



UNITING CHURCH IN AUSTRALIA

SUBMISSION TO ATTORNEY- GENERAL'S DEPARTMENT

RELIGIOUS FREEDOM BILLS SECOND EXPOSURE DRAFTS

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CONTACT

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Religious Freedom Bills

Second Exposure Drafts (December 2019)

Uniting Church in Australia

Summary

The Uniting Church in Australia commends efforts to strengthen legislative protections to prevent discrimination against people on the ground of their religion at the federal level. However, in seeking to achieve this, we believe the redrafted Religious Freedom Bills do not get the balance right. People should be able to enjoy their right to freedom of thought, conscience, religion and belief – however, the manifestation or expression of their religion and beliefs should not harm or demean others, nor should it automatically be privileged over other rights.

We commend the Australian Government for proposing to make religious belief and activity, as well as the absence of religious belief and activity, a protected attribute in discrimination law at the federal level. However, based on our commitment to human dignity and the common good, the Uniting Church in Australia does not support blanket provisions that would permit statements and actions that demean and unjustly diminish the rights of others on religious grounds.

As a provider of education and community services across Australia, including hospitals and aged care services, we are concerned certain provisions within these Bills undermine our ability to ensure safe and inclusive workplaces and may act as a barrier to vulnerable people accessing essential services or seeking employment.

The Uniting Church's commitment to a diverse society means that, while we recognise there may be cause for certain exceptions or exemptions for discrimination by religious organisations, these should be proportionate and limited in scope, being only as required in order to maintain the integrity and existence of the religious organisation.

Ultimately, the Uniting Church believes the right to freedom of religion is vital to a diverse society, but must always be balanced and bound together with the "due recognition and respect for the rights and freedoms of others and of meeting the just requirements of human dignity and the general welfare of a democratic society". We do not believe the Draft Bills, in their current form, achieve this balance.

The Uniting Church in Australia Assembly

The Uniting Church in Australia Assembly is the national council of the Uniting Church in Australia (UCA) and has determining responsibility within the Church for matters of doctrine, worship, government and discipline. We welcome this opportunity to contribute to the Second Exposure Drafts of the Religious Freedom Bills.

This submission is informed by extensive consultation with the Agencies of the Uniting Church in Australia. In addition to operating schools in most states and territories, the Uniting Church is an umbrella for one of the largest networks of non-government community service providers across Australia, offering a range of services in urban, rural and remote communities.

The UCA Assembly has worked with UnitingCare Australia to incorporate feedback from our community services into this submission, drawing on their experience as large employers and service providers, as well as their role in working directly with various vulnerable and marginalised population groups.

The Uniting Church made a submission to the Religious Discrimination Bill 2019 Exposure Draft released in August 2019.

This submission follows a similar structure to our first submission, covering most of the same areas upon which we focussed previously.

Previous Submission

In our [first submission](#) the Uniting Church reiterated its position as a “justice oriented” Church,² with a long history of support for human rights. The Church’s engagement with human rights issues in Australia is steeped in our concern for the rights of vulnerable and marginalised groups in our society.

Our commitment comes from our belief that all people are created in the image of God and are loved and valued by God.³

Accordingly, we have consistently opposed discrimination in society on the basis that every person is entitled to dignity, compassion and respect, and that the community flourishes when all people are included and accorded the dignity and respect they deserve.

This first submission explained our view that the right to religious freedom is an important element in the protection of all human rights by law nationally. As a result, the consistent position of the Uniting Church has been, and continues to be, that legislative provisions for religious freedom would best be made through the mechanism of a comprehensive Human Rights Act, within which the competing claims and values inherent in this discussion may be grounded in a holistic approach to human rights.⁴

The Uniting Church has appreciated the opportunities to consult with the Federal Government and also members of the Federal Opposition on this issue, along with the leaders of other religious communities in Australia.

In these consultations, and the wider and at times acrimonious public discourse that has followed, the Uniting Church has been reminded of the tension which can sometimes be found between the right to practice religion, including the right to discriminate in some cases, and the right for all people to live lives of dignity and equality under the law free from discrimination.⁵

In framing this second submission the Uniting Church reiterates that our approach to religious freedoms is that such freedoms are never to be self-serving, but rather ought to be directed toward the Church’s continuing commitment to seeking human

¹ Uniting Church in Australia (2006) *Dignity in Humanity: A Uniting Church Statement on Human Rights*, point 13(d).

