

27 January 2022

Questions on Notice

Australian GLBTQI Multicultural Council (AGMC)

Senate Legal and Constitutional Affairs Legislation Committee Hearing (21 January 2022)

Dear Committee Secretary

Thank you for the opportunity to provide evidence at the Senate Legal and Constitutional Affairs Legislation hearing into the *Religious Discrimination Bill 2021 Religious Discrimination (Consequential Amendments) Bill 2021 Human Rights Legislation Amendment Bill 2021* on 21 January 2021.

Please see AGMC's responses to the Questions on Notice from the hearing below.

Question 1 from Senator O'Neill

You might need to take this on notice. I'm referring to a piece of research that I sighted yesterday and has been mentioned this morning in evidence. It's the Longitudinal Study of Australian Children. The Australian Catholic bishops put the point that roughly one in 20 Australian children has experienced discrimination based on their religion, which was higher than the rates of discrimination based on disability, mental health or sexuality. I've gone to the source to check it, and I'm reading from table S2. The committee will provide you with this to comment on. This is a percentage of teenagers reporting discrimination according to demographic and physical characteristics: racial, 19.4 per cent, the highest; disability, 7.6 per cent; religious beliefs, 11.7 per cent; body—this is actually the highest, I'm sorry—31.8 per cent; mental health, 7.6 per cent; sexual identity, 5.4 per cent; and sex, 8.6 per cent. It's a huge range of ways in which people are being spoken to by others in diminishing ways, in hateful ways that break people's sense of themselves and their right to be who they truly are. That's why we have all these discrimination laws.

Can I be clear: you do support legislation to prevent discrimination on the grounds of religion? That's for all of the groups. You're all nodding; everybody's in agreement. So the record can show: yes, everyone is in agreement with that. I invite to you respond to that, because it's very concerning and you represent such a large group as you're collected here, as you're gathered before us.

I now want to take you to section 12. We've discussed this in detail, and I want you to have a look at the Human Rights Commission's submission—and they're the ones who are doing this day in, day out. Despite the awareness of all the issues that you've been raising and we're all concerned about, they state they are:

... not aware of any cases where genuine statements of belief have been held to be contrary to Australian anti-discrimination law.

I invite you to have a look and see if you can find any examples to provide the committee with—not vilification; antidiscrimination law. You might be able to give me an answer to this today. While the Human Rights Commission recommends the removal of section 12, it also argues that section 12 would not confer much, if any, additional protection to statements of genuine religious belief, which is quite different to some of the views that have been put to us by other participants in this inquiry. What is your view? Do you agree that section 12 wouldn't confer much, if any, additional protection to statements of genuine belief, particularly in light of the Human Rights Commission's statements? Perhaps you, Mr Giancarlo de Vera—what a beautiful name—could answer that here, because you are live in the room. That would be very helpful.

AGMC's response

Firstly, to clarify AGMC does support legislation to prevent discrimination on the grounds of religion.

With respect to the question on the longitudinal study of Australian children, the finding that teenagers report higher levels of discrimination based on religion than sexual identity tells part of the story.

Firstly, we would need to ascertain the level of discrimination for each faith tradition, so we are able to understand if other factors are at play. For instance, if discrimination is felt by Muslim, Buddhist and Jewish teenagers more than other faith traditions, then we would argue that racism is driving the religious discrimination more, and that LGBTIQ+ people of those faith traditions will be particularly vulnerable to the potential negative impacts of the bill because separating one's LGBTIQ+ identity from one's religious-cultural community would be very difficult for an LGBTIQ+ adolescent. For this cohort of people, we would expect significantly higher negative impacts on their mental wellbeing, as reconciliating one's LGBTIQ+ identity at the potential cost of losing membership of one's religious and cultural community would be anguish.

Secondly, we would say that the compounding and intersecting impact of discrimination on multiples grounds would be particularly acute for LGBTIQ+ teenagers. For example, a Sikh woman with autism, who identifies as LGBTIQ+ and proudly grows their facial hair in line with their Sikh beliefs, may report the basis of discrimination as being about their physical appearance not conforming to the norm that female-identifying people ordinarily do not grow facial hair. This does not discount that this person's LGBTIQ+ identity is part of experience of discrimination, as this person could very well be growing out their facial hair in line with their Sikh traditions, but also as part of an expression of a queer identity that desires to not conform to a gender binary.

