

AIJAC

AUSTRALIA/ISRAEL & JEWISH AFFAIRS COUNCIL

ABN: 39 631 231 251

27 January 2022

NATIONAL CHAIRMAN

Mr Mark Leibler AC

EXECUTIVE DIRECTOR

Dr Colin Rubenstein AM

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: legcon.sen@aph.gov.au

Dear Committee Secretary,

I write in regard to my appearance before the Committee on January 20, 2022 together with my AIJAC colleague Ms Naomi Levin as well as Mr Peter Wertheim from the Executive Council of Australian Jewry (ECAJ).

Questions were posed to us regarding clauses 11 and 12 largely stemming from the submissions of Professors Twomey and Aroney (submissions 31 and 145) which we have now had the opportunity to further evaluate.

I have carefully read and considered the opinions expressed by Professors Twomey and Aroney concerning the potential constitutional issue with the drafting of clauses 11 and 12, as well as the suggested redraft that may alleviate any constitutional issues before they potentially arise.

The potential for a constitutional issue under section 109 of the Constitution in the context of the operation of clauses 11 and 12 of the act identified by Professor Twomey is persuasive. Whilst not in a position to express a view on the legal validity of Professor Twomey's arguments, the potential issue of whether this Bill would create an inconsistency with state and territory laws or attempts to regulate how they function is sufficiently unclear, given the current wording of these sections.

The redraft suggested by Professor Aroney, contained in Appendix B of his submission to the inquiry, attempts to resolve the potential conflict with section 109 of the Australian Constitution. AIJAC believes that Professor Aroney's redraft suggestion would remove the constitutional issues raised by Professor Twomey. However, the suggested wording might confer an unintended consequence by expanding the remit for a person to seek protection for statements of belief.

While it remains unclear whether the redraft proposed by Professor Aroney would expand this remit, AIJAC has consulted with our colleague Peter Wertheim and notes the suggested drafting changes submitted by the ECAJ in its response to these questions on notice which we submit are also worthy of serious consideration. AIJAC would encourage the Committee to seek advice from the Solicitor General, or other neutral and informed parties, as to the most straightforward method of alleviating the issue identified by Professor Twomey, without introducing unintended consequences.

On the second question, regarding the Australian Human Rights Commission's claim in its submission that clause 12 would lead to unmeritorious complaints about statements of belief, AIJAC argues that the protective provisions in clause 12.2 – namely that statements of belief are not protected if they are malicious, threatening, intimidating, harassing or vilifying – will assist in preventing any untoward

unintended consequences by those expressing their faith or beliefs. In this case, AIJAC supports the argument in the response provided to this question by the ECAJ, that the freedom to express one's religion is a fundamental human right and a higher priority than the freedom to be protected from someone else making a statement of belief about their faith.

We trust this answer will be helpful to the Committee in its deliberations and we convey again our appreciation to its members for considering our views.

Sincerely

Colin Rubenstein

Dr. Colin Rubenstein
Executive Director
AIJAC