Available at <https://www.unitingjustice.org.au/human-rights/uca-statements/item/484-dignity-in-humanity-a-uniting-church-statement-on-human-rights>

² “In the light of this faith, we will live out our covenant as First and Second Peoples, our commitment to being a multicultural Church, oriented towards justice, and that engages constructively with ecumenical partners.” Assembly Strategic Plan 2017 – 2020. Available at <https://assembly.uca.org.au/about/strategicplan>

³ Uniting Church in Australia (2006) *Dignity in Humanity: A Uniting Church Statement on Human Rights*, point 2. Available at <https://www.unitingjustice.org.au/human-rights/uca-statements/item/484-dignity-in-humanity-a-uniting-church-statement-on-human-rights>

⁴ Uniting Church in Australia (2014) *Rights and Responsibilities: Submission to the Human Rights Commissioner’s Consultation*, p6. Available at <https://www.unitingjustice.org.au/human-rights/submissions/item/981-rights-and-responsibilities>

⁵ Uniting Church in Australia (2015) *Submission to the Australian Human Rights Commission Religious Freedom Roundtable*, p12. Available at <https://www.unitingjustice.org.au/human-rights/submissions/item/1103-religious-freedom-inquiry>

flourishing and wholeness within a healthy, diverse society.⁶ In this respect, any legislative provisions for religious freedom should be driven by an overriding focus on enabling and maintaining a society which encourages mutual respect and is free from discrimination that demeans and diminishes people's dignity.

Focus of Proposed Legislation

As stated, the Uniting Church preference is for a comprehensive Human Rights Act, however, there are significant parts of the Exposure Drafts which we commend in its effort to provide protection from religious discrimination in Australia.

The legislation in its current form would enable Church members to continue to freely practise our religion. We also acknowledge that the second drafts have improved several aspects of the Bills, such as narrowing the basis on which health professionals may conscientiously object to providing services, clarifying the definition of 'vilify', and extending protections to 'associates' of religious individuals.

However, while there are some welcome amendments to the redrafted Bills, we are concerned that certain changes significantly expand the scope and lower the threshold for discrimination on religious grounds.

In addressing the first Exposure Draft Bills we expressed our concern that the proposed legislation adds to the complex patchwork of anti-discrimination laws already in place but does not achieve a balance between competing rights.

We remain concerned that the Draft Bills continue to lean too heavily in favour of religious freedom over other rights. As such, the Church maintains that the protections afforded to those most vulnerable in our society are at risk of being diminished by this proposed legislation. Provisions which permit

demeaning statements of belief and provide blanket exemptions to anti-discrimination laws preclude a more nuanced balancing of rights and a considerable potential for harm.

We are concerned such provisions could also have a legitimating effect in the wider community, creating the perception that certain human rights are optional or of lesser importance, and serving to embolden discrimination by providing an authorising environment for demeaning statements or actions.

With reference to our role as a service provider and employer in the health and community services sectors, we remain concerned about provisions that potentially conflict with our duty of care to employees and vulnerable service users, and that are ultimately at odds with our commitment to providing services that enhance the dignity of all people.

Complexity and Practical Workability of Proposed Legislation

Any new legislative provisions to protect against religious discrimination should avoid unnecessary complexity and should not diminish existing protections against other forms of discrimination.

We are concerned, however, that the complexity and ambiguity of the exposure draft Bills will generate uncertainty and confusion within workplaces and for individuals and service providers.

In addition to introducing unorthodox provisions that have no counterpart in other anti-discrimination laws, the interaction between the three Bills and existing federal and state and territory legislation creates significant uncertainty around the potential consequences of the proposed legislation and how it would operate in practice.

⁶ Uniting Church in Australia National Assembly (2009) Submission Australian Human Rights Commission Freedom of Religion and Belief in the 21st Century, p5. Available at <https://www.unitingjustice.org.au/human-rights/submissions/item/680-ahrc-freedom-of-religion-belief-in-the-21st-century>

Given the Uniting Church’s commitment to a diverse and inclusive society, we are concerned such complexity and uncertainty will make it harder for people who are more vulnerable to discrimination to understand and enforce their rights.

A lack of clarity around the operation of religious exemptions means people may be uncertain about whether they will experience discrimination, and this may in turn serve as a barrier to those who fear discrimination when accessing services from faith-based organisations.

