



The relevance of "religion" to the operation of religious organisations: a response to the Anti-Discrimination Bill 1999

This paper was prepared by Rev. Dr. Ann Wansbrough and adopted by the Board of UnitingCare NSW.ACT at its meeting on 19 October 2000

NSW.ACT

This Position Paper raises a number of questions about the way the New South Wales Law Reform Commission's Anti-Discrimination Bill 1999 (in Report 92 Review of the Antidiscrimination Act 1977 (NSW)) will relate to the activities of the Uniting Church in Australia. It follows written submissions to the Law Reform Commission and to the Attorney-General's Department, neither of whom have offered any clarification of the matters we have raised.

Note: UnitingCare NSW.ACT was until earlier this year known as the Board for Social Responsibility of the NSW Synod of the Uniting Church in Australia.

The issue of human rights

The Uniting Church in Australia, and the NSW Synod, support human rights. On the whole, we would support the view that the church and other religious organisations should not discriminate on the grounds of the characteristics which are "irrelevant characteristics" in the bill, namely race, sex, domestic status, disability, sexuality, transgender status, political opinion, age or carer responsibilities including family responsibilities. This paper focuses only "religion" as a relevant or irrelevant characteristic.

The NSW Synod has, from 1985, supported the inclusion of religion as a ground of discrimination in anti-discrimination legislation. It is consistent with established policies of the Synod to support the inclusion of the ground of religion in the Anti-Discrimination Bill 1999. We believe that in general, religion should be considered an "irrelevant characteristic" in the activities covered by the bill.

There is, however, a question of the extent to which religion is irrelevant to the activities of religious institutions

themselves. In considering this issue there is a need to hold together the human rights of individuals who interact with the church in the various activities covered by the Bill, and the human rights of members of the church, to practice their religion through the activities of the church (as is recognised in the relevant human rights convention). Good human rights legislation takes equally seriously the human rights of both groups, since human rights are inalienable, universal and indivisible.

The ecclesiology of the Uniting Church in Australia

According to its constitution, the UCA exists for a number of purposes, namely "to provide for the worship of God, to proclaim the Gospel of the Lord Jesus Christ, to promote Christian fellowship, to nurture believers in the Christian faith, to engage in mission, to assist in human development and toward the improvement of human relationships, to meet human need through charitable and other services and to do such other things as may be required in obedience to the Holy Spirit." (Constitution, #3)

That is, according to our constitution, a very wide range of activities is required by "the doctrines, tenets or beliefs" of our religion (to use the Anti-Discrimination Bill terminology).

The UCA understands ministry in a very wide sense, as encompassing all its members. Its life is intended to provide opportunity for all members to exercise their gifts; ministry is not simply for ordained clergy.

"Recognising that ministry is a function of the whole Church to which all baptised persons are called, provision will be made by Congregations, Parishes, Presbyteries,

and Synods for the development and exercise of the gifts of all members ..." (Constitution, #11).

Thus the church, as church, engages in a wide range of activities on the basis of our Christian faith. As a church, we operate in what we consider an inclusive way. Some religious activities express the heart of our faith, and are intended primarily for the community of faith. Some of our activities have as their primary focus the expression and nurturing of the Christian faith. They are inclusive in that we would not usually exclude anyone who was interested. They are discriminatory in that they are not advertised or intended for everyone in the community, but only for people with a religious faith or religious interest. Some of our activities are intentionally services to the community, offered on the basis of need. Some activities are primarily services that one part of the church offers to other parts of the church to enable them to function effectively. While some of these services may be available to others on a commercial basis, their core business is resourcing the church itself. That is, religion is sometimes relevant, and sometimes irrelevant, to our activities.

These activities are funded from a range of sources. Community services and education receive some funding from government, and the church receives significant concessions such as exemption from rates and taxes. On the other hand, many of our activities are funded by church members, through freewill offerings, donations and bequests, or by investments which exist because of past donations and bequests. Church members give to the church as an expression of faith and in expectation that the church will fulfil its purposes in a way that places a high value on our religious tradition. They expect also that, in accordance with our Basis of Union and Constitution, the church will value their discipleship and gifts of ministry and create space within the life of the church for their expression. This may be through either voluntary or paid work in the church.

