2 October 2019

The Hon Christian Porter MP
Attorney-General of Australia
Parliament House
Canberra ACT 2600

Via email FoRConsultation@ag.gov.au

Dear Attorney-General,

**Re: Exposure Drafts on Religious Freedom and Associated Legislation**

Thank you for the opportunity to provide our comments in response to the exposure draft.

The Uniting Church LGBTIQ+ Network (hereafter ‘Uniting Network’) is an independent national network in the Uniting Church in Australia (UCA). We are an officially recognised network of the UCA and work within the structures and various Councils of the UCA, but we do not represent or speak for the UCA.

In the following paper we will provide details on our concerns with the draft legislation.

Our submission is not confidential and may be published on the Department’s website.

We are willing to meet with you and your team to discuss our concerns in greater detail.

Yours sincerely,

Jason Masters
National Secretary

Dr Deidre Palmer, National President, the Uniting Church in Australia
Ms Colleen Geyer, General Secretary, National Assembly, the Uniting Church in Australia
Uniting Church LGBTIQ+ Network, National Executive
UNITING CHURCH LGBTIQ+ NETWORK
SUBMISSION
IN RELATION
RELIGIOUS FREEDOM BILLS
EXPOSURE DRAFTS

October 2019
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1. Summary of Recommendations

The following are our recommendations. Please note that the recommendation number refer to the paragraphs in this submission and not a clause or section in a bill.

**Recommendation 2.1:** Given the potential impact of this proposed legalisation, it is our view there should be a full public inquiry that is open and transparent covering in further details (i) the need for such legislation, (ii) the breadth of the levels of religious protection to be afforded in society, (iii) the process for resolving competing rights, (iv) to consider those rights that are based on existence (such as sexuality, race, disability, sexual orientation), to those that are based on a choice (religion) and the hierarchy of rights in the event of competing rights.

**Recommendation 3.1:** All of the discrimination bills should be reviewed and incorporated into a Bill of Human Rights, which would be consistent with Australia’s international obligations.

**Recommendation 5.1.1:** That the Objectives of the Act should be expanded to specifically state the extent of the use of the Act, provide limitations against discriminating towards a person who does not hold a particular or any religious beliefs, and that outside of a religious organisation, religious beliefs should not be used to discriminate against other persons.

**Recommendation 5.2.1:** That this bill be delayed and reconsidered with the ALRC review, when it has been provided to the Government and considered through appropriate consultation with the public.

**Recommendation 5.3.1:** Section 8 (3) and (4) be deleted as they are not necessary and can lead to significant unintended consequences.

**Recommendation 5.3.2:** If the Government is not willing to delete Section 8 (4), then Section 8 (4) (b) be amended to read “that would, or is likely to, offend, insult, humiliate, harass, vilify or incite hatred or violence against another person or group of persons”

**Recommendation 5.3.3:** If the Government is not willing to delete Section 8 (3), that Section 8.3 be reviewed to provide appropriate balance for businesses to protect their values, and that employees who have gained a higher profile due to their employment do have a higher level of responsibility to their employers.
**Recommendation 5.3.4**: Section 31 (6) be deleted as the clause is not necessary and could lead to unintended consequences.

**Recommendation 5.4.1**: Removal of Section 8 (5) and (6) as these matters are clearly the domain and responsibility of the States and Territories, and health practitioner exemptions should be constrained to minimal exemptions as has been the current practice across Australia.

**Recommendation 5.4.2**: Removal of Section 8 (5) and (6) as it provides a precedent in Commonwealth law for discrimination against a class of citizens based on religious beliefs.

**Recommendation 5.4.3**: Should the Government not agree to remove sections 8(5) and (6) then we strongly recommend the following additions be added to the Bill as a minimum:

a) A health practitioner who holds religious belief conscientious objection to the provision of health services, a registered health practitioner is under a duty to perform all medical services in an emergency where it is necessary to preserve the life of the person or to prevent any significant harm.

b) A health practitioner who holds religious belief conscientious objection to the provision of certain services or to the provision of services to person, must provide the services if there is no alternative health practitioner reasonably located to the patient.

c) A health practitioner who holds religious belief conscientious objection to the provision of certain services or to the provision of services to person, must provide a referral to an alternative health practitioner that is reasonably located to the patient.

d) A health practitioner who holds religious belief conscientious objection to the provision of certain services or to the provision of services to persons, must advise every patient at the time of an appointment or being put on a patient list, of any limitation to the services that they will provide. [This will permit the patient to seek an appointment with another practitioner and avoid potential costs resulting from attending a health professional appointment only to not have the services provided]

e) That this Act does not permit health practitioners to provide religious based comments to patients as part of their consultation.

**Recommendation 5.4.4**: Removal of clause 31(7) which is an unreasonable limitation on health service providers.

**Recommendation 5.5.1**: Removal of Section 10 as a non-natural person/corporate entity cannot in the ordinary concept of discrimination be discriminated against, and discrimination is in the ordinary process that impacts a natural person.
Recommendation 5.5.2: If the removal of Section 10 is not accepted by the Government, then the bill be significantly redrafted to limit the rights of a religious organisation to cause direct or indirect harm to a person in the context of their religious beliefs, and in particular young people.

Recommendation 5.5.3: If the removal of Section 10 is not accepted by the Government, then there needs to be significant work to better define a religious organisation.

Recommendation 5.5.4: If the removal of Section 10 is not accepted by the Government, then there should be additional wording to expressly state that this act does not limit or override other discrimination laws, and where there is a conflict, the other discrimination laws are superior (ie discrimination against an existence (race, gender, disability, sexual orientation etc) is more serious than discrimination against a belief).

Recommendation 5.5.5: If the removal of Section 10 is not accepted by the Government, then replace the very general “in conduct that may reasonably be regarded as being in accordance” with tighter wording such as “in conformity with” or the like, consistent with other discrimination Acts and represents a consistent standard.

Recommendation 5.6.1: That the Religious Discrimination (Consequential Amendments) Bill 2019 be amended to remove the ability for religious educational organisations to discriminate against students (for example LGBTIQ+ student.)

Recommendation 5.7.1: That there be further consultation and consideration on the purpose and breadth of this clause.

Recommendation 5.8.1: That Clause 41 be removed from the final version of the Bill.

Recommendation 5.9.1: That the Freedom of Religion Commissioner part be deleted (Part 6, clauses 45 – 53). In the event that there is significant additional workload for the Commission, then an amendment to the Act and budget allocation be contemplated.

Recommendation 5.9.2: If the Government does not agree to the removal of Part 6, clauses 45 – 53, then the additional Commission and an LGBTIQ+ Right Commissioner should be appointed to protect the human rights of LGBTIQ+ people and to assist the Commission in dealing with competing rights between religious people and organisations and LGBTIQ+ people.
Recommendation 6.1: That there be further analysis on the cost implications of actions under this and related acts (both State/Territory and Federal), and the Bill be delayed until this is understood and the cost implications minimised.
2. Preliminary Comments - Process

Uniting Network has previously expressed our concerns you yourself and the Prime Minister in respect to the short period provided to respond to the Exposure Drafts on Religious Freedom Bills, which were released on 29 August 2019 with just over four weeks for comments.

We appreciate that the Prime Minister went to the election with a concept of Religious Freedom legislation, as a follow on from the Ruddock Enquiry. Further, we note that the Ruddock Report was only made available to the public in late 2018, with little consultation on the recommendations of that report.

As an overall principle, we support the concept of religious discrimination protection. However we note that any freedom, privilege or protection from discrimination does have an element of balancing competing rights, and we believe that the exposure draft fails in that balance of competing rights.

The exposure draft bills have a high level of legal complexity and the inter-relationship between the three bills and their impact on various Federal and State legislation adds significantly to the ability to analyse all implications of the bills and their potential consequences. As a small self-funded organisation, with very limited resources, we have not been able to obtain the necessary legal resources to make a fully considered submission. Where possible, we have taken as input, commentary from other organisations who may also be making submissions. That being said, this submission is our own position and not that of any other organisation.

This legislation will make significant changes in the rights for and against people holding religious views, as well as potentially significant negative consequences for other members of the community.

To that end it is our contention that the bills as presented in the exposure draft have significant ramifications, not only for the LGBTIQ+ community, but also other groups, including women, single parent families, people with disabilities and people of different cultural backgrounds.