As an employer and provider of health, community and education services, we are also concerned the complexity of the proposed legislation and its interaction with other federal and state and territory statutes will increase the complexity of workplace laws and make it harder for employers and services to meet their statutory obligations, including their duty of care to employees and vulnerable service users, as well as compliance with quality standards, such as in aged care and early childhood education.

By introducing a federal defence to discrimination complaints involving statements of belief, the proposed legislation undermines the cooperative basis of existing anti-discrimination laws and would thereby give rise to real practical difficulties.

Unlike the Federal Court or Federal Circuit Court, state and territory tribunals generally allow for low-cost adjudication of discrimination complaints as they operate on a ‘no costs’ basis in the area of discrimination law.

However, under provisions in the draft Bills, state and territory tribunals would have to refer discrimination complaints that concern statements of belief to a Commonwealth court where an unsuccessful party is liable to pay legal costs. If the defence is then rejected, the case would need to return back

to the state or territory tribunal. We believe this process would be costly and unworkable for both the complainant and respondent.

Coverage of the Legislation

In previous submissions, the Uniting Church has been particularly concerned to ensure that any legislated religious freedoms are not simply the prerogative of those (generally Christian) religious organisations who are most largely represented in our society, but also that the religious freedoms of minority communities are upheld.⁷

In this regard we support the broad approach taken in the legislation to defining religion and religious belief, including for those who hold no religious belief. However, we note certain provisions in the Bill may in fact leave some religious minorities more vulnerable to derogatory, religiously motivated statements or discrimination in employment.

The Uniting Church is pleased to see that Note 70 indicates that Indigenous religious beliefs would be captured within the concept of religious belief. However, we believe further dialogue with First Peoples across Australia is required to more fully determine their concerns relating to freedom of religion, and whether the Draft Religious Bills accommodate these concerns.

Timing, Process and Due Consultation

As mentioned earlier, the Uniting Church has greatly appreciated that the Federal Government has consulted with different faiths and faith-based organisations including our own Church and has indicated a commitment to consult further on the second Exposure Draft.

In responding to both Exposure Drafts, the Uniting Church has attempted to consult a diverse range of people from across our Church and beyond. Among some of the people with whom we have engaged there

⁷ Eg. *Uniting Church in Australia (2015) Submission to the Australian Human Rights Commission Religious Freedom Roundtable*, p8 – 9. Available at <https://www.unitingjustice.org.au/human-rights/submissions/item/1103-religious-freedom-inquiry>; *Uniting Church in Australia National Assembly (2009) Submission Australian Human Rights Commission Freedom of Religion and Belief in the 21st Century*, p28 – 29. Available at <https://www.unitingjustice.org.au/human-rights/submissions/item/680-ahrc-freedom-of-religion-belief-in-the-21st-century>

remains the sense that their voices have not been adequately sought out and reflected in the proposed legislation. We therefore continue to encourage the government to consult carefully with the LGBTIQ community in Australia.

Members of this community who are members of the UCA remain fearful for the consequences, intended and unintended, that might arise from this legislation.

As identified in our previous submission, we remain concerned that a number of other groups that have been subject to discrimination and social exclusion may be adversely affected by the proposed legislation.

In particular, a number of provisions will weaken existing protections against discrimination for people with disabilities.

We urge the Government to engage more fully with the concerns expressed by people with disabilities and revise the draft Bills to ensure existing protections are not diminished.

More broadly, given the nature of some religious beliefs, we see there is potential for women to be subject to discrimination under this legislation.

We believe further consultation and listening is required to more fully examine these issues and ensure these different groups are not left vulnerable to further discrimination as a result of the proposed legislation.

Employment in the Uniting Church, its Schools, Agencies and Campsites

The Uniting Church is firmly committed to diversity and inclusion, and this commitment is manifested in our employment practices and policies which seek to foster inclusive, safe and respectful workplaces. In terms of employment and workplace relations, the

proposed legislation would have significant implications across the Uniting Church and our Agencies, particularly in relation to our schools and services delivering healthcare, aged care and social support.

The Uniting Church neither needs nor supports blanket exemptions or open-ended exceptions which would enable religious organisations to discriminate against employees or prospective employees.

By and large, the Uniting Church does not seek to discriminate as an employer, asking prospective employees to be willing to abide by the ethos of the organisation rather than insisting on a particular religious affiliation.

