

21 December 2021

Dr Anne Webster MP
Chair
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600

Dear Chair

Religious Discrimination Legislative Package

Thank you for the opportunity to make a submission to the Committee's inquiry into:

- the Religious Discrimination Bill 2021
- the Religious Discrimination (Consequential Amendments) Bill 2021, and
- the Human Rights Legislation Amendment Bill 2021. ('the legislative package').

About Relationships Australia

Relationships Australia is a federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, lifestyle choice, living arrangements, cultural background or economic circumstances. Relationships Australia has, for over 70 years, provided a range of relationship and other therapeutic services to Australian families, including individual, couple and family group counselling, dispute resolution, services to older people, children's services, services for victims and perpetrators of family violence, and relationship and professional education. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others and develop better health and wellbeing.

We respect the rights of all people, in all their diversity, to live life fully and meaningfully within their families and communities with dignity and safety, and to enjoy respectful relationships. A commitment to fundamental human rights, to be recognised universally and without discrimination, underpins our work. Relationships Australia is committed to:

- Working in regional, rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres.
- Collaboration. We work collectively with local and peak body organisations to deliver a spectrum of prevention, early and tertiary intervention programs with people of all genders, including older people, young people and children. We recognise that some families need a complex suite of supports (for example, family support programs, mental health services, gambling services, drug and alcohol services, and housing).
- Enriching family relationships, and encouraging clear and respectful communication.
- Ensuring that services are accessible and inclusive, ensuring that neither social nor financial vulnerabilities are barriers to receiving services.
- Contributing its practice evidence and skills to research projects, the development of public policy, and the provision of compassionate and effective supports to families.

This submission is made by the Relationships Australia National Office on behalf of the federation.

1. Framing principles of this submission

Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia welcomes the proposed recognition, across all Commonwealth anti-discrimination legislation, of the indivisibility and universality of human rights, the inherent and equal freedom and dignity of all, and of the principle that human rights do not exist in a hierarchy.¹

Principle 2 - Commitment to promoting social connection while reducing social isolation and address the serious public health issue of loneliness

Policy, regulatory and service interventions that strengthen connections and reduce isolation constitute the most promising and feasible avenues for reducing the risk of abuse and exploitation of people who face structural and systemic barriers to their full participation in society:

Social support has emerged as one of the strongest protective factors identified in elder abuse studies....Social support in response to social isolation and poor quality relationships has also been identified as a promising focus of intervention because, unlike some other risk factors (eg disability, cognitive impairment), there is greater potential to improve the negative effects of social isolation.²

We serve many cohorts who are disproportionately more likely to experience systemic and structural barriers to full participation in Australia's social, cultural, political and economic life and, as a result, experience loneliness. Loneliness is a public health concern (Heinrich & Gullone, 2006; Holt-Lunstad et al, 2015; Mance, 2018; AIHW, 2019). It has been linked to physical health risks such as being equivalent to smoking 15 cigarettes a day and an increased risk of heart disease (Valtorta, 2016). Loneliness is a precursor to poorer mental health outcomes, including increased suicidality (Calati et al, 2019; McClelland et al, 2020; Mushtaq, 2014).³ Relationships Australia has welcomed the Government's prioritisation of improvements to mental health and suicide prevention services, and the substantial funding, announced in May 2021, for mental health and suicide prevention measures under the National Mental Health and Suicide Prevention Plan.⁴ Mental health and suicide prevention are cross-cutting issues, and the prioritisation accorded them requires policy makers across all portfolios and agencies to take into account potential impacts on mental health. This is why Relationships Australia

¹ See, for example, Explanatory Memorandum to the Religious Discrimination Bill, p 32, paragraph 14.

² See Dean, CFCA 51, 20, Box 7, citing the United States of America population study described in Acierno et al, (2017); citing also Hamby et al (2016); Pillemer et al (2016).

³ The campaign Ending Loneliness Together has released a guide that explains how community organisations can use validated scales to measure loneliness: https://endingloneliness.com.au/wp-content/uploads/2021/08/A-Guideto-Measuring-Loneliness-for-Community-Organisations_Ending-Loneliness-Together.pdf

⁴ See <https://www.pm.gov.au/media/historic-2-3-billion-national-mental-health-and-suicide-prevention-plan>

considers the legislative package in light of its propensity to foster social connection and mental health or, conversely, to promote social exclusion and mental ill health.