Consequently, we believe that the period for consultation needs to be significantly extended, to allow for the Government’s drafting staff to have full and effective consultation with all communities, and to minimise the risk of unintended negative consequences to members of the Australian public.

Recommendation 2.1: Given the potential impact of this proposed legalisation, it is our view there should be a full public inquiry that is open and transparent covering in further details (i) the need for such legislation, (ii) the breadth of the levels of religious protection to be afforded in society, (iii) the process for resolving competing rights, (iv) to consider those rights that are based on existence (such as sexuality, race, disability, sexual orientation), to those that are based on a choice (religion) and the hierarchy of rights in the event of competing rights.
3. Uniting Network and Uniting Church– Support for Human Rights including Religious Freedom

Whilst we speak only on behalf of Uniting Network, as members of the Uniting Church in Australia (UCA), we are able to call up and references rules, decision, policies etc of the UCA. To that extent we note that:

The national Assembly of the Uniting Church in Australia has made a number of statements concerning the dignity and rights of the human person as understood within the Christian tradition. In 2006 the Assembly affirmed:

…the Uniting Church believes that every person is precious and entitled to live with dignity because they are God’s children, and that each person’s life and rights need to be protected or the human community (and its reflection of God) and all people are diminished.

The Christian understanding of human rights is grounded in biblical teaching and the doctrine of God. This doctrine does not provide an automatic movement to or juxtaposition in terms of appropriate policy and legislation in the twenty-first century. But, as articulated by the Uniting Church Assembly, to deny or restrict human rights in any manner, would require the most rigorous analysis and justification. The onus is on the advocates of limiting human rights to establish their case. In the current circumstances, there would need to be robust arguments to defend any further denial of the human rights of other Australians in the name of “religious freedom”.

The UCA Assembly has also supported the range of international treaties and declarations including the Universal Declaration of Human Rights ([UDHR] 1948) which states that “everyone has the right to freedom of thought, conscience and religion”, and this includes freedom to practice religion and to change it. We note that this right is also reflected in the 1976 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and Cultural Rights.

The UCA policies are consistent with churches around the world. On the fiftieth anniversary of the passing of the UDHR the World Council of Churches called for defending human rights which is sensitive to different religions, cultures and traditions, and includes:

...the equal rights of young and old, of women and men, and of all persons irrespective of their origin or condition.

In 1993 the UCA Assembly endorsed the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief, and endorsed the actions of the then Commonwealth Government to amending Section 47 of the Human Rights and Equal Opportunity Act. Whether this is sufficient protection is the issue of whether there is a need for explicit statutory protection for religious (and non-religious) belief and how best to achieve that, such as in a national bill or charter of rights.

In 2008 the Standing Committee of the UCA national Assembly declared its support for:

...a national human rights charter that is born from widespread and effective community and stakeholder consultation.

A key clause in the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief is number three in Article 1 which states:
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.

Prior to the introduction of the Marriage Amendment Bill in late 2017, a Senate Inquiry had been held, including public submissions. The Uniting Network made a submission and appeared before that Senate inquiry. It is our understanding that the Marriage Act in no way undermines protections for religions to conduct marriages in accord with their own doctrines, policies and procedures.

In the case of the Uniting Church in Australia, following the passage of the Marriage Amendment (Definition and Religious Freedoms) Act 2017 the General Secretary of the UCA wrote to all UCA marriage celebrants advising them that they were not able to officiate at same-sex marriages. That is the case even though numbers of ordained Ministers had been asked to and would wish to officiate at same-sex marriages.

Subsequently, at the UCA Assembly in 2018, the Assembly determined that there would be two marriage rites, almost identical, with one being unchanged from the prior wording and the additional rite being the same except for replacing ‘man and a woman’ with ‘two persons’. The determination also allows Minister the choice of which rite they would use for marriage (ie they could choose to only marry a man and a woman, or marry any two persons legally allowed to be married). Also a Parish, which has oversight of the Church’s property in a particular location can decide if they would allow a marriage to be performed in that property using the second rite.

Since the early 1980s the Uniting Church has been engaged in new understandings of human sexuality in general and homosexuality in particular. For example, the polity of the UCA permits openly LGBTIQ+ people, including those living in same-sex relationships to be ordained as Ministers and to be appointed to the full range of UCA ministry positions. UCA Ministers in congregations with a particular ministry with LGBTIQ+ people regularly conduct services of prayers and blessings for same-sex couples. This was permitted under UCA polity but was not a marriage service but permitted prior to the 2018 Assembly decision.

For the purposes of your consideration of these proposed Bills, this example from the Uniting Church illustrates the fact that the changes to the Marriage Act in 2017 have not infringed on religious freedom protections with regard to religious marriage. Therefore, we can see no argument for the creation or extension of any laws which discriminate against LGBTIQ+ or any other Australians in employment or the delivery of goods and services such as education, housing, social welfare and healthcare. It further underlines the important point that within different religious groupings and denominations, there can be the same diversity of opinion on matters to do with minority groups and various policies as there is in the wider community.

The Uniting Church was represented at the November 2015 Australian Human Rights Commission Religious Freedom Roundtable, at which 25 different belief communities were represented. There are a number of points which emerged from that Roundtable with particular relevance in balancing religious freedom protections and human rights protections for LGBTIQ+ people.

As noted at the Roundtable and in various international Declarations, the right to religious freedom intersects with other human rights, particularly the rights to freedom of expression, freedom of association and freedom of assembly. If religions and religious practices can interconnect, intersect and be in tension with ethnicity, culture and racial discrimination then the same is true for sexual orientation, gender identity and intersex (SOGII) status.

In balancing individual and collective rights, we should not force people to act against their conscience. The role of government and legislation should be to establish clear boundaries for legally enforceable behaviour and not to exacerbate social disharmony. It does not seem helpful, respectful or harmonious, to suggest that there could be a hierarchy of rights, with LGBTIQ+
people being denied some human rights in order to protect a suggested more fundamental right such as freedom of religion.

There are already a large number of exemptions for faith-based organisations in the provision of education, healthcare, housing and other services, even though the overwhelming majority of those services receive substantial taxpayer funds. In the overwhelming majority of cases it is very difficult to see the link between a discriminatory practice and what is described as ‘religious freedom’.

More importantly, most of these exemptions, particularly in the area of health, are appropriately controlled through detailed state legislation and one impact of these Bills would be to override these controls and provide open ended exemptions in the area of health care.

In healthcare, for example, if a patient presents with a medical condition (eg diabetes) at a faith-based facility, first principles would suggest the individual be treated for the presenting medical condition. Refusing to treat a person with diabetes solely on the grounds that they are an LGBTIQ person or a single mother etc, would seem to be highly objectionable and contrary to widely held medical ethics. There are a very small number of medical procedures, notably the termination of pregnancy and euthanasia, where some faith-based institutions could argue that the procedure is specifically contrary to the authoritative teachings of their religion.

The Uniting Church’s national agency, Uniting Justice Australia (UJA), supported the 2013 amendments to the Sex Discrimination Act to include sexual orientation, gender identity and intersex (SOGII) status. The same Church agency expressed reservations about the scope of the exemptions for religious bodies. The UJA submission allowed limited areas where exemptions might be maintained: the ordained ministry and significant leadership positions.

In most, though not all cases, there are positions that are directly funded by the Church (not the taxpayer) and are for purposes which are directly related to a specific religious purpose: for example, the conduct of worship or hospital chaplaincy. They are, thus, intrinsically and categorically different to a general purpose, such as teaching mathematics or providing social housing, even if the mathematics is being taught within a faith-based school or the social housing is owned and managed by a religious organisation.

To state the same position differently, if a particular religion or denomination wishes to exclude women (or indigenous or LGBTIQ+ people) from the priesthood or the ordained ministry, there is nothing in Australian law which prevents the religion or denomination from exercising that particular religious freedom. But the delivery of services, the majority of which are publicly funded, is in a different category. In the latter case, community norms of respect for universal human rights override the particularities of the religion or denomination.

A different and improved balance was achieved in 2013 in one aspect of changes to the Sex Discrimination Act with regard to SOGII status. Some discriminatory exemptions were reduced for areas of service delivery in Aged Care. The idea that an ageing Australian could be refused essential caring services solely for being LGBTIQ+ was rejected in the legislation, at the same time as LGBTIQ+ people were added as a special need category for national Aged Care funding.