The purpose of the proposed bill

The bill will make it unlawful to discriminate, ie to act in a way that is detrimental to a person, on the basis of the "irrelevant characteristics" of race, sex, domestic status, disability, sexuality,

transgender status, political opinion, religion, age or carer responsibilities including family responsibilities in any of the areas of activities listed later in this paper.

The bill also makes unlawful sexual harassment in the various areas of activities, and vilification on the grounds of race, homosexuality or lesbianism, HIV/AIDS status or transgender status.

In the terms of the bill, an act of discrimination is a broad and inclusive concept:

11 What constitutes "doing an act".

For the purposes of this Act, a person does an act if the person:

- a. does or omits to do anything, or
- b. makes or fails to make a decision, or
- c. undertakes or fails to undertake a course of conduct.

12. What constitutes "relying on, taking into account, or requiring compliance with, an irrelevant characteristic"? - generally

1. For the purposes of this Chapter, a person (the first person) relies on or takes into account an irrelevant characteristic of another person (the second person) if the presence or absence of the characteristic is a material or significant consideration in the doing of an act by the first person in relation to the second person.

This is developed further in other clauses

The bill provides for penalties where advertisements are published which indicates an intention to do an act that is unlawful under the legislation.

The bill prohibits discrimination, victimisation, and authorising or assisting discrimination. It also provides for

vicarious liability of employers and principals who have not taken reasonable action to prevent an employee or agent contravening the act.

The bill provides for complaints to be made, and to be settled by conciliation or dealt with by a Tribunal which is able to make orders and award compensation. The report recommends a compensation ceiling of \$150,000. (Recommendation 148 page 762. There is no reference to a section of the bill.)

A large part of the work of the church is on a voluntary basis, much of it in local congregations, who, while under the general oversight of presbyteries and synod, have autonomy in many activities. Under the bill, who will be accountable in the event of complaints about such activities? What actions will the synod be expected to have taken to ensure conformity with the bill?

The activities of the Uniting Church in Australia

This section explores the range of activities that the church engages in, and relates them to the "activities" named in the Anti-Discrimination Bill. It should be noted that while the report of the Law Reform Commission discusses issues related to religion and employment, there appears to be no discussion of the relationship of religion to several of the other activities.

The area of work

This area of the bill covers applicants for work, person engaged in work, partnerships, qualifying bodies and accommodating persons with special characteristics.

The UCA is a major employer through

- Congregations - ordained ministers, lay pastoral staff, administrative staff, staff for community services, youth workers, staff for religious education in schools, and other programs such as arts, ethics, and social justice.
- Presbyteries. May include some or all of the above. May include people who assist parishes with a range of issues included strategic planning for mission.
- Synod.

- a. The synod employs people in several units: the boards of education, mission, social responsibility and finance and property and the secretariat. All exist to further the purposes of the church and are accountable to the synod, and all relate to the work of parishes and presbyteries as well as having direct responsibilities on behalf of synod. The synod employs ordained staff, non-ordained members of the Uniting Church, Christians who are members of other churches and people who may have no religious belief or affiliation. The property trust acts on behalf of the synod as the owner of all UCA property, and involves a range of legal and administrative responsibilities.
- b. A major focus of the work of the synod is to provide a variety of services to the church, ie to implement policy of the synod itself, and to provide services to synod boards, presbyteries and congregations. It provides property, investment, insurance, information technology and administrative services; conference centres; education, mission strategic planning, and resourcing of other aspects of mission; guidance on social justice issues, an employee relations service and oversight (through the UnitingCare NSW.ACT, UnitingCare Ageing and Disability Services and UnitingCare Children's Services Forum) of community services run by other agencies and councils of the church.
- c. The synod either through the UnitingCare NSW.ACT or other agencies such as the War Memorial Hospital employs staff in a range of health, welfare and community services such as Burnside Unifam, Supported Living, WESTS (tenancy advice), the Harris Community Centre, Sydney Family Day Care, the Inner Sydney Home Maintenance and Modification Service and Lilian Wells Nursing Home.
- Assembly. Most of the UCA National Assembly staff are located in NSW and come under NSW legislation.

They cover a number of areas such as Secretariat, Unity and International Mission, Theology and Discipleship, and Social Responsibility and Justice. There are also administrative and financial functions. Frontier Services provides a number of community services, as well as ministers, for remote areas.