These considerations are particularly important in light of the barriers experienced, and the acuteness with which they are experienced, by various groups with whom Relationships Australia works daily, including:

- First Nations people
- people with disability
- people who come from culturally and linguistically diverse backgrounds (including people who have chosen to migrate and people who have sought refuge)
- people affected by complex grief and trauma, intersecting disadvantage and polyvictimisation
- people living with intergenerational trauma
- survivors of all forms of abuse, including institutional abuse
- people experiencing mental ill-health
- people experiencing homelessness or housing precarity
- people who identify as members of the LGBTIQ+ communities, and
- younger and older people.

Relationships Australia has a particular interest in isolation and loneliness. Loneliness is a complex social problem stemming from dissatisfaction with our relationships, a lack of positive and respectful relationships, or both of these. It is often caused by experiences of exclusion due to structural and systemic social realities that form obstacles to participation in social, economic, cultural and political life.

We are invested in supporting respectful and sustainable relationships not only within families, but within and across communities. Relationships Australia is uniquely positioned to speak on isolation and loneliness as we have clinical experience supporting clients who experience loneliness, have conducted pioneering research into who experiences loneliness (eg Mance, 2018), and manage a social connection campaign, Neighbour Day,⁵ which supports people to create connections which combat loneliness. In our clinical practice and our advocacy, we apply a social model of loneliness which recognises systemic and structural barriers that inhibit people from making fulfilling social connections and from participating as fully as they would wish in all facets of our community.

Principle 3 – Clarity, transparency and accountability

Fragmentation of legislation, services and programmes is a burden that is routinely imposed on our clients by virtue of our federated structure. We have consistently argued that the burden should be lifted, as far as possible, from the shoulders of those least equipped to bear it (for example, in navigating the family law, family violence and child protection systems).

Relationships Australia considers that, to minimise the burden of fragmentation, it is incumbent on governments to legislate in a way that promotes universal accessibility of the law. We

⁵ Neighbour Day is Australia's annual celebration of community, encouraging people to connect with their neighbours. Neighbours matter (whether near, far, or online), and now, more than ever, is the time to make creative connections and to stay connected; see <https://neighbourday.org/>

therefore welcome the opportunities taken by the Government in this legislative package to promote consistency in its statute book (for example, by using language and concepts that are uniform across other Commonwealth anti-discrimination legislation).

Relationships Australia is nevertheless concerned that the complexity of the legislative package (within the current anti-discrimination law landscape and its existing complexities) will exacerbate people's adverse experiences of fragmentation, and undermine the objective of enabling marginalised people to better assert their human rights and receive an effective remedy when those rights are infringed.

2. Recommendations

Recommendation 1

The Commonwealth should harmonise and simplify its anti-discrimination legislation before or at least concurrently with enacting religious discrimination laws. (see section 3 of this submission)

Recommendation 2

The Commonwealth should take a leadership role in the federation, grounded in its external affairs power, to harmonise Australian anti-discrimination legislation. (see section 3 of this submission)

Recommendation 3

The Government should consider making more extensive use of notes to provide cross-references to related provisions. (see section 3 of this submission)

Recommendation 4

The Government should amend the Explanatory Memorandum to the Religious Discrimination Bill to clarify the basis on which a threshold of two years imprisonment has been selected for the definition, in subclause 35(2), of a serious offence. (see subsection 4.3 of this submission)

Recommendation 5

The Government should afford additional time for detailed public consultation about the legislative package. (see section 6 of this submission)

Recommendation 6

The Government should align the maximum period for exemptions with the period for statutory review (ie two years). (see subsection 7.1 of this submission)

Recommendation 7

The Government should amend clause 47 of the Religious Discrimination Bill to require the Commission or Minister to give, in the notifiable instrument, reasons for varying or revoking an exemption. (see subsection 7.2 of this submission)

Recommendation 8

As part of its commitment to the indivisibility and universality of human rights, and to the principle that every person is free and equal in dignity and rights, the Commonwealth should advocate for an international convention on the rights of older people, to support legislation and programmes that are human rights-centred and that move away from arrangements which segregate and 'other' older people, reinforcing the stigma that currently attaches to older people and those who work with them.⁶ (see subsection 9.2 of this submission)