Recommendation 3.1: All of the discrimination bills should be reviewed and incorporated into a Bill of Human Rights, which would be consistent with Australia’s international obligations.
4. Human Rights Legislation Amendment (Freedom of Religion) Bill 2019

It is our view that Section 47C (3) is unnecessary as it is already established in the Section 47B of the Marriage Act 1962 (as amended), and if an educational institution is properly associated with a religious organisation, consequently the remainder of Section 47C is unnecessary.

Recommendation 4.1: That Section 7 of the Schedule is not required and should be removed.
5. Religious Discrimination Bill 2019

5.1 The Objects of the Act

We contend that the objects as stated in the proposed Act fail to consider two areas:

- The rights of people not to be discriminated against for not holding a religious belief, and
- That people of a religious belief, outside of their organisation, should not be able to use their religious belief to discriminate against other people.

It is our view that in providing a protection from discrimination for holding a religious belief is important. It is equally important that the objective (and subsequent considerations in the Act) should ensure that outside of a religious organisation, no one is discriminated against for not holding a religious belief or holding to a particular religious belief.

Case Study 1 – Religious Allegiance “Required” for Promotion

In railways in South Australian in the 1970’s (and potentially earlier), as I was told by my father, it was well known that to obtain a promotion a person needed to be either a member of the Catholic Church or a Freemason, so he became a Freemason.

We also hold the view that outside of a religious organisation, a person holding religious beliefs should not be able to use those religious beliefs to discriminate against another person.

Consequently, the Act should be clear to ensure that a person cannot use this Act so as to not provide goods or services due to their religious beliefs, such as not providing photography services to someone because of their religious belief.

Recommendation 5.1.1: That the Objectives of the Act should be expanded to specifically state the extent of the use of the Act, provide limitations against discriminating towards a person who does not hold a particular or any religious beliefs, and that outside of a religious organisation, religious beliefs should not be used to discriminate against other persons.

5.2 Existing Religious Freedoms

There are already in existence a number of Religious Freedoms to discriminate (positive discrimination by religious organisations) against classes of people, such as in the Sex Discrimination Act 1984 (Cth) (SDA) and the Age Discrimination Act 2004 (Cth) (ADA). The SDA for example allows religious educational organisations to positively discriminate against a class of individuals, such as unmarried parents on staff, and LGBTIQ+ students. The Prime Minister on multiple occasions has stated his intention to remove these positive discriminations against students and undertake further inquiry in relation to staff, and some of these matters have been referred to the Australian Law Reform Commission.

Recommendation 5.2.1: That this bill be delayed and reconsidered with the ALRC review, when it has been provided to the Government and considered through appropriate consultation with the public.

5.3 Limited Controls in relation to Indirect Discrimination

Section 8 provides an outline to indirect discrimination, and in subsection (3)(b) it outlines that an employer cannot use a document such as a “code of conduct” to limit a person’s religious freedom; “would have the effect of restricting or preventing an employee of the employer from making a
statement of belief at a time other than when the employee is performing work on behalf of the employer;”

There is a balancing control in subsection (4) that subsection (3) would apply in the event that it is “malicious” or “harass, vilify or incite hatred or violence against another person or group of persons”. However, other discrimination Acts have a different standard, such as the Racial Discrimination Act (RCA) which uses the concepts of “offend, insult, humiliate or intimidate another person or a group of people”

It is our view that there should be a consistency in discrimination law, and that the standard in the RCA is a standard that should be included in this legislation.

The arbitrary nature of this clause (and related clauses) creates this concept of “unjustifiable financial hardship”. It is our view that such a clause is unreasonable, and the benchmark is too high.

The issue is further compounded when a person’s profile becomes significantly larger in the public domain as a consequence of the opportunity provided to them by their employer. The proposed bill does not in our view find the balance between the values set by the organisation (such as full inclusion) and those that might be exposed by their employee, using the profile gained as a benefit of their employment.

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**Case Study 1 – Youth suicide attempt**

We refer you to a situation where a 12 year old boy attempted suicide as a result of a high profile sports person tweeting negative comments in relation to the boys sexual orientation.

“’My question is…’

He paused and then his voice got so quiet that I had to lean in to hear him.

’My question is does God make mistakes, and am I just a mistake?’

It took all I had not to cry with him.

He kept going. ‘Israel Folau says that I am going to hell with the drunks and liars and thieves and other bad people. I am only twelve and I am trying my best. I thought God loved me but now I don’t know anymore. I just feel bad and ashamed. I don’t know what to do.’

Then he said the thing that made my heart stop.

’It makes me feel so bad that I wish I was dead. I think everyone might be better off without me if I can’t fix this problem.’ …...

I rang his mum, Julie. She came straight over and I supported Matt while he had a very hard conversation with his mum about his sexuality. Both of them cried and we all hugged and Julie promised her son that she still loved him and that everything would be okay. ….

Then Julie sent Matt downstairs to put his bike on the racks on the back of her car. ‘I’ve thought that he might be gay ever since he was two or three,’ she said. ‘And of course
his Dad will be okay with it. It's 2019. We're a modern family. All we want for our boys is that they are healthy and happy.'

'Did you know he's been thinking about harming himself?' I asked.

Julie went pale. 'No,' she said, her eyes filling with tears. 'Okay, thanks for letting me know. I'll take him home now and we'll get this sorted.' We hugged again and she drove away. …

Julie rang me late yesterday. Matt is in hospital after a suicide attempt. He's twelve. He's a great kid who has been terribly distressed by everything that is happening right now about Israel Folau's fight with Rugby Australia over Folau's right to freedom of speech, and about Matt's idol's continued stance on homosexuality as a sin against God.

In a subsequent post, the author provided an update:

"PS – I'm grateful for the outpouring of love and support for Matt and his family, and for the kindness and care you've shown me after yesterday's post. Matt is off life support, but still in ICU. He's stable and he and his family are being well looked after."

We note that the proposed legislation allows for religious organisations to make claim of discrimination (see discussion below with which we disagree). However there is no equal right or limited rights for businesses when harmed by their employees using religious freedom to negatively impact their values and position in public.

We see the potential for unintended consequences in the Act, allowing religious people to communicate to fellow employees in a manner that may not be in accordance with their employers code of conduct. The employer may not be able to take appropriate action to protect the affected employee, not take action against the originating employee, particularly in interrelationship of these clauses and Section 13 (2).

Scenario I – Workplace communications

An employee sends to another employee from their personal email account an email daily that because they are a single mother that they are inappropriate parents.

Scenario ii – Workplace communications

An employee communicates daily, out of hours, via connected social media systems (work and private) to an LGBTIQ+ employee that they are praying for them every day that they will be made whole as a straight person.

More importantly, it appears to us that this clause moves away from a principles-based discrimination law. Additionally, the use of the language ‘unjustifiable hardship’, which may have reasonable usage in say the Disability Discrimination Act (DDA), where there may be unjustifiable hardship for a company to make alterations to a building. There is a clear principle at play here, it is our contention that use of unjustifiable hardship in the context of this Bill does not appropriately translate from the DDA to the area of religious discrimination. Further, the concept in the DDA
provides a minimum standard that an employer needs to establish in order to not respond to a discrimination action, whereas in this bill, the concept is somewhat flipped.

Associated with this section is Section 31(6) which we view is not appropriate nor necessary.

**Recommendation 5.3.1**: Section 8 (3) and (4) be deleted as they are not necessary and can lead to significant unintended consequences.

**Recommendation 5.3.2**: If the Government is not willing to delete Section 8 (4), then Section 8 (4) (b) be amended to read “that would, or is likely to, offend, insult, humiliate, harass, vilify or incite hatred or violence against another person or group of persons”

**Recommendation 5.3.3**: If the Government is not willing to delete Section 8 (3), that Section 8.3 be reviewed to provide appropriate balance for businesses to protect their values, and that employees who have gained a higher profile due to their employment do have a higher level of responsibility to their employers.

**Recommendation 5.3.4**: Section 31 (6) be deleted as the clause is not necessary and could lead to unintended consequences.