Some parts of the church also act as "**Qualifying bodies**". For example, there are standards for

- the specified ministries of Minister of the Word, Deacon, Deaconess, Youth Worker, and Community Minister.
- Lay pastors
- Teachers of religious education in schools (NSW Law requires certain minimum standards be met)
- Chaplains, including chaplains who are not in one of the specified ministries.

Church employment positions be divided into several categories:

- **Positions for which religion is an essential occupational qualification.** Whether or not religion is an essential qualification is not always as obvious in the Uniting Church as in some other churches. In some churches there are positions that are always held by ordained persons which means that the religious requirement is obvious to everyone. In the UCA almost any position (including Moderator, Synod Secretary, and Executive Directors of Boards) can be held by an ordained or non-ordained person, and authority is widely shared rather than being focused in one or two roles. Congregations may be led by ordained ministers, or by lay pastors. Positions for which religious faith (and usually membership of the Uniting Church) is an essential qualification include the roles of minister or pastor to a congregation, parish pastoral worker, synod secretary, executive directors of synod boards, educational roles, positions that offer advice and theological reflection to the synod and its boards or to presbyteries and congregations about mission, evangelism or social policy,

and positions that resource and equip congregations to fulfil their mission as the church. Formal theological qualifications are desirable in all these positions, but are not always considered essential.

- **Positions for which religion is a desirable or useful but not essential occupational qualification.** There are a number of positions where someone with relevant professional qualifications and a willingness to understand and work within the ethos and tradition of the Uniting Church can make a significant contribution whether or not they are members of the Uniting Church. However, in most of these positions, being a Christian and being a member of the Uniting Church can add value to the employee's contribution, because they are activities in which the church is fulfilling its purposes and acting as the church. As the Executive Director pointed out at the UnitingCare Conference in April, our community services differ from those of other organisations largely in their inputs, namely the aspects of the Christian tradition that inform our delivery of those services. The church employs a number of Christians, who may or may not be members of the Uniting Church, in these positions, but also employs some people who are not Christian. They are employed to contribute to our life as a church.

From one point of view, the church may appear inconsistent in its employment practice in these positions. From a different point of view, it endeavours to be flexible, getting the best person for the job by balancing religious belief against particular abilities. The church invites others to share its journey. The following positions come in this category. (a) Positions of leadership, oversight and representation. Such positions include the Directors or CEOs of UnitingCare Ageing and Disability Services, Burnside, Unifam, UnitingCare Children's Services Forum, and Community Services Manager of UnitingCare NSW.ACT. (b) Professional positions in community services such as Burnside or UnitingCare. Having Christians in such positions means that the Christian ethos of the organisation is

intrinsic in the workers rather than being an external element imposed through policy alone. (c) Positions that provide financial, administrative and other apparently non-religious services to other parts of the church - where one part of the church, eg the synod, is offering a service to another part of the church.

- o **Positions for which personal values or beliefs are largely irrelevant to the content of the work.** The church itself embodies different views on whether religious faith is always relevant or sometimes irrelevant.

The bill provides only a limited exemption with regard to religion as a characteristic, namely

28. (5) *It is not unlawful under this Act for a person on behalf of a body or institution (the Offeror) to decline to offer work to a person*

- a. *who holds or does not hold a particular religious belief, or*
- b. *who is, or is not, pregnant, or of a particular sex, domestic status, sexuality or transgender status, if to do so, with respect to the particular work to be done,*
- c. *is necessary to comply with doctrines, tenets or beliefs of a particular religion and*
- d. *the offeror is*
 - i. *a body established for the purposes of that religion, or*
 - ii. *a private educational authority under the direction, control or administration of such a body.*

There is also a general exemption (ie, one covering all "irrelevant" characteristics) for religious appointments, provided taking account of the characteristic is required by our religious belief:

66. *Religious appointments*

It is not unlawful under this Act to discriminate in relation to

- a. *the selection, ordination or appointment, or*
- b. *the training or education for selection, ordination or*

appointment of persons to perform functions in relation to a religion if the discrimination is necessary in order to comply with the doctrines, tenets or beliefs of that religion.

The NSW LRC report indicates that the intention of the new bill is to narrow the employment exemption compared to that in the current Anti-Discrimination Act. The wording of the exemption refers to work that is required by our doctrines, tenets or beliefs.