The only instances in which we selectively employ people on religious grounds is where it is an inherent requirement of the specific position (e.g. roles connected with chaplaincy or religious worship, practice or teaching) or in certain leadership or governance roles.

We support carefully circumscribed exemptions that would enable us to continue to selectively employ or appoint on religious grounds in these narrow range of roles.

However, we do not believe religious organisations should have a carte blanche right to discriminate against employees on religious grounds.

Further, where organisations do wish to apply lawful exceptions, they should be required to be transparent in so doing, able to point to specific documents, policies, or statements which are available to public scrutiny and which set out the grounds for their use of exceptions.

As a large employer, the proposed legislation has a range of potential implications which are of concern to the Church and its Agencies.

As discussed, the complexity and ambiguity of the draft Bills, and uncertainty about their interaction with other federal and state and territory laws, poses concerns about their practicability and workability.

Clauses relating to statements of belief and employer codes of conduct (discussed further in the section below) pose a potential conflict between our Agencies' duty of care to their employees and their obligations to provide workplaces that are safe, inclusive and respectful.

Our Agencies that deliver community and health services are committed to providing person-centred care and support that is non-judgemental, inclusive and respects and honours peoples' wishes and identities.

We are concerned the proposed legislation will undermine the ability of our Agencies to expect this standard of behaviour and professional care is extended by all employees to everyone who uses their services.

There is also potential conflict between various provisions in the draft Bills and the statutory obligations and external quality standards that many of our services must currently adhere to, such as quality standards that apply in healthcare, early childhood education, and aged care.

Given potential conflicts between the proposed legislation and existing organisational codes of conduct and service standards, it is likely our Agencies will face additional costs associated with revising internal policies, retraining staff, and the possible legal costs of contesting claims.

Response to Specific Clauses in the Draft Religious Freedom Bill 2019

Clause 42 - Statements of belief

Clause 42 states that a "statement of belief does not constitute discrimination for the purposes of any anti-discrimination law".

As noted in our previous submission, the Uniting Church does not believe that Clause 42 is necessary and recommends that it be removed.

We are concerned that this Clause legitimises the expression of an opinion that may be demeaning and harmful, as long as a case can be made that it is a statement of religious belief, which is itself broadly defined.

While the draft Bills exclude statements that are made in bad faith, malicious, harassing, vilifying, threatening or "seriously" intimidating, this Clause will leave people without protection from a significant range of conduct that is demeaning, humiliating, insulting, ridiculing or offensive and that would otherwise constitute discrimination if not couched within a religious belief.

The Uniting Church continues to hold a range of concerns about Clause 42 of the revised Bill. We oppose any weakening of existing discrimination protections that would enable demeaning and harmful statements to be made against particularly vulnerable and marginalised groups.

The Clause would expose women, LGBTIQ people, single parents, people in de facto relationships, divorced people, people with disabilities and other groups, to a range of statements that would otherwise be considered discriminatory if not framed as a religious belief.

Insulating religiously motivated statements may also leave people of faith vulnerable to

demeaning and derogatory statements made by people of a different faith.

By rendering such discriminatory statements lawful, the proposed legislation will license conduct that diminishes the dignity and inclusion of community members from a diverse range of backgrounds.

We remain concerned that Clause 42 of the revised Bill seeks to exempt certain 'statements of belief' from all Commonwealth, state and territory anti-discrimination protections.

As outlined in our first submission, we do not support this position. By overriding Commonwealth and state and territory anti-discrimination laws, the Clause perpetuates a false and unjustified hierarchy of rights, privileging religious freedom over the human right to be free from other forms of discrimination.

By shielding statements of religious belief from existing anti-discrimination laws, Clause 42 is also inconsistent with the new Objects Clause 3(2) in the redrafted Bill, which affirms "the indivisibility and universality of human rights, and their equal status in international law" and "the principle that every person is free and equal in dignity and rights".

According to the Explanatory Notes, the revised Object Clause is designed to put into effect the recommendations of the Ruddock Review, which stated:

[T]here is no hierarchy of rights: one right does not take precedence over another. Rights, in this sense, are indivisible... Australia does not get to choose, for example, between protecting religious freedom and providing for equality before the law. It must do both under its international obligations.⁸

Clause 42, however, is at odds with this recommendation. Instead of reflecting the equal status of human rights and their

indivisibility, it seeks to favour one human right at the expense of others – an approach which is unprecedented and unjustified.

