Submission on the Second Exposure Draft of the Religious Discrimination Bill
By Anglican Community Services trading as Anglicare Sydney

About Anglican Community Services

Anglican Community Services, trading as Anglicare Sydney, is a not-for-profit organisation of the Anglican Church Diocese of Sydney and one of the largest Christian community service organisations in Australia. Anglicare Sydney was formed on 1 July 2016 by the merger of the Sydney Anglican Home Mission Society (formerly trading as Anglicare Sydney) and Anglican Retirement Villages Diocese of Sydney (ARV). Anglicare Sydney exists to serve people in need in our community, enrich lives, and share the love of Jesus. We respect and value every person as made in the image of the living God. We seek to serve those who are ageing, vulnerable or marginalised by meeting their material, physical, emotional, social and spiritual needs. In partnership with parishes and others, we provide a range of services that promote dignity, safety, participation and wellbeing for people in their relationships, homes and communities.

We operate a wide range of community and aged care programs across the Sydney Metropolitan, Blue Mountains, Illawarra and Shoalhaven regions of New South Wales with an annual revenue of $380m and assets of $1,740m. Our 3,900 staff and more than 2,000 volunteers operate across a diverse range of community services including: foster care and adoption services; early intervention family support; counselling and family support services; family relationship centres; residential and community aged care services; retirement village living; services for migrants and refugees; carer support services; disability respite services; mental health support; youth services; emergency relief for people in crisis; social and affordable housing; opportunity shops providing low-cost clothing; emergency management and community outreach in times of natural disaster; and chaplains in hospitals, prisons, mental health facilities and juvenile justice institutions. Even though Anglicare Sydney operates largely within the Greater Sydney, Blue Mountains, Illawarra and Shoalhaven areas, it is one of the largest community and residential aged care providers and retirement living operators in Australia. Governed by the Anglican Diocese of Sydney, Anglicare Sydney is the largest member within the Anglicare Australia network and actively participates in national matters of network interest.

Anglicare is a Public Benevolent Institution, regulated by the Australian Charities and Not-for-Profits Commission, and has charity subtypes of advancing religion, advancing health and advancing social or public welfare.

Support for Submissions

Anglicare Sydney has taken the opportunity to consult with the Anglican Diocese of Sydney and Freedom For Faith and we formally express our endorsement for these two independent
submissions concerning the second exposure draft, which in our view more fully set out the considerable issues for support and concern regarding the draft legislation.

In particular, we endorse the comments in the Anglican Diocese of Sydney which highlight the challenges posed for Anglicare Sydney in the current drafting of the Bill – it is difficult for Anglicare Sydney as single corporate entity which conducts a wide variety of activities (see above) to determine whether or not we are (1) an institution that is an aged care facility, (2) an institution that primarily provides accommodation, or (3) neither for the purposes of the rider to the definition of “religious body” in clause 11. If Anglicare Sydney is (1) and/or (2), then this impacts the application of the draft legislation to other activities (assuming that if Anglicare Sydney only conducted those other activities it would be a “religious body” as defined.

Similarly, if Anglicare Sydney is not a “religious body” as defined, it is difficult to determine how the exceptions in clause 32 for a person that (1) establishes, directs, controls or administers an aged care facility that is conducted, or (2) an institution that primarily provides accommodation (if Anglicare Sydney is such an institution), in accordance with the doctrines, tenets, beliefs or teachings of a particular religion, apply to Anglicare Sydney. Do they exceptions extend to our other activities (i.e. are not related to the conduct of our aged care facilities or the provision of accommodation).

It would be an unfortunate impact of a Religious Discrimination Act if Anglicare Sydney felt the need to undertake a corporate restructure in order to achieve clarity as to whether it (or each new corporate entity) was, or was not, a “religious body” as defined, and/or was , or was not, able to rely on the exceptions in clause 32.

This submission will not comment further on, or duplicate, the matters raised in the separate submissions of the Anglican Diocese of Sydney and Freedom For Faith but will focus solely on additional major concerns that Anglicare Sydney has with the draft legislation.

Confusion between service recipients and the nature of services provided

The draft legislation, particularly Clause 21, appears to be crafted with the intention of reducing the incidence of discrimination experienced by service recipients – perhaps through wrongful exclusion from being able to participate in the receipt of services. This objective is commendable, and it is Anglicare Sydney’s practise to not discriminate against persons who may benefit from using our services. Our aged care services, family services and childrens services do not discriminate in determining the eligibility for services (the understanding being that in the case of foster care and adoption services, the child or young person is the person receiving services, not the foster carers or adopting parties). Anglicare Sydney could possibly pursue a preference to provide services to Sydney Anglicans (or persons of Christian faith more generally) in preference to others, as may be thought to be required through the Biblical mandate of Galatians 6:10: “Do good to all but especially to the household of faith”. In our experience this has not actually occurred and does not create exclusivity, but rather the principle could provide an ordering of priorities, which would assist with resource allocation. Practically, the work of Anglicare Sydney provides a universal good, a recent example being the activation of Anglicare’s Disaster Recovery volunteers throughout NSW in the recent bushfire crisis.
Notwithstanding our support for the elimination of discrimination against service recipients, Anglicare Sydney is concerned about the draft legislation impacting on the way services and operations will need to be changed to provide an equal voice for opposing religious positions. Anglicare Sydney is an overtly Christian organisation and we are concerned that the draft legislation will effectively require our organisation to provide space and opportunity for the expression or promotion of religious views (or views on religion) that are inconsistent with the doctrines, tenets and beliefs of the Anglican Diocese of Sydney. It would not be acceptable, for example, for Anglicare Sydney to be required to make property available for the conduct of activities (such as a Hindu festival) that are inconsistent with the doctrines, tenets and beliefs of the Anglican Church, merely because as an overtly Christian organisation it had at all other occasions made property available for the conduct of various culturally specific activities that are consistent with the doctrines, tenets and beliefs of the Anglican Church in the Diocese of Sydney.

