

Recommendations

Recommendation 1

3.88 The committee recommends that, consistent with other anti-discrimination legislation, clause 14 of the Religious Discrimination Bill 2021 be amended to require that in determining if a condition, requirement or practice imposed on a person resulted in indirect discrimination, the person who imposes, or proposes to impose, the condition, requirement or practice has the burden of proving it was reasonable.

Recommendation 2

3.89 The committee recommends that paragraph 39(2)(b) of the Religious Discrimination Bill 2021 be amended to refer to the inherent requirements of the 'particular position', rather than the inherent requirements of the 'employment'.

Recommendation 3

3.90 The committee recommends that the government consider including a legislative note in the Religious Discrimination Bill 2021 that states that reasonable management action conducted within a reasonable manner will not constitute unlawful discrimination, and provide examples in the explanatory memorandum of the type of action that would likely constitute reasonable management action.

Recommendation 4

3.91 The committee recommends, consistent with other anti-discrimination legislation, that Division 4 of Part 4 of the Religious Discrimination Bill 2021 be amended to include a provision that the Australian Human Rights Commission and Attorney-General, in exercising powers under clauses 44 and 47, must include with the explanatory materials accompanying the instrument the following information:

- the Commission or Attorney-General's findings on material questions of facts in relation to the decision;
- the evidence on which those findings were based;
- the reasons for the decision; and
- the fact that an application may be made to the Administrative Appeal Tribunal for a review of the decision.

Recommendation 5

3.92 The committee recommends that subclause 69(1) of the Religious Discrimination Bill 2021 be amended to provide that the Australian Human Rights

Commission can only delegate the power to make an exemption to a Commissioner or an SES member of staff of the Commission.

Recommendation 6

3.93 The committee recommends that clause 47 of the Religious Discrimination Bill 2021 be amended to provide that the Australian Human Rights Commission may vary or revoke an exemption by notifiable instrument, but the Attorney-General may only vary or revoke an exemption by disallowable legislative instrument (ensuring there is parliamentary oversight of any political decision to vary or revoke an exemption made by the Commission).

Recommendation 7

4.121 The committee recommends that the explanatory memorandum to the Religious Discrimination Bill 2021 be amended to provide clarification as to the applicability of the bill to in-home care services, particularly in relation to aged care and disability services.

Recommendation 8

5.109 The committee recommends that subclauses 7(6), 7(7) and 9(3) of the Religious Discrimination Bill 2021 be amended to set out what is required to be included in a publicly available policy, namely: that the policy must outline the religious body's position in relation to particular religious beliefs or activities, and explain how this position will be enforced by the religious body. These subclauses should also provide that the minister may, by legislative instrument, determine any other requirements ancillary to this, which the policy must comply with.

Recommendation 9

6.135 The committee recommends that the government consider providing further explanation and examples with respect to clause 12 in the explanatory memorandum accompanying the Religious Discrimination Bill 2021, to provide greater clarity about what sort of statements or actions may, or may not, be considered to not constitute discrimination.

Recommendation 10

6.136 The committee recommends guidelines relevant to qualifying body conduct rules in clause 15 are developed in consultation with relevant professional bodies.

Recommendation 11

6.137 The committee recommends that the government give consideration to amending the explanatory memorandum, or clause 14 of the Religious

Discrimination Bill 2021 to add a legislative note, to clarify that it may be indirect discrimination for a qualifying body to impose a qualifying body conduct rule that restricts or prevents a person from expressing their religious beliefs, unless the qualifying body can demonstrate the rule is reasonable.

Recommendation 12

6.138 The committee recommends that, following implementation of the recommendations in this report, the Religious Discrimination Bill 2019, the Religious Discrimination (Consequential Amendments) Bill 2021, and the Human Rights Legislation Amendment Bill 2021 be passed.