In addition, we believe the threshold for statements of belief that are not protected by the Bill remains too high. We note that Clause 42(2) has been modified to exclude conduct that is malicious, likely to harass, threaten, seriously intimidate or vilify another person or group of persons.

The definition of vilify (Section 5) is helpful and we acknowledge the addition of "likely to threaten or seriously intimidate". However, these changes are still inadequate from our perspective.

Clause 42 will still leave people without protection from a significant range of conduct that is humiliating, intimidating, insulting, offensive, ridiculing or otherwise unlawful under existing anti-discrimination laws.

It is clear statements drawn from religious belief that are not malicious can still cause serious harm to people. Yet under the draft Bill, the threshold of harm remains higher than that set out in the Racial Discrimination Act 18(c) and creates a higher threshold for discrimination complaints arising from harmful or demeaning religious statements.

The Explanatory Notes to the Bill maintain the proposed legislation is seeking to promote attitudinal change and counter negative stereotypes about people who hold certain religious beliefs (Note 9).

We continue to support this intent but remain concerned that the 'harm' bar remains set too high, meaning this legislation would permit the expression of statements about minority and vulnerable groups that has the opposite effect.

Just because religious speech doesn't directly incite violence, doesn't mean it isn't

⁸ Expert Panel chaired by The Hon Philip Ruddock (2018) Religious Freedom Review: Report of the expert panel, available at www.ag.gov.au/RightsAndProtections/HumanRights/Documents/religious-freedom-review-expert-panel-report-2018.pdf

used to legitimise violence and abuse. The same is likely to be true of comments that are made by one religious group against another. We continue to assert that this part of the legislation would not serve to encourage better behaviour in interfaith acceptance.

While we support and encourage the expression of a diversity of religious beliefs in the public domain, we maintain that religious bodies and individuals must be accountable for the language they use, the context and the likely impact it might have on others, particularly vulnerable groups.

From a Uniting Church perspective, the Bill continues to allow an imbalance in anti-discrimination law. People who are subjected to derogatory comments because of another person's religious belief would be stripped of legal protection under anti-discrimination law.

However, people making these derogatory comments will be able to make a complaint of indirect discrimination on the basis of religious belief if a third party attempts to prevent them from making such statements (for example, an employer who is seeking to provide a safe and inclusive workplace for all employees).

As an employer, Clause 42 will limit the ability of our Church and Agencies to regulate the conduct of employees – not only in terms of their engagement with other employees, but also how our employees engage with those using our community services, hospitals and schools.

The Uniting Church and our Agencies are committed to fostering safe and inclusive workplaces and have strict workplace policies regarding equal opportunity and the promotion of workplaces that are free of unfair discrimination and offensive and demeaning behaviour. Clause 42 will, however, undermine this approach by

restricting the ability of employers to respond to and manage instances of inappropriate conduct by an employee who makes demeaning and offensive statements to other employees.

Further, as noted above, our Agencies are committed to delivering community and health services that are non-judgemental, inclusive and respect and uphold the dignity of all.

Creating a safe and inclusive service environment is particularly important where our services are supporting those who are highly vulnerable and disadvantaged.

By preventing employers from regulating harmful statements made by employees, the proposed legislation will undermine the ability of our Agencies to ensure their services are provided in a non-judgemental and professional manner by all employees.

It will also interfere with their ability to ensure staff deliver services in a manner that complies with certain statutory obligations and external standards, such as quality standards that apply in healthcare and aged care.

Finally, in addressing Clause 42, Note 534 in the Explanatory Notes states that:

A key aspect of protecting the right to freedom of religion is protecting the ability of individuals to explain, discuss and share their fundamental beliefs. Protecting the freedom to express religious beliefs civilly and as part of public discourse is an essential part of maintaining a healthy and functioning democracy

The Uniting Church strongly agrees with the essential nature of civil public discourse. We are concerned that Clause 42 will not promote such civility.

Clause 8

Clause 8 sets out prohibitions against indirect discrimination and includes provisions which relate to employer codes of conduct and conscientious objection by health practitioners.

We are supportive of Clauses 8(1) and most of 8(2), which reflect conventional indirect discrimination protections and allow for a balancing of relevant factors to be taken into account.