### 5.4 Health Practitioners – Section 8 (5) and (6)

There are limited scopes in various jurisdictions for health practitioners not to provide services on religious grounds, usually birth and death events. These exemptions from providing health services are well outlined in State legislation and we contend that there is no benefit of this section, particularly as health services are already under the jurisdiction of the States and Territories.

Further we are concerned that this section could be used to over-ride the various health professional bodies good practice guides. Appendix 1 provides a discussion on the potential implications of the religious override of the “Good medical practice: a code of conduct for doctors in Australia”

We see that this section of the Act could allow for indiscriminate discrimination by health practitioners against a wide range of people including but not limited to:

- LGBTQ+ people seeking access to healthcare services, including sexual health, reproductive or transgender health services
- women and girls seeking access to reproductive services
- anyone seeking access to contraception
- divorced people,
- unmarried couples,
- single parents,
- even potentially a disabled person (if the religious health practitioner holds a religious view that a person’s disabilities are a result of sin or the like)
Whilst this “right” to discriminate by withholding health services for religious reasons will have an impact in urban areas, it could have a catastrophic impact in regional and remote areas where there are limited medical services and alternative services may not be reasonably accessible:

**Case Study 2 – Doctor providing religious comments to young gay patient**

We understand that a doctor in NSW was counselled as the practitioner advised a young gay male patient that he should consider the Biblical position on sexuality, which had a significant negative impact on the patient’s already challenged mental health state.

**Case Study 3 – Psychiatrist making religious judgement to vulnerable lesbian patient**

Experience of one of our members with their psychiatrist.

As a 12 year old I knew I was gay but struggled in coming to terms with this. I reached out to family and school counsellors, only to be told it was a phase and most likely grow out of it.

When I stopped telling people and reaching out to talk with people, my mental health suffered.

I became seriously depressed and constantly considered suicide at the young age of 14, along with inflicting low-level self-harm upon myself. My depression worsened and was sent to my local GP for help, which was appropriate, and she sent me to see a specialist youth psychiatrist, in the public health system.

As a teenager I was utterly petrified, especially attending the appointment alone. I met with a young psychiatrist in training who at first was very friendly and bubbly, which helped me relax a little. Upon starting to discuss why I was there, I felt comfortable sharing that I was struggling with my sexuality and didn’t know what to do.

Her demeanour immediately changed and became very serious. Without hesitation, she told me that being gay was wrong and God would disapprove of it. She also told me I needed to pray and ask God to make me better.

Being so young, I didn’t know what to say or how to respond. I was upset that someone I thought was supposed to help, would say something like this. I was in such shock that I made another appointment, but unsurprisingly, never showed up for that. And I kept my sexuality hidden for another 6-7 years until I finally felt safe to be my genuine self.

**Case Study 4 – HCCC successful complaint against doctors religious comments**

The following case was prosecuted by the Health Care Complaints Commission (NSW) against Dr Alexander Anthony Sharah in 2015 resulting a decision by NCAT. For this case study we have simply extracted elements from the published decision and except to provide some context on the patient (as reported) have not provided any commentary.
“(1) The respondent is disqualified from being registered as a medical practitioner pursuant to s 149C (4) of the National Law.

(2) The respondent cannot re-apply for registration for at least a two year period from the date of the Tribunal’s decision.

(3) The respondent is to pay the applicant’s costs.”

“The applicant [HCCC] pressed the view that there was a public interest served by an allegation of this kind being resolved, and the public being informed, one way or the other, as to the appropriateness or otherwise of the practitioner’s conduct. Adverse findings on an issue of this kind might bear on the gravity of the disciplinary finding, and the nature of a disciplinary order. The applicant added that in the present case, any period of time set by way of disqualification from reapplying to enter practice would be likely to be affected by any adverse finding on a matter of this kind.”

Patient A – A Lesbian Patient with Attention Deficit Hyperactivity Disorder

“We will set out the response of the respondent to each of the sub-particulars below, based on our summaries of the evidence at hearing and the subsequent written submissions (which included references to the transcript).

1. Between approximately 2004 and 2013 the practitioner during consultations gave inappropriate religious advice to Patient A, which was uninvited, in that he said on multiple occasions words to the effect ‘you have to pray’.

2. During a consultation when Patient A reported that she had a lesbian friend who started to pray, the practitioner made the following inappropriate comments with the words to the effect of:

(a) ‘lesbians don’t know that they are doing something wrong so we still have to love them’;

(b) “it’s the same as paedophiles, they don’t know they are doing something wrong so we still have to love them”.

3. In January 2013 during a consultation with Patient A, the practitioner failed to observe appropriate professional boundaries in that he:

(c) advised her to continue to pray to God.

Findings in relation to Patient A

In relation to Particulars 1 and 2, Patient A’s evidence at hearing was consistent with her statement, and reasonably precise. The respondent accepted that he may have made the statements attributed to them. We find both Particulars proven.

It was professionally inappropriate to suggest in a treatment setting of the kind described that a solution might be found in frequent praying (Particular 1). Similarly it was professionally inappropriate to make gratuitous remarks about lesbians, and then to compare lesbian relationships to the conduct in which paedophiles engage (Particular 2). Comments of this kind go well beyond comments of a light, social kind that are not unusual in the consultation environment.

Particular 3 refers to the incident relating to the tattoo. Particular 3(c) is another instance of a comment invoking the power of prayer, similar to Particular 1. For the same reasons, we find it proven.”

Patient B – Female with depression and seeking assistance after being discharged from an alcohol detoxification program
“Particular 7 is:

On 5 September 2013 the practitioner during a consultation gave inappropriate religious advice to Patient B, which was uninvited, when he said words to the effect of:

(a) ‘Jesus hates you’;
(b) ‘don’t cry, Jesus Christ drank, you don’t need any medication’;
(c) ‘this is your medication’, after handing Patient B a cross;
(d) ‘I want you to go to church tonight. Make time to go to church’;
(e) If she connects with Jesus she will feel better;
(f) she should see a priest and tell the priest she wants to confess;
(g) if she didn’t go to church and show Jesus that she loved him, she would end up in hell with her former husband and her slut of a mother;
(h) if she prayed to Jesus she would end up in heaven one day with the practitioner playing football.

The respondent admitted the making of the statements particularised at (d) to (h). He formally denied the statements at (a) to (c), but admitted the giving of the cross to the patient. As noted earlier, Patient B’s statement was precise and detailed. She lodged her formal complaint with the Commission three weeks later (on 26 September 2013) and signed her statement a few weeks after that, on 30 October 2013. Her statement was not contested. At hearing the respondent give a detailed account as to what transpired. He denied making the comments the subject of sub-particulars (a) to (c). In these circumstances, we find those aspects of particulars (a) to (c) not proven. Accordingly, we find sub-particular (c) proven in relation to the handing over of a cross, and find sub-particulars (d) to (h) proven. We find the remarks proven were inappropriate and uninvited.”

Patient C – A Muslim patient referred by her GP for opinion and management

“11. On or around 5 December 2012 at a consultation with Patient C, the practitioner made inappropriate religious gestures in that he:

(a) used holy water to draw the sign of a cross on Patient C’s forehead;
(b) prayed over Patient C on at least one occasion;
(c) did (a) and/or (b), above, with the knowledge that Patient C was Muslim.

We will deal with the three Particulars together. The respondent admitted using the words attributed to him in Particular 9(a), and initially denied using the words set out in Particular 9(b). However in evidence his evidence was that he may have said something like this, but with a broader context than appears in the allegation. He thought that he would have said that there was nothing wrong with her sufficient for her to be classed as disabled.

The issue is whether the words used constituted inappropriate comments in a professional setting.”

…. As to Particular 11, the respondent admitted (a), denied (b) (praying over the Patient) and admitted that he knew she was Muslim ((c)). We find particular (a) proven. As to particular (b), there is a similar conflict in the evidence to the one we have just discussed in relation to Particular 10(b). For the same reasons, we accept the patient’s account.

Clearly the conduct to which Particular 11 refers (the use of religious gestures) was inappropriate and was magnified in its appropriateness, when the patient was an adherent of a non-Christian faith…..”
“Patient D, a woman who was about 31 years of age at the relevant times, consulted with the respondent on 4 July 2013 and 11 July 2013. In December 2012 her unborn child had been diagnosed with Hypoplastic Left Heart Syndrome. She and her husband decided to induce labour at 22 weeks and the child was stillborn. As a result, she developed Post Traumatic Stress Disorder (PTSD) and was having suicidal thoughts. She was referred to the respondent. At the time she was taking a medication, Duromine, to help her lose weight. The respondent was informed of these matters, most notably the circumstances surrounding the loss of her baby.