Recommendation 9

The Government should legislate, in conjunction with the protections of the legislative package as currently framed, clear and enforceable safeguards to protect the rights of children and young people in religious educational institutions. (see subsection 9.2 of this submission)

Recommendation 10

The Government should include in the Human Rights Legislation Amendment Bill 2021 a note cross-referencing the source of the existing legal or policy position that the amendment seeks to codify for the purposes of the *Charities Act 2013*. (see section 11 of this submission)

3. The Religious Discrimination Bill 2021 is overly complex and should be simplified

The Religious Discrimination Bill 2021 has a highly complex structure that inhibits accessibility and may impair effective application. The Bill is structured to:

- set out circumstances in which the conduct of a religious body is not discrimination and therefore not unlawful (cl 7)
- set out circumstances in which clause 7 does not apply to the conduct of a religious body (cl 8)
- identify areas of public life in which the conduct of bodies described in clause 8, which might otherwise be discriminatory under that provision, is not discrimination and therefore not unlawful (cl 9)⁷
- override certain State and Territory laws (cl 11)
- set out when discrimination on the grounds of religious belief or activity is unlawful (Part 4, Divisions 2 and 3), and then
- create exceptions and exemptions, in addition to those areas and aspects otherwise 'carved out' in (for example) clauses 7, 9 and 66 (Part 4, Division 4).

The structure of this Bill offers compelling evidence supporting a fundamental overhaul of Commonwealth anti-discrimination legislation. It is so labyrinthine to effectively preclude those most in need of the law's assistance from asserting their rights and pursue their remedies, so that only those already with powerful voices, backed by ample resources and social capital, receive its full benefit. This further polarises our community, and compounds the isolation and

⁶ See, eg, Ben-Harush et al, 2017; Dobbs et al, 2008. The stigma attaching to age is often compounded by stigmas attaching to impairment, as well as to gendered caring roles, and other intersectionalities around culture, language, gender and sexuality and religion.

⁷ For the intended relationship between clauses 7-9, see EM to the Religious Discrimination Bill, p 47, paragraph 115; p 91, clause 441.

exclusion of those experiencing systemic and structural barriers to participating in the legal system. This is contrary to the objectives of Australia's human rights legislation.

Accordingly, Relationships Australia recommends that the Commonwealth should harmonise and simplify its anti-discrimination legislation before or at least concurrently with enacting religious discrimination laws. We further recommend that the Commonwealth should take a leadership role in the federation, grounded in its external affairs power, to harmonise Australian anti-discrimination legislation.

If the Government is disinclined to simplify the structure of the Bill, there are opportunities to mitigate its complexity. We respectfully suggest, for example, that more extensive use be made of cross-referencing notes. For example, clause 27 (Accommodation) of the Religious Discrimination Bill could helpfully be accompanied by a note cross-referencing clauses 8, 9 and 40 of the Bill, and explaining the nature of the relationship between the four provisions. Similarly, the provisions in column 1 of the following table could be accompanied by notes cross-referencing the provisions in column 2:

Clauses in Religious Discrimination Bill	Proposed cross-references
Clause 7 (Religious bodies acting in accordance with their beliefs)	Clause 43
Clause 28 (Land)	Subclause 36(2)
Clause 29 (Sport)	Clause 14
Clause 30 (Clubs)	Clause 42

4. Key concepts should be clarified

4.1 Public life and private life

The legislative package relies on an asserted distinction between public and private life.⁸ The Explanatory Memorandum to the Religious Discrimination Bill identifies the following areas of public life that are intended to fall within the scope of its protection:

- employment
- partnerships
- qualifying bodies
- registered organisations
- employment agencies
- education
- accommodation, and
- the provision of goods, services and facilities. (p 43)

⁸ See, eg, Explanatory Memorandum (EM) to the Religious Discrimination Bill, p 6; p 80, paragraph 355; p 87, paragraph 414; p 90, paragraph 434.