However, the Uniting Church is of the opinion that the remaining subsections of this Clause are unnecessary, complicated and pose a range of problems in relation to employer codes and guidelines protecting patients' health.

If the legislation remains in its current form in regard to Clause 8, then the Uniting Church would raise a number of more specific issues as follows.

Codes Regulating Statements of Belief: Private time vs Public/work (Clause 8(3-4))

The Uniting Church appreciates the issue of when an employer can lawfully regulate what employees say or do when they are not performing work.

This needs to be approached with care. In determining the grounds on which an employer can legitimately restrict an employee's conduct, we understand that the legislation attempts to make a clear distinction between private and public domains.

However, we remain concerned that these subclauses fail to take into account a range of important considerations and will make it harder for larger organisations to set and maintain standards that support inclusive, diverse and culturally safe workplaces and services.

While we acknowledge Clause 8(3) has been amended to slightly narrow the restrictions on when an employer can regulate employee conduct, our overarching concerns with this section of the draft Bill remain unaddressed.

As emphasised above, the Church and our Agencies seek to foster workplaces and services that are inclusive, diverse and culturally safe.

In certain circumstances, this may include employer codes of conduct that seek to prevent discriminatory or offensive public comments by staff, particularly senior staff, when they are not performing work.

For example, in certain circumstances it may be important staff are prevented from making derogatory public statements that may severely erode the reputation and inclusiveness of a service that relies on gaining the trust of vulnerable clients.

The proposed legislation risks undermining employer conduct rules and qualifying body conduct rules which are attempting to uphold the values of the organisation or profession, and which seek to avoid the potential for damage to individuals and the organisation if these values are breached.

By restricting the ability of employers to set codes of conduct, workplaces will find it more difficult to foster inclusive and safe work cultures and services.

The Uniting Church remains concerned that 8(3) retains financial hardship as the only threshold measure available to large employers.

This provision prevents consideration of all the relevant circumstances of a case, including the non-financial harms that may arise as a result of an employee's statements or conduct outside of work.

The distinction between large and small employers is also arbitrary and unjustified, failing to take into account the nature and degree of harms that may arise.

The Uniting Church does not believe financial hardship should be the prism through which conduct codes are judged as reasonable and proportionate.

As the International Convention on Civil and Political Rights states, the “freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others” (Article 18(3)).

This is the standard indirect discrimination test, and we believe it should be the reference point for assessing whether a code of conduct and its application to an employee’s conduct outside of work is reasonable.

Codes Regulating Statements of Belief: Threshold for Protections (Clause 8 (5))

Subclause 8(5) clarifies that subclause 8(3) does not apply to statements which are malicious, would harass, threaten, seriously intimidate or vilify a person or group, or which advocate for the commission of a serious criminal offence.

This unjustifiably high threshold of harm mirrors the threshold adopted in relation to statements of belief in Clause 42, and our concerns about this threshold addressed in our response to Clause 42(2) above.

Conscientious Objection (Clause 8(6 and 7))

The Uniting Church understands and supports the right of conscientious objection for health practitioners and we appreciate the changes that have been made in this section when compared to the first Draft.

Narrowing the list of health professionals and clarifying that health professionals need to be objecting to providing a service, rather than objecting to serving an entire group of people, are both positive.

We remained concerned, however, that the redrafted Bill fails to adequately consider patient care and wellbeing and the potential effects on equitable access to healthcare.

Health practitioners are in a position of power and authority in relation to their patients and the public, and their right to freedom of religion must be balanced against the rights of their patients to life, health, autonomy and non-discrimination.

While the redrafted Bill clarifies that a health professional cannot conscientiously object to serving an entire group of people, in practice this distinction will not prevent systemic discrimination.

A doctor will be able to refuse to provide a treatment where this disproportionately impacts one specific group of people, as long as they also refuse to provide it to others.

For example, the refusal of a doctor to provide hormone therapy on religious grounds will disproportionately affect trans and gender diverse people.

Similarly, a refusal to provide oral contraception will adversely affect women, while an objection to prescribing or dispensing PEP or PrEP will disproportionately affect gay and bisexual men and their risks of contracting HIV.

An ongoing concern with the draft Bills is the absence of real consideration for patient care and wellbeing. This “unjustifiable adverse impact” provision sets the bar too high and lacks appropriate safeguards to protect patient health and wellbeing.