It will be seen that the first two Particulars that follow again deal with acts or conduct with religious connotations. The final particular, Particular 14 deals with clinical competence. All of the particulars were admitted. The events are the subject of a witness statement dated 24 October 2014, and elaborate on the complaint made online by Patient D a few days after the second consultation, on 17 July 2013.

12. At a consultation on 4 July 2013 the practitioner gave inappropriate religious advice to Patient D, which was uninvited, when he said words to the effect of:
   (a) ‘God can help you’;
   (b) ‘God is love’.

13 At a consultation on 11 July 2013 the practitioner gave inappropriate religious advice to Patient D, which was uninvited, when he said words to the effect of:
   (a) ‘God was love, so love was important’;
   (b) her son was God’s will;
   (c) she ask for God’s forgiveness for her son’s death.

We find each of the Particulars proven in respect of all their elements. We draw attention to the following part of the patient’s witness statement for their account of the emotional impact of the respondent’s conduct.

‘After the first consultation I felt extremely uncomfortable, he had continuously brought up religion. I am not religious in any way, but I was too vulnerable and absolutely petrified of the terrible place I was in emotionally to say anything. He also kept using words like ‘abortion’ and ‘termination’, which absolutely mortified me, as that was not what we did to our baby boy. To hear these abhorrent words made me sick to my stomach’

She made a similar statement about feelings of revulsion after the second consultation:

‘After the appointment, I was in a state of shock. I was shaking, I couldn’t breathe. I texted my parents regarding what happened and called my husband in an extreme emotional state.’

In his report Professor Greenwood observed that the respondent had no right to impose his own religious beliefs on the patient. He noted that religious belief is specifically excluded from a psychiatric diagnosis under the NSW Mental Health Act (s 68(g) and Sched 1, cl 16(1)(b)). He commented as to the matters the subject of Particular 14, that no adequate management plan was put in place. The respondent, he considered, missed completely a PTSD diagnosis. His instruction to her to eat sensibly and to exercise was very inadequate response to her distress. His notes did not reveal
any satisfactory mental examination. There should have been a risk assessment in circumstances where she was seriously distressed."

**Patient G – Female having been diagnosed with depression and anxiety**

“This case was added to the proceedings after the original application was filed, and was added as part of the amendments that make up the amended complaint. Volume 3 of the applicant’s bundle deals with the case. It derives from a letter of complaint from Patient G, a woman born in 1960, dated 30 April 2014. There is also a statement made 26 June 2014. She was referred to the respondent for psychiatric treatment after being diagnosed with depression and anxiety. The Medicare records show nine consultations over the period December 2012 to August 2013.

It will be seen that there are four Particulars, many with sub-particulars. It will be seen that the first three refer to remarks by him that are said to be inappropriate. As in a number of the cases already traversed they relate to religious matters (Particular 18, Particular 19) and comments of a personally offensive nature (Particular 20). The final particular, Particular 21, goes to competence.

18. During consultations between 12 August 2012 and 15 August 2013, the practitioner gave inappropriate religious advice to Patient G, which was uninvited, when:
   (a) on more than one occasion he said words to the effect of ‘you need to think more about where you are heading and to let Jesus into your life’; and
   (b) he said words to the effect of ‘you should join the church’;
   (c) he recommended that Patient G should read a particular book about miracles;
   (d) he said words to the effect of ‘what do you have to be scared of? You should be looking forward to the kingdom of heaven’ during a discussion about Patient G’s fear of illness and death;
   (e) he said words to the effect of ‘once you get to heaven you can have a little dress shop on a cloud’ during a discussion about Patient G’s fear of illness and death.

19. During consultations between 12 August 2012 and 15 August 2013, the practitioner, inappropriately and without medical or psychiatric justification:
   (a) discussed religion with Patient G at every consultation including after Patient G had made it clear to the practitioner that she did not want to discuss religion during consultations;
   (b) discussed his experience of bringing Jesus into his life with Patient G;
   (c) gave Patient G a small cross;
   (d) recommended that Patient G disregard public information surrounding the Royal Commission into Institutional Responses to Child Sexual Abuse and the Catholic Church.

The respondent, admitted in whole, Particulars 18, 20 and 21. He admitted (b), (c) and (d) of Particular 19, and with a qualification, he admitted item (a) of Particular 19. His qualification was that the she did not make her lack of interest clear at ‘at every consultation’. This aspect of the allegation reflects words used by the patient in her original complaint to the applicant, where she said: ‘on every occasion I was told to accept Jesus into my life and pray, join a church group, disregard news events discrediting the catholic church’. He acknowledged that she did, over time, make it clear to him that she was not that interested in religious perspectives on her condition.

Particular 21 is supported by a report from Professor Greenwood dated 15 August 2014.

We find all particulars proven. We prefer the patient’s account on the one factual matter debated by the respondent, the matter of whether he engaged in the unwanted
communications every time he saw the patient. We find that he did. It is plain, we consider, from the evidence generally, that the respondent had a way of interacting with his patients which made routine references to religion and the role religious belief and practices might play in obtaining alleviation or cure of their conditions.”

Case Study 5 – Recent Italian case of doctor providing gay conversion material

The following has been reported in relation to a doctor in Italy:

“In Verona, Italy, a woman received advice from her general practitioner to cure her of homosexuality through books. The woman, who remains anonymous, sent a letter to MailMa.Online, explaining what the doctor told her during the consultation and what books the doctor “prescribed”.

The prescription given by the GP is certainly not what anyone would expect from a professional doctor. The GP told the woman that she was pleased she had disclosed her sexual orientation but said she already suspected it “because of her short haircut”.

The GP’s treatment plan included an autobiography by an “ex-gay” Italian celebrity.

This woman didn’t follow the GP’s advice, but she claims that there is at least one other homosexual patient that she knows of who might have followed the doctor’s suggestion.

Conversion therapy survivors found that 68.7% of respondents with mental health issues have had suicidal thoughts, while 32.4% have attempted suicide.”

Scenario iii – Young gay man in rural location seeking PreP

A gay young man in a rural location with only one pharmacy has been prescribed PreP (a medication to prevent HIV infection) is denied having his prescription filled as the pharmacist holds religious beliefs that prescribing such medication is supporting a legal sexual activity that is against their religious beliefs. Due to the difficulties of obtaining PreP, the young man ultimately becomes HIV+ where if he had access to PreP such infection is highly likely to have been avoided.

Scenario iv – Women seeking “morning after pill” in remote location

A young woman who has been raped attends a remote hospital facility that is only has minimal medical staff and the doctor and the pharmacist on duty refused to provide the “morning after pill” as it is against their religious belief to prescribe the medication.
Scenario v – Travelling transgender person requiring hormones

A transgender person is travelling around Australia for an extensive period of time, and their endocrinologist has provided documentation as to their treatment plan and their hormone medication regime. As they travel they have severe difficulties in obtaining their hormones as in one rural location, the only doctor available refused to prescribe the hormones, and in another the only available pharmacist refuses dispense the prescribed hormones as ‘God made humanity male and female, and, in his creative purposes, biological (bodily) sex determines gender’, and her faith calls on her to ‘differentiate between compassion for the person and understanding the distress of their situation/condition and agreeing with and validating a treatment protocol to transition\textsuperscript{xviii}. This has a real and significant impact on the transgender persons wellbeing.

More broadly, we are concerned that the breadth of this proposed clause provides a principle for the broadening of such a clause in the future, that would allow any person, based on their religious beliefs to refuse to provide goods and services to a person outside of a religious organisation.

As a community we would be very distressed should the “American Religious Freedom” principles be imported to Australia, where there is a significant push to allow religious persons to be legally allowed to refuse to provide goods and services to any other person based on their religious beliefs. This would not only directly and severely negatively impact the LGBTIQ+ community, but has the potential to impact women, people of other races and or religions, people of disabilities etc.