Section 21 as currently drafted would appear to have application to require Anglicare Sydney to provide facilities for the promotion of religious views that are antithetical to the doctrines, tenets and beliefs of the Anglican Diocese of Sydney. It is completely untenable that a Christian organisation, which arguably does not qualify as a “religious body” under clause 11 to effectively be required to operate as if it had no religious perspective whatsoever. Anglicare Sydney is “a registered public benevolent institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion” but it does conduct residential aged care services and is arguably excluded as qualifying as a religious body (see above) in its entirety or at least insofar as it conducts aged care facilities. This means that although Anglicare Sydney is an arm of the Anglican Church it would not be able to operate in a manner that supports the Anglican Church’s views with the degree of exclusivity that is necessary to be consistent and faithful to those views.

The overlap between Clauses 20 and 21 needs to be eliminated.

Currently, although Clause 20 is principally concerned with the use of premises that the public or a section of the public may use, the draft section also addresses “the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use”. Clause 21 concerns the provision of goods services or facilities. There is the potential for an overlap where the use of facilities within premises may not be prohibited under Clause 20 but could be unlawful under Clause 21. An example in the context of an aged care facility is as follows:

In Anglicare aged care homes a chapel space (usually a dedicated room but at some locations a multi-purpose room) is provided for the use of residents and families for the conduct of Anglican church services or religious activities conducted in accordance with the doctrines, tenets and beliefs of the Anglican Diocese of Sydney. These chapels and multi-purpose rooms are not available for the use of the public generally but are solely for the use of Anglicare, the residents of the residential aged care home and their visiting family members and friends. It is considered that these premises or the “facility” in the premises is not available for the use of the public or a section of the public. Therefore, the exclusive use of the chapel for the conduct of Anglican church services or religious activities conducted in accordance with the doctrines, tenets and beliefs of the Anglican Diocese of Sydney should not contravene Clause 20, even
where there may be an express refusal to allow the chapel space to be used for the conduct of other religious practices, such as for a Roman Catholic Mass, or for Islamic prayers. Similarly, in the case of multi-purpose rooms, they are not available for the conduct of religious practices or activities that would be inconsistent with the doctrines, tenets and beliefs of the Anglican Diocese of Sydney.

The exclusive use of the chapel space or multi-purpose room may not contravene Clause 20. However, it would seem that as currently drafted, the abovementioned activity and practice could still contravene Clause 21. To eliminate this overlap, there should be an express exclusion from Clause 21 for matters that are more specifically addressed in Clause 20. It is recommended that the wording “(otherwise than through the use of facilities in premises, addressed in section 20)” should be inserted in line 3 of draft Section 21, so that the text should read as follows:

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available (otherwise than through the use of facilities in premises, addressed in section 20), to discriminate against another person on the ground of the other person’s religious belief or activity......

Further examples of this problematic overlap can be given with respect to the operations of retirement villages operated by Anglicare. In accordance with the foundational purposes of Anglicare Sydney’s retirement villages, only Anglican church services are conducted within Anglicare Sydney’s retirement villages. In fact, this practice is enshrined in the Diocesan Property Use Policy of the Synod of the Anglican Diocese of Sydney.

The Policy states:

“This policy is not intended to require a withdrawal from, or the exclusion of, those who do not share our doctrines, tenets and beliefs. Rather, we should welcome to our properties those who do not share our doctrines, tenets and beliefs, to the fullest extent possible, yet in a way that does not cause our doctrines, tenets and beliefs to be contravened or compromised. The mere presence of those who do not share our beliefs or the mere expression of beliefs we do not share, will not contravene this policy. However, allowing our property to be used for the promotion or propagation of such beliefs does. For example, it does not contravene our doctrines, tenets and beliefs for a resident of an Anglican retirement village who is an adherent of another faith to practise their faith in the privacy of their own residence, but it would be a contravention if the retirement village were to allow a service of public worship for those of that faith to be held.”

The clear policy and practice of Anglicare Sydney is to not allow the conduct of non-Anglican religious services on Anglicare premises, including in its retirement villages. If the overlap between Clauses 20 and 21 is not eliminated as requested above, there will be exposure to Anglicare Sydney from continuing to conduct its exclusive religious practices as it has for decades.