Many circumstances and actions can easily be identified as being private in character, and we therefore support (for example) exceptions relating to discrimination in work for domestic duties and in residential accommodation to be shared by a lessor or a near relative of such a lessor.⁹

We are, however, concerned that features of contemporary Australian life render this distinction unhelpful and possibly harmful, and susceptible to arbitrary and idiosyncratic interpretations that would undermine achievement of the objectives of the legislation, potentially protecting powerful and well-resourced institutional actions at the expense of historically disenfranchised and less well-resourced individuals. This may occur, for example, in relation to the use of social media. Indeed, the well-publicised High Court case involving former Australian Public Service employee Michaela Banerji indicated that the APS Code of Conduct does not recognise (or protect) a distinction between public and private life. Yet, under the proposed legislative package, had Ms Banerji framed her criticisms of Government policy as statements of religious belief, her employer may not have been in a position to dismiss her.

4.2 *'Moderately expressed' religious views*

We also have concerns about the concept of 'moderately expressed' religious views (see, eg, Note 1 to subclause 12(2), distinguishing 'moderately expressed' views from 'harmful religious expression').¹⁰ Is a 'moderately expressed' religious view merely one that does not incite hatred or violence or fall within the ambit of clause 35 (Counselling, promoting etc. a serious offence)? An example of how this issue may cause confusion is provided (for another purpose) by the illustrative example of clause 25 set out in the EM to the Religious Discrimination Bill (see p 73, paragraph 304). If Marshall had asked Catherine and her children to leave the restaurant mildly, or politely, or moderately, could Catherine still lodge a complaint under clause 25? Does Catherine's standing to lodge a complaint rely on Marshall's request being made 'aggressively', even if that aggression falls short of vilification within its legislative meaning?

We are concerned that 'moderate expression' is an innately subjective concept which will engender confusion and undermine the intended protections. Developing settled jurisprudence on the point will take some years, and involve significant legal expense, undermining the accessibility of the intended protection and remedies.

4.3 *'Serious offence'*

The Religious Discrimination Bill provides that it is not unlawful to discriminate against a person on the ground of the person's religious belief or activity if that is done in a way that a reasonable person would conclude that the putatively aggrieved person is counselling, promoting, encouraging or urging conduct that would constitute a serious offence: subclause 35(1). Subclause 35(2) defines 'serious offence' by reference, *inter alia*, to an offence punishable by imprisonment of two years or more under a Commonwealth, State or Territory law.

⁹ See also the protections in clauses 15 and 41 of the Religious Discrimination Bill.

¹⁰ See also EM to the Religious Discrimination Bill, p 57, paragraphs 184-185.

Relationships Australia notes that, across the Commonwealth statute book, concepts of serious offence differ; presumably, because of different purposes to be served by individual Acts. However, we consider that the Explanatory Memorandum should include an explanation of the basis on which the Government has selected two years as the threshold in this context.

5. Definitions relating to family should be expanded to reflect contemporary diversity of Australian family formation and composition

Relationships Australia supports the Government's expansive approach to recognising religious faiths, including First Nations spirituality and emerging faith traditions. We further support the proposed recognition of diverse denominations or sects within broader religious traditions.

Relationships Australia is concerned that the definition of 'child' in the Religious Discrimination Bill is tied to its meaning under the *Family Law Act 1975*; this definition also has implications for the definitions of 'near relative' and 'parent'. A range of inquiries, reports and scholarly commentary has identified that the Family Law Act approach to family formation and composition is unduly narrow. The Family Law Act (and, consequently, the Religious Discrimination Bill) fails to reflect the diversity of family formation and composition within contemporary Australian society, and fails to reflect kinship relationships among First Nations people. Similarly, we are concerned that the definition of 'near relative' in subclause 5(1) is confined to 'vertical' relationships and siblings, and does not include such near relatives as aunts, uncles, nieces, nephews and cousins, who may all play culturally vital roles in extended family groupings.

Anti-discrimination laws exist because of the need to protect the human rights of everyone in the community, regardless of differences amongst us; that is, the very existence of anti-discrimination law derives from diversity and complexity. We would therefore encourage Government to consider how its anti-discrimination laws, including those in the legislative package, can be refined to afford the fullest possible protection.