Associated with this section is Section 31 (7) limiting a health organisation from having codes to be considered inherent requirements. We do not see any basis for this limitation. That is, the case studies and scenarios provided here should not be permissible under this Act, such as providing religious commentary to patients in a health setting.

Recommendation 5.4.1: Removal of Section 8 (5) and (6) as these matters are clearly the domain and responsibility of the States and Territories, and health practitioner exemptions should be constrained to minimal exemptions as has been the current practice across Australia.

Recommendation 5.4.2: Removal of Section 8 (5) and (6) as it provides a precedent in Commonwealth law for discrimination against a class of citizens based on religious beliefs.

Recommendation 5.4.3: Should the Government not agree to remove sections 8(5) and (6) then we strongly recommend the following additions be added to the Bill as a minimum:

a) A health practitioner who holds religious belief conscientious objection to the provision of health services, a registered health practitioner is under a duty to perform all medical services in an emergency where it is necessary to preserve the life of the person or to prevent any significant harm.

b) A health practitioner who holds religious belief conscientious objection to the provision of certain services or to the provision of services to person, must provide the services if there is no alternative health practitioner reasonably located to the patient.
c) A health practitioner who holds religious belief conscientious objection to the provision of certain services or to the provision of services to person, must provide a referral to an alternative health practitioner that is reasonably located to the patient.

d) A health practitioner who holds religious belief conscientious objection to the provision of certain services or to the provision of services to persons, must advise every patient at the time of an appointment or being put on a patient list, of any limitation to the services that they will provide. [This will permit the patient to seek an appointment with another practitioner and avoid potential costs resulting from attending a health professional appointment only to not have the services provided]

e) That this Act does not permit health practitioners to provide religious based comments to patients as part of their consultation.

Recommendation 5.4.4: Removal of clause 31(7) which is an unreasonable limitation on health service providers.

5.5 Religious Bodies – Corporate Entities – Clause 10

We believe there are significant issues with this section of the proposed Bill.

Firstly, it is usual that discrimination Acts are to protect a natural person and not a “non-natural person” such as an organisation. We are not aware of any other discrimination Act in Australia that allows a “non-natural person” or corporate entity to take discrimination action.

A religious organisation is made up of individuals who themselves can be discriminated against on the basis of their religion, however a non-natural person cannot have a religious belief.

We strongly urge that in reviewing the proposed legislation that the concept of discrimination against a non-natural person be removed.

Recommendation 5.5.1: Removal of Section 10 as a non-natural person/corporate entity cannot in the ordinary concept of discrimination be discriminated against, and discrimination is in the ordinary process that impacts a natural person.

In the event that the Government is of the view that Section 10 is to remain, then we believe that there are some significant matters that need to be addressed.

Section 10 and the associated definitions does not adequately define what is a religious body.

There are competing challenges between what a religious body might consider appropriate and the impact on another person, which may have a significant negative impact on that person.
Case Study 6 – Gay Conversation Therapy

A State or Territory may outlaw Gay Conversation Therapy. At the Sydney Anglican Diocese Synod 2018 their records so that:

“(d) notes that the Anglican Church in the Diocese of Sydney does not practise, recommend or endorse ‘gay conversion therapy’” and later:

“(g) values prayer for same-sex attracted Christians who wish to live celibate lives, noting that prayer is not a form of “gay conversion therapy”.

The challenge is when a religious body defines gay conversion therapy, rather than those that suffer from such therapy, many would argue that the act of “strongly encouraged prayer to remain acceptable to the religious body is in itself a form or gay conversion therapy and therefore a form of abuse that most reputable health professional bodies in Australia and around the world reject and confirm are harmful to the recipient.

The proposed bill may provide protection to the religious body from State and Territories bills to outlaw those practices. Whilst the bill does not allow religious practices that are criminal in nature, if a State or Territory outlawed such practices through health legislation, then this Commonwealth Bill may override that State or Territory Act.

There has been considerable commentary particularly in The Australian of recent months regarding people with Gender Dysphoria. Interestingly the series of articles received a “GLORIA Award (“The GLORIAs is a fun event that shines a light on outrageous, ignorant and plainly ridiculous public comments made about lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people in our community every day.”). Unfortunately, whilst all the peak medical bodies have supportive approaches to people with Gender Dysphoria and there the “Australian Standards of Care and Treatment Guidelines for trans and gender diverse children and adolescents”, publications such as The Australian have taken it upon themselves to deride transgender youth. Rejection of good medical practices can lead to increased harm of young people and we see the processes of harm supported by some religious organisations.

Case Study 7 – Transgender Conversion Therapy.

At the Sydney Anglican Diocese Synod 2019, a paper was presented and supported around “Gender Identity Initial Principles of Engagement 24/17 Development of a final form of diocesan policy for gender Identity issues.”

“9.1.2 Those experiencing gender incongruence You are made in the image of God and you will find your identity in Christ. Therefore, we encourage you:

(a) to seek treatment options that aim for the integrity of psycho-somatic unity;”

[comment – in an earlier note to this section “9.1.1 (g) The human person is a psychosomatic unity, where body and soul come into being at the same time and, in this life and the next, exist together. Embodiment is integral to human identity, and biological sex is a fundamental aspect of embodiment. Preserving the integrity of body and soul, and honouring and protecting the biologically-sexed body that God has given are necessary for human flourishing” – essentially this is calling for the person to undergo counselling to remain in their birth biological sex, which is most likely to be harmful to the person]
9.1.3 Family and Friends of those experiencing gender incongruence
(e) if appropriate, to provide information about alternative treatment approaches to those
which promote transitioning; “

[Comment: alternative treatment approaches effectively is a form of conversion
therapy]

9.1.4 Christian parents Christian parents are encouraged:
(d) to seek mature Christian counsel and pastoral care if your child has gender identity
issues that cause you concern, and seek to support the child in their biological sex role”

[Comment: the Church is encouraging parents to engage their children in conversion
therapy.]

9.1.5 Counsellors, teachers, doctors (those with secular professional relationships)
Christian professionals are encouraged:
(d) to differentiate between compassion for the person and understanding the distress
of their situation/condition and agreeing with and validating a treatment protocol to
transition; and
(e) to build support networks for consultation, possibly including legal contacts.”

[Comment: the Church is encouraging Counsellors, teachers, doctors etc to encourage
transgender person to underdo conversion therapy]

9.1.8 Public engagement
(f) to be informed about the different dimensions of the public debate, as there are
those who promote transgender ideology, and those who suffer from gender
incongruence, who are vulnerable members of our community, yet the needs and
claims of the two groups are different, and must be considered in any public
engagement on these matters; “

[Comment: the Church is calling a class of citizens an ideology, where their existence
and the basis for their existence is well documented socially and medically, this is a
form of vilification]

The proposed bill may provide protection to the religious body from State and
Territories bills to outlaw those practices. Whilst the bill does not allow religious
practices that are criminal in nature, if a State or Territory outlawed such practices
through health legislation, then this Commonwealth Bill may override that State or
Territory Act.

We wish to clearly remind the Government that minors are largely in religious organisations or
religious educational bodies without choice of their own. We acknowledge parents’ rights and their
obligations of their duty of care to their children but so does the State. The State shares
responsibility for minors to ensure, in part, the overall safety of children and the provision of an
acceptable standard of care and education in accordance with broad community standards.

As evidenced by the above case studies, some religious bodies are strongly advocating against
LGBTIQ+ people, in some cases their existence, and their rights. Some religious organisations
claim that non-binary gender expression is a myth, a fad or secular ideology. Regrettably, some
religious organisations expressly reject mainstream scientific evidence concerning gender
dysphoria.
So, the question here is the issue of competing rights, and also the evidence of medicine and scientific methods over beliefs.

We refer to the “Convention on the Rights of the Child”xxiii, and ask the reviewers to consider the following articles:

- Article 6 (1) “recognize that every child has the inherent right to life” recognising that LGBTIQ+ people have a significantly higher rate of suicide, with transgender people having some of the highest rates of suicidality in Australia
- Article 8 (1) “undertake to respect the right of the child to preserve his or her identity” that being LGBTIQ+ is part of a child’s identity
- Article 19 (1) “shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”.
- Forcing, or strongly encouraging a child so that they are acceptable to others to undergo conversion therapies is a form of physical and mental violence and abuse, and by the practitioners/counsellors/religious person negligent treatment.
- Article 24 (1) “recognize the right of the child to the enjoyment of the highest attainable standard of health” infers that children should not be subject to health standards that are not of the highest order as recognised by health professional bodies.
- Article 37 (a) “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” Processes of conversion therapy can be contemplated as torture, cruel, inhumane and degrading treatments.