The clause does not set out obligations to patients, such as the provision of information, the requirement to disclose the objection, and the requirement to make an effective referral.

Even where referrals are provided or patients can access alternative health providers, the denial of healthcare can have a detrimental effect on a person's wellbeing and inevitably creates at least some degree of harm, ranging from inconvenience, humiliation, and psychological stress to delays in care and increased medical risks.

There is potential to further marginalise particular groups that already face stigma and uncertainty when trying to access healthcare. Such harms will likely be exacerbated in contexts where access to alternative healthcare providers may be limited, particularly in rural and regional areas where there may be limited choice of medical practitioners.

This may have a negative impact on the level of care such people can receive in their own area, forcing them to travel further for medical care or live with lower levels of care than might be available in urban settings.

The lack of safeguards also has implications for our hospitals and other services providing healthcare, including residential aged care.

Our services have an obligation to provide timely, clinically indicated and person-centred health care.

The refusal of a health practitioner to deliver clinically indicated and non-judgmental care may affect the quality of care delivered by a healthcare service.

In this regard, we believe it is vital a health professional who invokes a conscientious objection to providing, or participating, in specific treatments or procedures "should make every effort in a timely manner to

minimise the disruption in the delivery of health care and ensue burden on colleagues and other health care professionals".⁹

This Bill, however, makes no reference to obligations around disclosure or safeguards to minimise disruption to healthcare. It would thereby have the potential to undermine our services' obligations to patients and statutory responsibilities to deliver timely services in line with quality standards.

In short, while we recognise the importance of allowing health professionals to conscientiously object, we remain concerned the redrafted Bill fails to achieve an appropriate balance between supporting a doctor's right to conscientious objection and people's right to safe, accessible healthcare.

Clauses relating to Exceptions - Clauses 11, 32 and 33

The Uniting Church reiterates its understanding that an exclusion clause in some form is necessary to ensure that religious institutions are able to operate in certain circumstances to the exclusion of people who are not of the same religion.

However, it is important that such an exclusion is carefully and narrowly defined to avoid unintended consequences and a negative impact on the rights of others.

Rather than blanket and open-ended exemptions or exceptions, we believe religious exemptions in anti-discrimination law should be consistent with the international human rights law principles of necessity, reasonableness, and proportionality.

This would ensure that religious bodies could only discriminate if there is a genuine and legitimate need, with any discriminatory measures proportionate and appropriately tailored to that need.

⁹ Australia Medical Association (2019) Position Statement: Conscientious Objection – 2019, available at <https://ama.com.au/position-statement/conscientious-objection-2019>

On this basis, we recognise religious organisations may seek to selectively employ people on religious grounds where it is an inherent requirement of the specific position (e.g. roles connected with chaplaincy or religious worship, practice or teaching) or in certain leadership or governance roles where it is required to maintain the integrity or religious ethos of the organisation.

Consistent with this approach, the Uniting Church generally does not seek to discriminate as an employer, asking prospective employees to be willing to abide by the ethos of the organisation rather than insisting on a particular religious affiliation.

The only exception to this that our Agencies and hospitals might seek to apply is in relation to chaplaincy or, in some instances, certain leadership or governance roles.

As a significant operator of hospitals and aged care facilities, the Uniting Church neither needs nor supports the revisions in this second Draft that extend the range of organisations able to access blanket exemptions in terms of employment and partnership.

The broad religious exemptions would give religious bodies (broadly defined) excessively wide discretion to discriminate without justifiable reasons, such as where a person's religious beliefs have little to do with the job requirements.

As indicated, the Uniting Church and its agencies would not seek to use such wide-ranging and blanket exemptions.

Nevertheless, given the scale of public services delivered by faith-based organisations across Australia, such exemptions would open up the possibility of widespread and unwarranted discrimination in employment, with flow-on consequences for certain groups who already face barriers and disadvantages in the labour market.

Irrespective of the employment practices of the Uniting Church, the existence of such blanket and wide-ranging exemptions may have wider implications in terms of how faith-based services are perceived, particularly by vulnerable groups or those who have disproportionately experienced marginalisation and discrimination.

Our community services often work with people who have experienced multiple layers of marginalisation and discrimination, and maintaining a safe and inclusive service setting in this context is fundamental.