6. Public participation in the legislative process should be facilitated

Relationships Australia welcomes the proposed review of the legislation (clause 76). However, we are disappointed at the very brief consultation period, given the great complexity and far-reaching implications of the legislative package. This has been inadequate, and is particularly regrettable given the time of year.

7. Exemptions

7.1 The maximum period for exemptions should align with the legislated review

Relationships Australia supports mechanisms allowing the Commission to confer exemptions by notifiable instruments. This will afford opportunities for entities to bring their practices into conformity with the legislative package. However, we consider that a maximum specified period of five years is too long a period (noting that the mandated review of the legislation itself will take place after two years (cl 76)). The periods should align.

7.2 *Reasons should be given for varying or revoking an exemption*

Clause 47 of the Religious Discrimination Bill allows the Commission or the Minister to vary or revoke an exemption. Paragraph 487 of the EM to the Bill states that

It is intended that such an instrument [of variation or revocation] detail the reasons for revoking or varying the exemption. (p 97)

In accordance with principles of clarity, transparency and accountability, Relationships Australia urges the Government to consider amending clause 47 to require that a notifiable instrument made pursuant to subclause (1) include a statement of reasons.

8. Protection extends to persons associated with individuals who hold or engage in a religious belief or activity

Relationships Australia welcomes the extension of protection to those associated with individuals holding or engaging in a religious belief, as being likely to support the maintenance of valued relationships.

9. Inherent potential for unintended consequences that breach human rights

Relationships Australia has further concerns that, as currently framed, key aspects of the legislative package have the inherent potential to undermine the universality and indivisibility of human rights, and the principle that every person is free and equal in dignity and rights. This would be inconsistent with the express objectives of the legislative package. Two aspects in particular concern us: first, the practical application of the intended distinction between beliefs rejecting religion and beliefs not connected with religion and, second, the practical application of the intended distinction between employment and service delivery.

9.1 Distinction between beliefs rejecting religion and beliefs not connected with religion

The Religious Discrimination Bill appears to be intended to:

- protect statements and expressions of beliefs that derive from either belief in a religious tradition or rejection of belief in a religious tradition,¹¹ *but*
- exclude from protection statements and expressions of belief that derive from neither religious belief nor rejection of religious belief.

Relationships Australia is concerned that, in practice, it would be difficult to distinguish statements or conduct that derive from rejection of religious belief from statements or conduct unconnected with religious belief.

¹¹ See paragraph (b) of the definition of statement of belief in clause 5; see also, EM to the Religious Discrimination Bill, p 2, paragraph 4; p 10, paragraph 16, citing Article 18 of the ICCPR.

In the Explanatory Memorandum to the Religious Discrimination Bill, the Government acknowledges that

A person's religious belief, or lack of belief, is of significance to their identity, sense of self and the manner in which they live their life. (p 26, paragraph 67)

Protecting the freedom to express both religious and non-religious beliefs civilly is an essential part of maintaining a functioning democracy. (p 53, paragraph 159)

The Explanatory Memorandum also states that

The attribute of religious belief or activity will capture beliefs, such as atheism and agnosticism, which are defined by reference to a lack of belief. However, this definition will not capture non-religious beliefs which are not fundamentally connected to religion, consistent with Article 18 of the ICCPR. As such, not holding a religious belief is not intended to capture belief systems such as pacifism and veganism, which are not inherently related to religion. (p 35, paragraphs 41-42)

The definition [of religious belief] would also not cover statements of belief that are not linked to any religion.... (p 54, paragraph 166)

It is not intended that [paragraph (b) of the definition of 'statement of belief'] would capture philosophical beliefs which do not relate to the fact of not holding a religious belief. (p 55, paragraph 172)

Unintended consequences that breach an individual's human rights might arise, for example, where two people express identical views, but one expresses it by reference to a belief in a supernatural Being, Thing or Principle¹² (or by reference to their rejection of such belief), while the other expresses it by reference to principles of secular philosophy, or without any context. It would appear that the former would be protected from discrimination, while the latter will not.

While day to day experience perhaps leads many of us to be preoccupied by conflict and polarisation, identical ideological and doctrinal positions can be, and are, reached by divergent and nuanced paths across an array of important, contested issues (including animal cruelty and pacifism, which are examples noted in the Explanatory Memorandum).

