

## QUESTIONS ON NOTICE

*Senator SMALL: In a previous submission I note that the Council on the Ageing raised concerns about the way that the bill defines vilification and it's mentioned again here. The legislation in front of us includes that statements of belief would need to pass a test of reasonableness thereby ensuring that there is an objective standard applied. Do you agree that that is a positive step?*

Thank you for the opportunity to comment on the reasonableness test contained in Section 12, Subsection 2. COTA acknowledges the change to a “reasonable person would consider” from the exposure draft language of “reasonably likely, in all the circumstances”. We note however our core concern raised with the vilification definition is that it is inconsistently narrow compared to other Commonwealth legislation. We would propose that Subsection 2, paragraph b should be aligned with section 18C of the racial discrimination act (so as to ensure consistent treatment across various forms of discrimination). This would involve inserting the words offend, insult, humiliate or intimidate so that the section read

- (b) that a reasonable person would consider would offend, insult, humiliate, intimidate, threaten, harass or vilify a person or group; or

*Senator O'NEILL: My continuous question is: can we have you provide any amendments that you think are necessary for the legislation.*

1. Section 8, Subsection 1, paragraph a “aged care facility”
  - Propose that this section should be amended so that both home care and aged care homes are covered. Currently the term “facility” would imply only residential aged care facilities are covered by section 8, leaving home care services to be covered by section 7
  - Delete the words “**or aged care facility**”
  - Insert with a new paragraph e “**if the religious body solely or primarily provides aged care services—the provision of the services**”
2. Section 9, Subsection 2, paragraph b
  - Propose replacing definition of “aged care facility” with “aged care service provider” modelled on disability service provider
  - Delete paragraph b
  - replace with **a body (a religious aged care service provider) that solely or primarily provides aged care services in accordance with the doctrines, tenets, beliefs or teachings of a particular religion.**
3. Various locations
  - Replace all references of “aged care facilities” with reference to “aged care service providers”
    - Section 7, Clause 1, Note 2
    - Heading of section 8
    - Heading of section 9
    - Section 9, Clause 1
    - Section 9, Clause 1, Note
    - Heading above Section 9, Clause 3
    - Section 9, Clause 3
    - Section 9, Clause 5

○ Section 10, Clause 1, Note

4. As discussed during the hearing, we do not believe it appropriate that a Statement of Belief should override other discrimination laws. Accordingly we recommend that Section 12 be deleted in its entirety (noting the definition of statement of belief would remain)
  - a. If the committee were recommend the retention of Clause 12, we would propose that Subsection 2, paragraph b should be aligned with section 18C of the racial discrimination act (so as to ensure consistent treatment across various forms of discrimination). This would involve inserting the words offend, insult, humiliate or intimidate so that the section read
    - (b) that a reasonable person would consider would offend, insult, humiliate, intimidate, threaten, harass or vilify a person or group; or