We have sought, but not received, clarification of the following matters.

- a. **What is the definition of "functions required in relation to a religion" in the general exemption in Section 66? Does this cover appointments related to all the purposes of the church set out in its constitution? If not, how would those functions be distinguished from any other functions?**
- b. **Under section 28 (5), what tests would be applied in determining whether "the particular work to be done is necessary to comply with the doctrines, tenets or beliefs of a particular religion"? Would all the work covered by the purposes of the UCA in its constitution be accepted as coming within this category?**
- c. **How does section 66 relate to section 28 (5)?**
- d. **Would we be able to make Christian faith a requirement for some positions but only a desirable or useful characteristic for others?**
- e. **Will the bill allow churches to require that applicants for jobs demonstrate a willingness to work within the values, ethos and polity of the Uniting Church and to require that new employees attend orientation courses which explain to them the church, its structure, values and basic beliefs?**
- f. **Has the Law Reform Commission considered the way the bill may impact on church members who may wish to work**

for the church as an expression of their faith and discipleship, although they are employed in positions where religious faith is not an essential requirement of the job? How will the bill protect their right to express their faith through working for the church of which they are a member and which they help fund? That is, how are we to cater for members of our church who desire to work for the church, if it is considered discrimination to give weight to their church membership in assessing their application for positions where religion is not an essential occupational qualification?

We must conclude that our freedom in these areas would be severely restricted by the proposed bill, which fails to take adequate account of the nature of religious organisations and the rights of members for whom one expression of religious belief is the organisational structures that they fund and in which many of them serve.

The area of goods and services

This section of the bill appears to be a "catch-all", in that the list of services included in the bill are illustrative rather than exhaustive.

Goods are described as "things, money or choses in action". The Church may provide goods within the meaning of the bill. A number of church activities seem to come within its definition of services, including the following, which are set out under the relevant parts of section 36 (1) of the bill. Many of these activities are provided on the basis of need or interest. Others are primarily directed to church members, but are available to anyone else who chooses to take advantage on them. Some may be available only to church members or to those who are active in the life of the church, not as discrimination but because that is the nature of the activity.

- a. churches and halls are *places or facilities* that are often made available to the public in various ways, eg churches may be open to the public for prayer and meditation or for attendance at services of public worship. Churches and halls may be available for hire provided activities

are in accordance with a set of guidelines of appropriate activities.

- b. *financial services* - the Synod investment services
- c. *provision of superannuation and insurance* - there is a Synod Insurance Fund for the insurance of church properties. There is also an insurance brokerage service.
- d. *provision of health and welfare services* - within the NSW synod, these include hospitals (and before the end of 2000 will include a medically supervised drug injection room) and a wide range of community and welfare services such as aged care, child care, and support services for children and families at risk
- e. *provision of entertainment, recreation or refreshment* through children's clubs, youth groups, adult fellowship groups; camping activities, retreats and conferences for children, youth, families, and adults; social activities
- f. *services connected with transportation or travel* - congregations and support groups of community services and agencies may arrange bus trips and other types of travel. The UCA has an arrangement with QANTAS, which, from their point of view is an ordinary commercial arrangement to a large customer. However, it may be that religious discrimination is implicit in some aspects of its operation within the church.
- g. *services of any profession, trade or business* - congregations, presbyteries, synod and assembly all provide services of a number of professions, including people in specified ministries such as Minister of the Word, Deacon and Youth Worker, accountancy and property advisors, family counsellors, mission strategic planning, personal or telephone counselling, relationship counselling and mediation. Some of these services are provided to the community, some are provided to the church itself.

- h. *Services provided by State or local government* - we provide a range of government funded services.

In addition, the church provides the following services that may or may not be covered by the above:

- Worship activities, including public worship, baptism, confirmation and Holy Communion or Eucharist (and may impose conditions on these).
- Pastoral care and counselling services through both lay and professional staff.
- Weddings and funerals using the liturgies of the Uniting Church in Australia (by law, marriage celebrants who are ministers of religion must use the liturgies of the church for weddings).
- Funding for church and sometimes for community activities eg the Synod's 2% for Development Fund offers small grants to a range of community and church groups who engage in community development activities or development education.
- The UCA has an arrangement with Telstra, which, like the QANTAS arrangement is an ordinary commercial arrangement from their point of view but which may, in some aspects of its operation in the church, involve indirect religious discrimination since we are a religious organisation and that means that the basis of access to the benefits of the arrangement is sometimes religious.