A person without a religious belief can, we submit, have as deep a conviction about and commitment to 'canons of conduct' as can a believer in a 'supernatural Being, Thing or Principle', as envisaged by the High Court. Similarly, the susceptibilities of the former may be as deep and as cherished as those of a person of faith, yet only the latter's will be protected by the legislative package as currently framed. This is, we suggest, inconsistent with the universality and indivisibility of human rights, and equal freedom and dignity, that the legislative package seeks to reflect.

¹² As contemplated by Mason CJ and Brennan J in *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120, 137.

9.2 Hospitals, aged care, disability care – ethos in employment and service delivery are intertwined

The Religious Discrimination Bill seeks to protect the ability of religious bodies who provide public services (often with public funding) to discriminate, on the basis of religious belief or activity, in employment, but not in service delivery.¹³ This is to enable religious bodies to maintain their ethos¹⁴ while providing (often essential) services to the public at large, often on a commercial basis¹⁵ or subsidised by taxpayers.

Relationships Australia agrees that religious bodies, in carrying out religious functions and observances, should be able to give preference to adherents in their employment practices. It is difficult, however, to see how the proposed distinctions between employment and service provision will operate in practice in a way that does not marginalise or exclude those to whom services are provided; particularly those who already experience marginalisation or disadvantage through compounding structural and systemic barriers and power imbalances.

For example, it is unclear how a religious aged care facility which hires (in accordance with the Bill) only adherents and practitioners of its faith, will ensure that their employees' expressions and manifestations of faith do not adversely affect the experience of service users, such as through shaming or intimidating service users. This is of grave concern in relation to facilities where service users are in a relationship of power asymmetry with the provider, and where they may have little real choice about from whom they receive services, when and where. Clearly, this concern would be particularly acute in communities where there may only be one provider (such as the only aged care provider in a rural, regional, remote or ultra-remote community).

In our submission to the Royal Commission into Aged Care Quality and Safety,¹⁶ Relationships Australia articulated its concern about the inadequacy of market-based principles in aged care, including by reference to inescapable asymmetries of power created by geographic or timing exigencies experienced by someone who needs residential aged care suddenly and urgently. These concerns are relevant here, also. In that submission,¹⁷ for example, we reflected the concerns of LGBTIQ+ people that, to receive aged care services, they will need to 're-closet' to access residential aged care. More broadly, the Royal Commission's findings indicated a range of shortcomings, grounded in intersecting barriers and forms of discrimination, in the aged care sector. This is why Relationships Australia advocates for the Commonwealth to lead international advocacy for an international convention for the rights of older people.

Similarly, how will religious schools ensure that staff's expressions and manifestations of their faith do not intimidate, offend, insult, shame or isolate the children and young people whom they are educating? This is a critical question given the lack of agency children and young people may have in relation to their parents' or guardians' choice of school for them, and the adverse impact that maintaining a religious ethos may have on the mental health of children and young

¹³ See, for example, EM to the Religious Discrimination Bill, p 48, paragraph 123.

¹⁴ See, for example, EM to the Religious Discrimination Bill, p 11, paragraph 22.

¹⁵ See, for example, EM to the Religious Discrimination Bill, p 46, paragraph 111.

¹⁶ <https://relationships.org.au/wp-content/uploads/Relationships-Australia-National-Royal-Commission-into-Aged-Care-Quality-and-Safety-submission.pdf>

¹⁷ See <https://relationships.org.au/wp-content/uploads/Relationships-Australia-National-Royal-Commission-into-Aged-Care-Quality-and-Safety-submission.pdf>

people who have little or no choice in their attendance. Clear and enforced safeguards are necessary to protect the rights of children and young people in these contexts, and they must apply before, or at least on and from the date of commencement of the protections of the Religious Discrimination Bill.

Relationships Australia does support the requirements that, if a religious body seeks to give preference to adherents, it can only do so in accordance with a publicly available document.¹⁸ This is consistent with principles of clarity, transparency and accountability.