Yet we are concerned the broad exemptions proposed in the redrafted Bill, even if not relied on in practice, risk creating negative perceptions and mistrust toward faith-based services.

We also note that that, under the redrafted Bill, the threshold for determining whether discrimination should be permitted has also been lowered, allowing religious organisations to discriminate if they satisfy either of the two different tests specified.

For example, we note that under the test in Clause 11(1), an organisation must simply be “engaging, in good faith, in conduct that a person of the same religion as the religious body *could reasonably consider* to be in accordance with the doctrines, tenets, beliefs or teachings of that religion” (emphasis added).

While we recognise some level of exemption is needed for faith-based organisations, this test lacks sufficient stringency and seems to underestimate the wide diversity of beliefs and conduct within different faiths and denominations (and even within different sub-groups of the same faith or denomination).

Given what could “reasonably” be construed as constituting “doctrine”, “tenets” and “injury to religious sensitivities” is contested even

within religious communities, it is difficult to see how this could be regarded as an “objective test”.

We are concerned this test is too loosely defined and risks legitimating almost any beliefs or conduct, including those which are demeaning, derogatory and harmful.

Transparency

We welcome the addition of Clause 33 (2c) that specifies that conduct for religious camps and conference sites must be in accordance with publicly available policy issued by the person.

We would encourage a wider usage of such mechanisms so that organisations seeking to apply exceptions and thus discriminate in employment or other practices are able to point to publicly available policies and these policies are open to public scrutiny.

However, we ultimately maintain that transparency is a necessary but not sufficient basis to justify discrimination – that is, transparency and public availability of policies is not a sufficient defence for discrimination in access to facilities and accommodation.

We remain concerned that the wider implications for people vulnerable to discrimination has not been given adequate consideration, and that exemptions need to be more narrowly defined.

Australian Human Rights Commission Funding

If the proposed legislation comes into being, the Uniting Church would expect to see the Federal Government providing an appropriate increase in funding to the Australian Human Rights Commission, adequately meeting the costs associated the expanded brief.

Amendments to the Charities Act 2013

We do not believe that the planned amendments to s11 of the Charities Act are necessary. Current laws make it clear that activities supporting of ‘traditional’ marriage do not constitute a disqualifying purpose.

By providing an express provision, the proposed amendments create legitimate questions about the ability of charities to oppose government policy and existing law on other issues.

If implemented, they would create a double standard and potentially lead to greater confusion around the ability of charitable groups (including religious charities) to advocate in line with their charitable purposes.

Conclusion

In conclusion, the Uniting Church is committed to the right of every person to a robust freedom of religion as described in Article 18 of the International Covenant on Civil and Political Rights.¹⁰

Every person is equal before the law and any permission given to individuals or religious organisations that allows them to discriminate on the basis of religious belief must be carefully balanced against the rights of people to be free from discrimination and live with dignity.

The Uniting Church remains concerned that the Second Exposure Drafts (10 December 2019) Religious Discrimination Bill 2019 does not yet achieve that balance and that vulnerable people in particular are likely to be adversely impacted should it be implemented in its current form.

As this discrimination bill is further developed the Uniting Church would welcome being consulted further.

¹⁰ International Covenant on Civil and Political Rights, Article 18. Available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

Appendix: Previous Statements and Submissions made by the UCA

The UCA has made the following submissions and statements that are relevant to this new inquiry:

1. 1977 – [Statement to the Nation](#)
2. 2000 October – Submission to Inquiry into, and Report on – [Australia’s efforts to promote and protect Freedom of Belief](#)
3. 2006 – [Dignity in Humanity: Recognising Christ in Every Person](#) – A Uniting Church in Australia Statement on Human Rights
4. 2009 March – Submission to the Australian Human Rights Commission – [Freedom of Religion and Belief in the 21st Century](#)
5. 2014 November – Submission to the Human Rights Commissioner’s Consultation – [Rights and Responsibilities](#)
6. 2015 October – Submission to the Australian Human Rights Commission – [Religious Freedom Roundtable](#)
7. 2016 December – Submission to the Parliamentary Joint Committee on Human Rights – [Inquiry into Freedom of Speech in Australia](#)
8. 2018 January - Submission to the Expert Panel on Religious Freedom – Submission to the Expert Panel on Religious Freedom
9. 2019 October – Religious Discrimination Bill 2019 Submission – [Uniting Church in Australia Assembly](#)