There is no exemption related to religion for any of these activities, and the Report's discussion of exemptions gives the impression that this is deliberate.

We have sought, but not received, clarification of the following matters.

- a. **Are any or all of the activities of the church listed above covered by the bill's section on goods and services? If so, how will it impact on them? If not, how**

does the bill make clear that they are they excluded? What would we have to do to meet the requirements of the bill in these activities?

- b. **Would access to the benefits of any of our commercial arrangements be covered by this section of the bill?**
- c. **If the bill includes all these goods and services, many of which are intrinsic to the practice of religion, how is this consistent with the relevant human rights convention?**
- d. **What is the difference between government activities included at (h) in the list of goods and services, and those included in the separate activity of government services? Which part of the bill covers government funded services provided by churches? (See also the questions under the activity of government services.)**

We conclude that the bill has been based on an inadequate understanding of how religious organisations function, and the relationship between religious activity and the provision of goods and services. The bill would have a significant, detrimental effect on the ability of religious organisations to carry out a range of functions that support their religious activities.

The area of education

The area of education covers admission of students, providing the benefits of education to students, and expelling students or any other detriment to students. An educational authority means any "person or body administering a kindergarten, school, college, university or other institution, the primary purpose of which is to provide education or training". "Education" is not defined in the bill.

The Uniting Church provides education in a variety of ways, including

- Early childhood education through preschool kindergartens and long day care centres, usually run by congregations - in NSW this

comes under Child Care and Protection Act 1996 and associated regulations, rather than under education legislation.

- Primary and secondary education through church schools
- Tertiary education eg tutorials at Wesley College in the University of Sydney
- Tertiary education - theological education for candidates for specified ministries and for private students, through United Theological College in conjunction with Sydney College of Divinity; also courses in theology and other subjects at Wesley Institute.
- Some adult education courses on a commercial basis. Wesley Institute has sponsored some language courses for overseas students through a commercial organisation.
- Continuing education through the School of Continuing Education at the Centre for Ministry
- Education for Lay Ministries through the ELM Centre at North Parramatta, regional education officers, and through various retreats, conferences, workshops, seminars and exposure programs.
- Field education placements for students from secular education institutions (eg social work and social policy students) and from church institutions such as United Theological College
- Informal education through congregations - Sunday schools, youth and adult study groups; schools for seniors.
- In-service training for church staff, including staff of community services

The bill's exemption related to religion comes under the heading "Religious schools". The exemption appears to be more general than this heading implies and to apply not only "schools" in the formal sense, but also other educational

programs and institutions. The exemption reads:

44 It is not unlawful under this Act for a private educational authority that operates an educational institution or program in accordance with the doctrines, tenets or beliefs of a particular religion to exclude persons on the irrelevant characteristics of sex, domestic status, sexuality, transgender status or religion if the exclusion is reasonably necessary to comply with the doctrines, tenets or beliefs of that religion.

We have asked for, but not received, clarification of the following matters.

- **What is meant by the term "reasonably" in Section 44?**
- **Is it intended that this exemption covers the full range of educational activities that the church conducts, as listed in this paper, even where state legislation considers them community services or does not specifically cover them? Does it include schools related to the UCA but with their own act of parliament?**

The exemptions provided for education appear fairly general and therefore potentially to embrace a range of activities. However, we cannot assume that this section of the bill is adequate, since the division between educational and other activities of religious bodies is not always clearcut, and the bill does not define the meaning of "reasonably".

The area of accommodation

The area of accommodation covers residential, commercial (hotels, motels etc) and business premises. It covers provision, eviction and the conditions imposed on the user.