In a range of other submissions, we have noted the propensity for institutions, intent on maintaining their ethos, to apply that ethos in ways that shamed, punished and abused those to whom duties of care were clearly owed. We are concerned that the lack of clarity in concepts such as 'statement of belief', the public/private distinction, and the latitude afforded by the religious susceptibilities protection,¹⁹ will enable perpetuation of such conduct at the expense of people who are vulnerable and marginalised. If this occurs, it will entrench social isolation and exclusion, and exacerbate poor mental health among those affected.

10. Human Rights Legislation Amendment Bill 2021

According to its Explanatory Memorandum, item 6 of Schedule 1 to this Bill inserts a new provision into the *Marriage Act 1961* (proposed section 47C of that Act) to make

... it lawful for religious educational institutions to refuse to provide facilities, goods or services to some persons for the solemnisation of their marriage, or for reasonably incidental purposes. (EM, p 9, paragraph 39)

This amendment would extend the protection currently afforded to bodies established for religious purposes (section 47B of the *Marriage Act*) and, as noted in the Explanatory Memorandum, recognises that many religious educational institutions have places of worship available to staff and students, to support their religious observances.

The purpose of the amendment is to ensure that religious educational institutions cannot be required to compromise their religious ethos by being obliged to accommodate services solemnising marriages that fall outside the concept of marriage within their doctrines, tenets and beliefs. Many religious traditions accord a very particular status to marriage, and to marriages solemnised in accordance with their beliefs. In light of this, the provision is, on its face, appropriate, principled and consistent with the overall objectives of the legislative package. Relationships Australia is, however, concerned by the indication, in the Explanatory Memorandum to the Bill, that

Such differential treatment could be made on the basis of certain characteristics of the individuals within that couple. (p 9, paragraph 39)

No further information is given. We have some concerns about whether this provision may come to be used in a way that is contrary to the human rights of individuals who are perceived

¹⁸ See, eg, paragraph 7(6)(a), clause 11; clause 40; See, for example, EM to the Religious Discrimination Bill, p 49, paragraphs 126-128; p 52, paragraph 148.

¹⁹ See, for example, Religious Discrimination Bill 2021, cl 7.

or presumed, by religious educational institutions, to have certain characteristics. We would welcome clarification.

11. Proposed amendment of Charities Act 2013

Item 3 of Schedule 1 to the Bill would amend section 19 of the Charities Act to create a conclusive presumption that an entity's support of marriage as a union of a man and a woman, is for the public benefit and not contrary to public policy. This relates to the criteria for recognising an entity as a charity for the purposes of that Act.

The Explanatory Memorandum to the Bill, however, indicates that this provision does nothing other than codify the

...existing *legal position* that such charities will not be disadvantaged for, in and of itself, advocating for a view of marriage as being the union between a man and a woman. (p 15, paragraph 39; see also p 16, paragraph 44) (emphasis added)

At p 15, paragraph 44, the Explanatory Memorandum states that

This amendment has arisen in a particular context, as outlined above in relation to the Religious Freedom Review, and is not intended to do anything other than codify the *policy position* under the Charities Act for the avoidance of doubt. (emphasis added)

Thus, there appears to be uncertainty, in the Explanatory Memorandum, about what is being codified. Given the Government's apparent intention to do no more than reflect the current position, it would be helpful if the Explanatory Memorandum stated clearly what the current position is and where it is located (ie in the Charities Act or in a policy document).

Further, to enhance the clarity and transparency of the legislative package, we would suggest that the Government include in the Bill a note indicating where the existing legal position is currently stated.


12. Commission resourcing

Relationships Australia supports the appointment of a specialist Commissioner, and the creation of mechanisms by which people can make complaints to the Commission. This gives effect to the right to effective remedy. However, that right is rendered illusory unless the Commission is adequately resourced to undertake, within responsive timeframes, the various functions conferred by the legislative package.

Conclusion

Thank you again for the opportunity to make a submission to this inquiry. Should you wish to discuss any aspect of this submission further, please do not hesitate to contact me at ntebbey@relationships.org.au or our National Policy Manager, Dr Susan Cochrane, at scochrane@relationships.org.au. We can also both be contacted on 02 6162 9300. Our office will be closed between 24 December and 7 January, re-opening on 10 January 2022.

Kind regards

A handwritten signature in black ink, appearing to read 'Nick Tebbey', with a stylized flourish at the end.

Nick Tebbey
National Executive Officer

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