Equality Rights Alliance
Women's Voices for Gender Equality

Equality Rights Alliance: responses to questions on notice posed by members of the Senate Standing Committee on Legal and Constitutional Affairs on 20 January 2021 during the inquiry into the *Religious Discrimination Bill 2021* and associated Bills.

1. **What amendments need to be made to enable that provision of protection without doing harm? What do they look like? (Senator O'Neill)**

The Bill needs to be redrafted throughout to provide for a blanket limitation on the right to protection from religious discrimination where that protection is necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. This includes part 2 of the Bill. The recent experience of pandemic in Australia has shown the need to have clearly defined human rights, including clear definition of the limits to human rights where the critical needs of others are affected.

Section 12 should be fundamentally redrafted to protect religious speech *except* where such speech needs to be limited to protect public safety, order, health or morals or the fundamental rights and freedoms of others. The fundamental rights and freedoms of others should be explicitly defined as including rights to non-discrimination and other human rights specified in other Federal, State or Territory legislation.

The Bill also needs a definition of *religion* in order to support the definition of *religious belief or activity* and *religious body* in s. 5. At the moment the boundary between matters which constitute religious beliefs and non-religious thoughts or matters of conscience under the Bill is not clear. An alternative would be to extend the Bill to protect thought and conscience as well as religion.

2. **Please provide examples where there could be a competing right between, say, the age discrimination law and the more orthodox provisions of the Bill? I'm not talking about a statement of belief. (Senator Bragg)**

Outlawing religious discrimination poses challenges which don't arise under other discrimination legislation, because religions tend to dictate rules about how individuals should interact with other people and can also specify that certain groups of people are sinful, lesser or 'other' in an unfavourable sense. This tendency of religion to impinge on interpersonal interactions is the reason that the ICCPR specifies a limit to the right to manifest thought, conscience and religion where the manifestation would affect another person's rights.

For this reason, the provisions of the Bill which prohibit direct and indirect discrimination against individuals on the basis of religion must be amended to include the ICCPR limitation where protecting the right to non-discrimination on the basis of religion would interfere with a

protection from discrimination under one of the existing Federal, State and Territory anti-discrimination Acts.

Example one: potential conflict between the Religious Discrimination Bill 2021 and the Age Discrimination Act 2004 (Cth)

Jeff belongs to a religion which teaches that elders should assume decision-making and leadership roles and that younger people should defer to older people. Jeff's employer is considering promoting Abyasa, a highly qualified person who is significantly younger than Jeff. Jeff tells his employer that he can't follow directions given by a manager who is younger than him. The company is small and can't find a role for Jeff that will not involve some direction from the manager. Jeff says that the requirement to follow directions from Abyasa would constitute indirect discrimination against him on the basis of his religious beliefs, as he could not follow directions issued by Abyasa, and the discrimination would not be reasonable because there are other, older employees who could be promoted. Abyasa points out that deciding not to promote him because of his age would constitute direct discrimination on the basis of his age.

Example two: potential conflict between the Religious Discrimination Bill 2021 and the Sex Discrimination Act 1984 (Cth)

Claude is a member of a sect which interprets 1 Timothy 2:12[1] literally. He has enrolled in a course run by a private college. His class is scheduled to be taught by Sade, a senior female teacher at the college. At the first class of the term, Claude objected to being taught by a woman, which embarrassed Sade. Sade asked the college to discipline Claude under the student code of conduct.

Claude asserts that disciplining him under the code of conduct amounts to direct discrimination on the basis of his religious beliefs. He has asked the college to assign a male teacher to his class. The college does have a male teacher available, but the class in question is held in the evening which attracts additional remuneration for the teacher. If Sade is moved to another class, she will earn less. Claude can't attend the only other available class because it is held on his holy day. Sade feels strongly that moving her to another class would validate Claude's views in the eyes of the other students. She feels that the college isn't sufficiently supporting her and refuses to change classes. She says that moving her to another class would constitute direct discrimination on the basis of her gender. Claude says that retaining Sade as the teacher would constitute indirect discrimination against him on the basis of his religious beliefs.

3. **Do you have any insight into the deal that was announced as existing between Ms Martin, Mr Sharma, Ms Bell and Ms Allen …? Do you have any insights or were you advised of that deal? (Senator O'Neill)**

ERA does not have direct knowledge of any such agreements.

[1] 1 Timothy 2:12 *But I suffer not a woman to teach, nor to usurp authority over the man, but to be in silence*