The church provides accommodation in several forms

- a. Residential
 - Aged care - retirement villages, hostels and nursing homes

- Housing for people with particular needs such as people with mental illness
 - Supported living program for people with intellectual developmental disabilities
 - University Accommodation - Wesley College at the University of Sydney
- b. Rental to individuals or businesses
- Congregations and the synod own a number of commercial properties which are leased for business. Most congregations have some guidelines as to the type of businesses that they would not consider appropriate in church owned property (or as a source of income for the church) - liquor stores or brothels, for example.
 - Sometimes congregations may lease redundant properties such as church halls or ministers' residences.
 - Sometimes church halls are available for hire for private or commercial functions.
- c. Community groups - Property for Mission

Many congregations make some of their properties available at a relatively low rental to community groups for purposes that they consider consistent with the purposes of the church. These may include self-help groups, arts or music groups, or groups related to health and fitness such as Tai Chi or Yoga groups. Many congregations see this as using "property for mission" through cooperation with the community sector, although they also generate some income in this way.

The only exemption related to religion is for hostels or similar institutions "established wholly or mainly for the welfare of persons of a particular religion". It would seem that all aspects of accommodation provided by churches would be covered by the bill.

The church does not run hostels etc only for persons of a particular religion. Like all our community services, accommodation for specific groups such as residential care for the aged is provided on a non-discriminatory basis.

We have sought, but not been given, clarification of the following matters.

- a. **Commercial Property. Under the bill, will church property owners have any right to discriminate in the provision of accommodation for business purposes? In particular, would we be required to accept commercial tenants whose activities were inconsistent with our values or our investment guidelines? If we hire property such as church halls for private functions, will we lose control over which functions are acceptable - will we have to accept all comers?**
- b. **Property used for religious and community purposes. Under the bill, would congregations be able to continue to apply guidelines based on their understanding of mission, in determining which groups can hire their churches and halls?**

The bill includes some exemptions that the Uniting Church does not need with regard to community services facilities, but may create problems for the church with regard to some uses of property.

The area of clubs and associations

This area of the Anti-Discrimination Bill refers to registered clubs, industrial organisations, cooperative and friendly societies, incorporated associations, and building societies and credit unions. It includes dealing with applications for membership, categories of membership and conditions of membership.

While we have many clubs and associations, they are not registered or incorporated.

The bill provides an exemption where a club or association exists "principally to

provide benefits for people of a particular religion." (Section 58)

The area of disposal of interest in land

Under the bill, to dispose means to sell, assign, lease, sublease, license, mortgage or create or transfer an interest in land.

The church from time to time disposes of interests in land as envisaged in this section of the bill. Sometimes it may do so purely as a commercial activity, without conditions. Sometimes the church may require some control over future use of the land, so that it is not incompatible with adjacent land used by the church itself. For example, the Synod owns property at North Parramatta. Some is used directly by the church, for Burnside and for the Centre for Ministry. The synod has leased some buildings for a Baptist school, and some land has been developed for housing. If we were to dispose of further parcels of this land, we may want to ensure that the uses for which it was sold were compatible with continuing church uses of the land we retain.

The bill does not provide for any exemption in this area related to religion.

We have sought, but not been given, clarification of the following matters.

- **Is this bill intended to over-ride the rights that vendors have under other property laws to decide whether a sale is in their interests, if, as a religious body, they take account of their religious interests in contrast to commercial interests?**
- **Businesses are free to develop and dispose of interests in land on the basis of their particular business plan and commercial values, which may lead them to discriminate between potential users of land (eg to develop a particular type of industrial park). If we are not able to apply religious values, is this not discrimination against religious organisations compared to businesses?**

While there are many circumstances where the bill would not create problems

for religious bodies disposing of interests in land, the bill may create problems in some circumstances where the future use of land may impinge on the interests and needs of religious organisations.

The area of government activities

The bill includes in this area activities which exercise a function of government or which administer or conduct a program funded by the State government or local government.

In general, we support the view that any organisation providing services on behalf of government should do so in a way consistent with the government's own obligations. Organisations that do not want to be bound by the government's responsibility to be non-discriminatory should not take on government contracts. The issue here is not the nature or rights of religious organisations, but is clearly the rights of citizens.

However, even here things are not always as clear cut as the bill assumes. The church provides a number of government funded community services. These include

- a. government funded chaplaincy services in police, defence forces, corrective services, and mental health, and other services (eg a chaplain in the medically supervised drug injection room). Chaplaincy is understood as providing services related to religion. Government funds chaplaincy provided by various religious organisations, each of which is only required to provide chaplains of their own faith.
- b. Government funding for services such as the Job Network, hostel care services, nursing home services, child and family support services, HACC, community development services, tenancy advice services, supported living program for intellectually developmentally disabled. Aged care services are funded by government and residents. Other services are funded by a combination of government and church funding. Some services, such as the Job Network, are

apparently funded entirely by government but depend on established infrastructure.