Further, we have a broader concern in relation to services that a religious body may provide, particularly if it received any funding directly or indirectly from any Federal, State/Territory or Local Governments. As examples:

- An Age Care facility rejecting an LGBTIQ+ couple from cohabitating their facility.
- A government funded foster care agency refusing to consider any of the following persons as suitable for the provision of foster care services; a single person; a single parent, a couple in a defacto relationship, a married couple not married in a religious institution and LGBTIQ+ couple.
- A government funded adoption agency refusing to consider any of the following persons as suitable as adoptive parents; a single person; a single parent, a couple in a defacto relationship, a married couple not married in a religious institution, and LGBTIQ+ couple.
- A hospital refusing to treat a person based on their sexual orientation, gender, marital status etc.

It is our view that the proposed bill should not permit religious organisation the ability to undertake activities that may lead to harm an individual.

Further, we acknowledge and support the importance of religious organisations and not for profit organisations, and fully support the service delivery of organisations within the Uniting Church, such as Uniting.

In the broadest context, these organisations run schools, hospitals, welfare organisations and employment agencies. We note that this sector is a very significant employer of people across Australia, not only in urban communities but also in rural and regional places. Often services that are run by the Uniting Church are in poorer socio-economic areas. Many of these organisations receive a significant amount of public funding to provide the services to the wider community.
We do not believe it is appropriate for such organisations to undertake what would otherwise be considered unlawful discrimination that would have significant negative implications not only for those who require the services, but also in the area of employment.

It is our observation, that these exposure drafts provide an extensive set of protections against religious discrimination in the areas of public life. This Act goes beyond the concept of a shield, and provides religious organisations with a sword of positive discrimination outside of their direct religious activities into the provision of public services, often significantly government funded.

Further, there could be an end point where a State or Local Government could release a tender for the provision of services, and state that no one should be excluded from receiving the services, and a religious organisation may claim that such a tender is a form of religious discrimination and take action against another level of government under this proposed Commonwealth legislation.

We are also concerned in relation to the relatively “looseness” of the wording in clause 10.1 using language that religious organisations are not discriminating if there actions “may reasonable be regarded as being in accordance with the doctrines, tenets, beliefs or teachings”. Again we see an inconsistency with other discrimination acts, as examples:

- **Sex Discrimination Act 1984** s 38(3)(1),(3): “conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed”;
- **Equal Opportunity Act 2010** (Vic) s82(2)(a): “conforms with the doctrines, beliefs or principles of the religion”; s 83(3)(a): ‘conformity with the doctrines, beliefs or principles of the religion’;
- **Anti-Discrimination Act 1998** (Tas) s 51(2): “conducted in accordance with the tenets, beliefs, teachings, principles or practices of a particular religion”;
- **Anti-Discrimination Act 1991** (Qld), “in accordance with the doctrine of the religion”;

Further, it is regret that we need to revisit the Royal Commission into Institutional Child Sexual Abuse, and the consequences on the lives of thousands of young Australians over decades. It was clearly identified through the Royal Commission that the Royal Commission noted that the unusual nature of religious institutions could provide ‘heightened risks’, including that they often operate with ‘closed governance’ and ‘complicated legal structures’.

There has for centuries been a significant power position that religious organizations have maintained in society, probably more power than they have earned or deserved. Through the Royal Commission, it was self-evident that religious institutions failed to protect the rights of individuals which been acknowledged by some religious leaders. As an example, at the Royal Commission, Catholic Archbishop Coleridge provided the follow evidence.

“If I could put it in these terms, they were invariably company men, and that had both good and bad aspects about it, I suspect, but they were more interested in the institution than in the individual…So they [religious leaders] had this passionate, lifelong commitment to the defence and promotion of the institution, and it made them blind to individuals.”

Consequently, due to the Royal Commission, many State and Territory Governments have created laws to require disclosure of child abuse by all including religious personnel. However, a number of religious organisations have stated that they are willing to defy State and Territory laws for their own religious tenets.

In summary, we hold the view that discrimination laws should only apply to a “natural person”, consistent with other discrimination laws in Australia and international norms in this area.
Recommendation 5.5.2: If the removal of Section 10 is not accepted by the Government, then the bill be significantly redrafted to limit the rights of a religious organisation to cause direct or indirect harm to a person in the context of their religious beliefs, and in particular young people.

Recommendation 5.5.3: If the removal of Section 10 is not accepted by the Government, then there needs to be significant work to better define a religious organisation.

Recommendation 5.5.4: If the removal of Section 10 is not accepted by the Government, then there should be additional wording to expressly state that this act does not limit or override other discrimination laws, and where there is a conflict, the other discrimination laws are superior (i.e., discrimination against an existence (race, gender, disability, sexual orientation etc) is more serious than discrimination against a belief).

Recommendation 5.5.5: If the removal of Section 10 is not accepted by the Government, then replace the very general “in conduct that may reasonably be regarded as being in accordance” with tighter wording such as “in conformity with” or the like, consistent with other discrimination Acts and represents a consistent standard.

5.6 Inconsistency – Clause 18

We draw attention to the Attorney General of the inconsistency that this Bill and other discrimination Acts.

Other discrimination Acts permit religious educational organisations to discriminate against people that the religious organisation do not believe are consistent with the tenet of their faith. The most obvious example of this is the ability of schools to remove from or not enrol in their education organisation an openly LGBTIQ+ students.

Yet in this draft Act, other educational organisations are not permitted to discriminate against people with religious beliefs.

We agree that public sector and other non-religious educational facilitates should not have the ability to discriminate against people due to their religious beliefs.

The Prime Minister has previously stated (prior to the Wentworth By-election as an example) that the ability for religious educational facilities to discriminate against would be withdrawn. This has subsequently been referred to the Australian Law Reform Commission, which apart from unreasonably delaying the pre-existing promise of the Government, unreasonably continues to put students at risk in approximately 35% of Australian schools, which receive significant public funding.

Accordingly, we recommend that the Religious Discrimination (Consequential Amendments) Bill 2019 incorporate the removal of discrimination against students in religious educational facilities.

Recommendation 5.6.1: That the Religious Discrimination (Consequential Amendments) Bill 2019 be amended to remove the ability for religious educational organisations to discriminate against students (for example LGBTIQ+ student.)
5.7 Counselling, promoting etc a serious offence – Clause 27

We have struggled to understand the implication of this clause, either through reading the exposure draft and the explanatory notes, and consequently there may be unintended consequences.

We agree with the high level principle that using religious concepts that would promote a crime should gain an exception from religious discrimination.

**Recommendation 5.7.1: That there be further consultation and consideration on the purpose and breadth of this clause.**

5.8 Clause 41 – Impact on Other Laws/Jurisdiction

We do not believe that there is any justification for clause 41.

We do not see any justification for overriding State laws. It appears to us that this section (particularly clause 41(1)(b)) relates to one particular event that did not end up in the tribunal, and unfortunately there has been considerable misrepresentation around the actual complaint that was originally made.

Once again, clause 41(2), which sets a high threshold for victims of such abuse to be able to seek action, which is not consistent with other discrimination laws, such as the RCA. Further, we would argue that it is actually the LGBTIQ+ community that suffers discrimination rather than that of the religious community, and the experiences of abuse, hate, vilification etc towards the LGBTIQ+ community often emanates from the religious communities.

**Recommendation 5.8.1: That Clause 41 be removed from the final version of the Bill.**

5.9 Part 6 (Clauses 45 - 53 –Freedom of Religion Commissioner

We do not believe there is any justification for a Freedom of Religion Commission. The Human Right Commission already has some responsibilities for religious discrimination under other Acts.

There is no evidence of a significant issue of religious discrimination within Australia, and although we support the high-level principle of protection from Religious Discrimination, there does not appear to be a sufficient work load to justify the creation of another role.

However, there is a significant risk that other groups may be subject to increased discrimination, harassment, vilification etc through the creation of this law.

The LGBTIQ+ community has suffered extensively with discrimination, harassment, hate, vilification (not to mention a significant number of unresolved murders and other criminal activities against the community).