Therefore, to take these statistics as evidence that more protection is needed to prevent discrimination on the basis of religion, while not recognising that the experience of discrimination can, and is often intersectional in nature, would be a blunt interpretation of what the longitudinal study is saying.

In addition, we would then argue that given the particular vulnerability of LGBTIQ+ young people, and the well established poorer mental health outcomes of LGBTIQ youth, it would be egregious for a piece of legislation to potentially put vulnerable LGBTIQ+ youth in situations where they would have to make difficult decisions to ensure their safety by removing existing legal protections from anti-discrimination laws under clause 12 of the proposed religious discrimination bill. All too often, we see LGBTIQ+ young people being excluded from their families, cultural and religious communities, when we should be promoting people to overcome their faith-based and culture-based attitudes that give rise to homophobia, transphobia, biphobia and other forms of queerphobia.

For this reason, we would support the Human Right's Commission recommendation to remove section 12 from the bill, as the current complaint mechanisms and opportunities for redress are far more accessible – while imperfect – for LGBTIQ+ people from multicultural and multifaith backgrounds. As for the debate as to what degree of protection clause 12 would confer, we don't have a position as we see this as ultimately a matter for the courts to test if the bill was to proceed with the current, or similar version of clause 12.

Question 2 from Senator O'Neill

On notice, can you have a look at the Law Council's evidence from the committee's previous hearing. It asserted very significant structural challenges to people accessing actual redress if the bill, as it's shaped with regard to state and federal jurisdiction, is to go ahead. They very clearly outline chapter 3 accords, state tribunals, Federal Court—the whole complex mess which is so unknown to so many Australians in terms of civic literacy. It's something you heard one day at the back of the classroom when you were in year 8 in one lesson; it has nothing to do with the rest of your life until you confront it. So please take on notice the Law Council's concerns about the way in which this will be structured. I will be interest in your response to that too. Thank you very much, Chair.

AGMC's response

We would agree with the Law Council's testimony from 20 January. Ms Eastman was right to bring up the issues of barriers to accessing justice and cost jurisdiction, and well as question whether a sufficient body of law would develop over time, so as to allow for tribunals to apply that body of law to make clause 12 more workable.

From our experience and research, 3 out of 4 LGBTIQ+ people from multicultural and multifaith backgrounds will not access a complaint mechanism of any kind, let alone the mechanisms where there are cost implications such as Chapter III courts. What drives this barrier to accessing complaint mechanisms, and ultimately justice, is an overwhelming expectation that nothing will be done. There is distrust in the communities AGMC represents.

Therefore, to make it harder for people to access justice by removing access to no-cost jurisdiction complaint mechanisms – even for a time to allow a body of law to develop – would probably skew the body of law that will arguably make clause 12 more workable, as we would expect LGBTIQ+ people to opt out of cost jurisdictions overwhelmingly.

So the body of law that arguably make clause 12 more workable, would in fact disadvantage LGBTIQ+ people of faith, as we would expect they would not be represented in the precedents set by judicial decisions.

Question 3 from Senator O'Neill

If I can just respond, Chair, the Catholic Education Commission indicated they would support a relatively small amendment to 38(3) of the Sex Discrimination Act to be embedded as part of this legislation, to actually provide clarity to young people in schools that they would not be dismissed. It has been articulated that that would not be happening anyway, but would you support that legislative change to make it clear while the Law Reform Commission continues its work more broadly into 38(3)? Mx de Vera?

AGMC's response

The only legislative amendment that AGMC would support to the *Sex Discrimination Act 1984* would be the removal of section 38. As noted in our written submission, we do not support faith-based organisations to discriminate against LGBTIQ+ people in relation to employment in any circumstance.

Yours sincerely

Giancarlo de Vera

President

Australian GLBTI Multicultural Council