The bill provides no exemptions on any grounds in this section. It therefore appears to fail to take account of the specific situation of government-funded chaplaincy services, which are government funding of religious services.

The bill provides no exemption for services which may be jointly funded by church and government, eg in the case where government funds specific programs but the church funds the organisational infrastructure on which delivery of the program depends.

- a. **Would the government funding of chaplaincy services be affected by this Bill?**
- b. **UnitingCare supports the state government including in its contracts a provision for non-discrimination in provision of services and in employment of staff for services directly funded by government but provided by the church. However, the division into church funded and government funded services is not always clear. How does the NSW LRC envisage that the bill will apply to services which receive some government funding but also depend on church infrastructure and/or partial funding?**

The bill needs to be amended to take account of government funding of chaplaincy and those services where there may be a mixture of funding by government and religious bodies.

Comparison between treatment of religion and treatment of political opinion

The bill includes "political opinion" as an irrelevant characteristic. Political opinion is defined as

Political opinion means a belief or opinion concerning:

- a. *the nature and purpose of the state, or*

- b. *the distribution and use of state power, or*
- c. *interaction between the state and individuals, bodies or groups in the community.*

Employment

Religious bodies can only discriminate where the particular work to be done "is necessary to comply with the doctrines, tenets or beliefs of a particular religion".

Political opinion can be taken into account in regard to employment as an advisor to, or member of staff of, a politician, political party, local government councillor or a member of the electoral staff of any person.

That is, there appears to be a broad exemption for political parties and politicians and a narrow exemption for religious bodies, although both political and religious belief are covered by the same human rights articles.

We conclude that the bill appears to limit the freedom of religious bodies more than it limits the freedom of political parties and politicians with regard to similar work.

Clubs and associations

The exemptions in section 57, political opinion, and section 58, religion, appear to have parallel wording.

Comparisons within the bill itself

The bill appears to treat religious discrimination differently depending on the particular activity involved. It is not clear from the Report why this is the case. It appears that we have some rights in the areas of employment and education, but not in the activities we employ people to do on our behalf, or in the way we manage our assets.

Does this bill allow us the same freedom to apply our values to our activities and use of assets and resources, as would be available to a business or secular community organisation in applying secular values? If so, how does the bill work to ensure that this is the case given that religion is covered, but not other forms of belief or values?

Conclusion

The NSW Law Reform Commission has proposed a bill that the Uniting Church would generally support. We concede that sometimes in our life we may decide that religion is not relevant to a particular task or activity. **But we cannot support those parts of the bill that apply the assumption that religion is irrelevant to all the activities of religious organisations, except where we can prove otherwise to the satisfaction of the secular legal system. We cannot support those parts of the bill that put the onus of proof on religious organisations to justify taking account of religion in their activities and decisions.** Such an assumption is highly disrespectful, even judgemental, of the activities of religious organisations. It is inconsistent with the reality of most religious organisations, and inconsistent with the *Declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief (UN resolution 36/55)*. The bill appears to be based on an over-simplified view of the nature of religious beliefs, religious activity, religious organisations and religious freedom. It seems to see religious organisations primarily as entities from which religious believers need to be protected, rather than as entities which religious believers create and support as an expression of their faith.

If the bill is not intended to limit our activities as religious organisations or our ability to incorporate religious values into our decision-making and practice, then there is a lack of clarity in some sections of the bill and need for some amendment. If the bill is intended to limit the ability of religious organisations to incorporate religious values into decision-making and practice, then this would appear to be itself discriminatory and contrary to the overall purpose of the bill.

We make these comments reluctantly. We are committed to human rights for all. We are committed to being responsible institutions in society. We agree there should be some form of accountability to society for our actions that impinge on society. But to support a law that assumes that religion is generally irrelevant to the activities of religious organisations and that the onus of proof is on religious organisations to prove the relevance of

religion to the satisfaction of a secular legal system would require that we deny our reason for existence and the nature of our activities, and that we allow the state to control religious interpretation and expression.

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