Accordingly, we do not support the cost of the creation of a new senior Commissioner role and believe that it would be more appropriate for the Commission to seek a subsequent amendment to the Act to create such a role should the demand justify such an allocation of Commonwealth budgetary expenditure.
If the Government insists that such expenditure be incurred, it is our view that there should be an additional Commission to focus specifically LGBTIQ+ discrimination, which often comes from religious organisations.

**Recommendation 5.9.1:** That the Freedom of Religion Commissioner part be deleted (Part 6, clauses 45 – 53). In the event that there is significant additional workload for the Commission, then an amendment to the Act and budget allocation be contemplated.

**Recommendation 5.9.2:** If the Government does not agree to the removal of Part 6, clauses 45 – 53, then the additional Commission and an LGBTIQ+ Right Commissioner should be appointed to protect the human rights of LGBTIQ+ people and to assist the Commission in dealing with competing rights between religious people and organisations and LGBTIQ+ people.

### 5.10 Clause 39 – Variations and Revocations of Exemptions

It is our understanding that equivalent anti-discrimination laws in Australia do not provide for the Minister to vary or revoke an exemption. We are concerned that this inconsistency will allow a political interference with the operation of the proposed Act.

There does not appear to be any reason or justification as to why in this particular anti-discrimination law the Minister has special powers.

**Recommendation 5.10.1:** That clause 39.1 be amended to remove the Minister from having any ability to vary or revoke temporary exemptions granted by the Commission.

### 6. Cost Impact of the Legislation

We are concerned that as there is potentially significant cost impact to a person who is alleged to have discriminated against another on a religious basis.

In the first instance, the matter may be dealt with in a State/Territory jurisdiction, and if the complainant is not satisfied, then they may take action under this Bill. Depending on the outcome, either party may then take a view that there are issues between State/Territory legislation and this Bill, leading to further legal actions in higher courts.

It is our view that further analysis needs to be undertaken regarding the inter-relationship between State/Territory legislation and Federal legislation and the potential cost implication to parties involved in matters that may ultimately fall under this Bill.

**Recommendation 6.1:** That there be further analysis on the cost implications of actions under this and related acts (both State/Territory and Federal), and the Bill be delayed until this is understood and the cost implications minimised.
7. Final Comments

The LGBTIQ+ community is one of the communities that will be negatively impacted by the legislation. To the best of our knowledge, major LGBTIQ+ community groups have not been involved in the consultation process and had our voice heard in the debate thus far.

We appreciate that you have stated that the aim of the legislation is to be a shield and not a sword, but we have attempted to outline our concerns as there are some concerning swords within the drafting, not only for the LGBTIQ+ community but also for other members of the Australian population. On an initial read we see some potential impacts to the current protections for LGBTIQ+ people, people with disabilities, Indigenous people, Culturally and Linguistically Diverse people and women.

Further, the LGBTIQ+ community is still struggling significantly with the consequences of the marriage equality postal survey process. As a community we do not have the financial resources to obtain all the legal advice required to analyse and comment upon the all of the complexity and interrelationship of the various pieces of legislation. We believe the LGBTIQ+ community has been placed at a significant disadvantage in the process up until this point of time and moving forward through the proposed consultation period.

We suggest that any consideration of these changes should be undertaken alongside the recommendations of the Australian Law Reform Commission review, so that all the relevant aspects are discussed at the same time.

We look forward to engaging with you and your government proactively and respectfully in the period ahead.

If you have any questions or comments on this letter, please feel free to contact our National Secretary Jason Masters via secretary@unitingnetworkaustralia.org.au.

Jason Masters
National Secretary
2 October 2019
Appendix 1 – Analysis of the “Good medical practice: a code of conduct for doctors in Australia”

We have a real concern that the proposed legislation could overrule the “Good medical practice: a code of conduct for doctors in Australia”, and are aware that there have been medical practitioners who have been counselled and/or disciplined for their poor practice and/or treatment of LGBTIQ+ people. As the proposed law is Federal Law, although medical practice is managed through a national system (with the exception of NSW), the legislation is enacted through a series of state laws. It is our understanding that under our Constitution and legal precedent, where there is a difference between state and federal laws, the federal laws are generally considered superior.

Specifically, in relation to the code of conduct, the following are areas of concern:

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| 2.2.2 Ensuring that you have adequate knowledge and skills to provide safe clinical care. | Medical practitioners may seek formal exception from undertaking any training on the following areas under religious freedom:  
• Appropriate treatment of LGBTIQ+ people  
• Contraception  
• HPV programs  
• Reporting of genital mutilation  
• etc |
| 2.2.6 Providing treatment options based on the best available information. | May provide non LGBTIQ+ supportive treatment options based on religious freedom.  
May not provide women’s reproductive options based on religious freedom |
<p>| 2.2.8 Supporting the patient’s right to seek a second opinion. | In relation to reproductive rights, abortion etc based on providing a second opinion is against their religious freedom. |
| 2.2.9 Consulting and taking advice from colleagues, when appropriate. | May reject taking on advice from a colleague when appropriate if that advice conflicts with their religious freedom. |
| 2.4.1 Treating your patients with respect at all times. | Due to their religious freedom may not wish to act in a respectful way to LGBTIQ+ people. |
| 2.4.2 Not prejudicing your patient’s care because you believe that a patient’s behaviour has contributed to their condition. | May be prejudicial towards an LGBTIQ+ person with anal cancer, HIV etc, due to their religious view that being gay is a life style choice based on their religious views and therefore their sexual orientation contributed to their condition. |
| 2.4.3 Upholding your duty to your patient and not discriminating on medically irrelevant grounds, including race, religion, sex, disability or other grounds, as described in anti-discrimination legislation. | The Federal Law may override state law in relation to discrimination and therefore a medical practitioner would be able to discriminate against an LGBTIQ, unmarried mother, a heterosexual couple in a de facto relationship based on their strongly held religious views. |
| 2.4.6 Being aware of your right to not provide or directly participate in treatments to which you conscientiously object, informing your patients and, if relevant, colleagues, of your objection, and not using your objection to impede access to treatments that are legal. | These two clauses have generally been kept fairly limited up until this point of time, and predominately in relation to contraception and abortion. With the proposed Federal Law, it is likely that some medical practitioners will significantly expand the use of these clauses. |</p>
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<td>2.4.7 Not allowing your moral or religious views to deny patients access to medical care, recognising that you are free to decline to personally provide or participate in that care.</td>
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<td>3.7.3 Understanding that your own culture and beliefs influence your interactions with patients and ensuring that this does not unduly influence your decision-making.</td>
<td>Religious freedom legislation may provide an exclusion for doctors compliance with this clause.</td>
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<td>5.3 Public Health (advocacy)</td>
<td>Doctors who hold a religious view, that is not consistent with good medical practice, knowledge etc, may advocate against good public health, and not be constrained by this clause on religious discrimination grounds.</td>
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<td>8.2.3 Avoiding expressing your personal beliefs to your patients in ways that exploit their vulnerability or that are likely to cause them distress.</td>
<td>We understand there are medical practitioners who support and refer to “gay conversion therapy” or “sexual orientation change efforts” (SOCE) which are known to be harmful to LGBTQ+ people. Professional discipline for referring to these types of practices may be over-written on the grounds of religious discrimination.</td>
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<td>8.11.2 Acting in your patients’ best interests when making referrals and when providing or arranging treatment or care.</td>
<td>A medical practitioner could refer an LGBTQ+ person to Sydney Anglicare Counselling services (which has an obligation to support SOCE activities) which may be against the best interest of the patient, but the medical practitioner believes it is on the basis of religious freedom.</td>
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Endnotes

1 The most comprehensive statement was made in 2006 in a document titled “Dignity in Humanity: Recognising Christ in Every person”. In Cynthia Coghill and Elenie Poulos, (Eds), For a World Reconciled, Uniting Church in Australia Assembly, Sydney, 2016, pp 127-131. Many of the documents and policies re also seen at www.unitingjustice.org.au

ii Ibid, p 127

iii Ibid

iv Ibid., p.130.


vi Ibid., p.134.

vii Ibid., p.134.


xvi https://www.caselaw.nsw.gov.au/decision/5600a0e8e4b01392a2cd0f88


