



Anglican Church of Australia

Public Affairs Commission

Opening Statement to the Parliamentary Joint Committee on Human Rights 13 January 2021

I appear today as the Chairperson of the Public Affairs Commission (PAC) of the Anglican Church of Australia. I was nominated by the Primate, Archbishop Geoffrey Smith, to appear in response to an invitation to the Anglican Church of Australia to send a representative. The PAC is a reference commission under a Canon of the Anglican Church with functions which include responding on matters of public affairs. Its members are appointed by the Primate on the recommendation of the Standing Committee of the Anglican Church and come from various dioceses around Australia and include clergy and lay people. The PAC has made a submission (numbered 78) to the Committee on the Religious Discrimination Bill and has done so previously in relation to earlier exposure drafts.

There are many different views across the Anglican Church on this topic and others. The PAC can only speak for the PAC and not for the Primate or the Standing Committee and certainly not for the Anglican Church as a whole.

The PAC comes from a position of support for the protection of human rights, especially for the marginalised and the vulnerable. We believe it is vital to build an inclusive society in which people can participate freely and fully without being the subject of discrimination.

We would prefer to see comprehensive human rights legislation or at least consolidated anti-discrimination legislation where all the different human rights can be protected together consistently. Given the unfortunate piecemeal situation of Commonwealth anti-discrimination laws as they currently exist, we would support Commonwealth religious discrimination legislation. This is particularly important not so much for Anglicans, but for other religious groups like Muslim or Jewish people or Sikhs who have suffered discrimination based on religious clothing or days of rest. Issues can also arise for Aboriginal people, for instance in the ability to have time off to participate in ceremonies.

At the same time, an inclusive society needs to ensure protection of other minority groups from discrimination, whether LGBTQI+ people, people with disabilities or people from culturally and linguistically diverse backgrounds. The PAC's position is that we must try to find ways and structure legislation in a way that all rights can be protected as much as possible.

We would support a religious discrimination statute in the form of a standard kind of anti-discrimination legislation. We are concerned however about the various unusual aspects of this Bill which we believe go too far at the expense of the fundamental rights of others.

One of the key concerns is in relation to s12 and the override of other discrimination legislation by statements of belief that may be discriminatory and offensive, but which do not quite reach the high disqualifying bar of malice or to amount to threatening, intimidating, harassing or vilifying anyone. It is inappropriate to privilege discriminatory religious statements of belief over the rights of others not to be subject to discrimination. Most religions will say that their doctrines do not justify offensive statements in which case, there is the question of why s12 is necessary. In any event, the policy issue should be where is the

greater harm? The person discriminated against suffers obvious harm, but a religious or anti-religious person probably suffers little harm from having to refrain from saying discriminatory or insulting or offensive things to others.

We also have concerns about s15 where statements of belief can override qualifying body conduct rules. These are matters that should be determined under the more general provisions in s14 where all the circumstances can be considered as to reasonableness of the condition.

In relation to the exceptions that do not amount to religious discrimination, the PAC believes that these would have benefited from a full analysis by the Australian Law Reform Commission. It is a pity that the review of exceptions for religious bodies has been delayed and prevented from considering the application to religious discrimination laws.

We do support some specific exceptions for religious bodies. Some of the typical religious exceptions relate to internal matters, such as the selection and training of ministers or people who can participate in religious ceremonies. We feel that membership of the religious body should be included in this, though this will usually be covered by s43 as well. We do not believe these are controversial and it would be best if courts and tribunals are not involved in assessing such internal matters.

We also support the ability of religious bodies to give preferences in appointment or provision of services to people of their own or similar faith in order to maintain the religious nature and mission of their organisations. Preferences are mainly relevant when there are people of the same religion as the relevant religious body seeking limited places, otherwise to refuse someone on the basis of their religion or lack thereof when there is no one else to preference may just be discrimination.

Our written submission covers s10, but we also support the ability of voluntary religious bodies to give benefits to members in s43. However, this should be expanded to cover such bodies being able to give special benefits to members of the same religion (as opposed to members of the body), such as scholarships or discounts or preference in admission to schools or use of facilities or in appointments to boards and committees, including the boards of s8 organisations. This extension is required because with separate bodies within the same religious umbrella, the members of the same religion may not be members of the particular voluntary body so that s43 will not cover this need.

These exceptions we seek have nothing to do with sexuality or gender identity, which should still be governed by sex discrimination legislation. We urge that amendments be made to the *Sex Discrimination Act (Cwlth)* to provide better protection for LGBTIQ+ people. From an Anglican point of view, LGBTIQ+ Anglicans are members and leaders in our church, so preferences and benefits are just as much for our LGBTIQ+ members as others.

If the giving of such preferences and benefits for people of the same or similar faith or non-faith can be treated as non-discriminatory, then the more general exceptions can be narrowed substantially to reduce the ability of religious bodies to discriminate against people of other beliefs.

Our written submission gives some instances of the ways these general exceptions could be narrowed. One notable concern is that the ability to expel or punish existing students or staff for their religious beliefs when they might otherwise be acting within the ethos of the organisation. If, as the government seems to accept, it is inappropriate to expel students for their sexuality, it is just as inappropriate to do so for their beliefs. We believe that security of schooling and employment is vital and allowing expulsion, dismissal or detrimental treatment in employment and education is too harsh. It would be in effect be a restriction on the

religious freedom of those students or staff to change their beliefs. We believe such exceptions that allow this should be removed, except where the holding of a particular religious view is an essential requirement of the particular position, but that could be catered for in a much narrower way, perhaps even under s39.

We therefore do not support the bill in its current form and urge that it be redrafted, with sufficient time to enable a proper analysis and consultation.

Dr Carolyn Tan,
Chair of the Public Affairs Commission