SACOSS
South Australian Council of Social Service

Marjorie Black House
47 King William Road
Unley SA 5061

P. 08 8305 4222
F. 08 8272 9500
E. sacoss@sacoss.org.au
www.sacoss.org.au

ABN 93 197 662 296

Hon Vickie Chapman MP
Attorney-General
GPO Box 464
Adelaide SA 5001

Forwarded by email: attorneygeneral@sa.gov.au

Dear Attorney- General

We write in response to your invitation to comment on a draft Bill entitled the *Equal Opportunity (Religious Bodies) Amendment Bill 2020* (the draft Bill) that would, if enacted, make a number of amendments to the religious bodies exemptions currently contained in section 50 of the Equal Opportunity Act 1984 (SA) (EO Act).

SACOSS is the peak body for the non-government health and community services sector and connects with hundreds of community service organisations and thousands of people each year, right across SA. Our policy positions and advocacy are guided by the SACOSS Policy Council, which is drawn from individual and organisational representatives from across the health and community services sector. SACOSS is also part of the national network of Councils of Social Service existing in each state and territory and ACOSS.

In seeking views to guide this submission we have consulted with a number of organisations embedded in supporting the LGBTIQ+ community and some individual community members. We are aware that a number of those bodies, including COTA SA, SARAA and the Rights Resource Network are all making their own submissions to the process, and we commend these to you.

In the commentary below, we will speak to a number of issues, some of which are canvassed in those other submissions, although bring our own reflections to the issues.

The role of the federal government's Religious Freedoms Bills

We note that one of the overarching issues relating to this matter is the way in which this state legislation is likely to interact with the proposed federal Religious Freedom Bills. We remain deeply concerned about a number of the elements of that legislation and are not at all persuaded that it will adequately protect, let alone advance, the human rights of people who identify as LGBTIQ+.

We appreciate this may indeed be a motivation in your own government bringing this Bill forward. However, we also recognise that federal legislation, such as the Religious Freedom Bills, ultimately overrides state legislation, and thus there is considerable anxiety that any good work undertaken by your government, will simply be brushed aside by any subsequent federal changes to legislation such as the Religious Freedoms Bills.

The rights of LGBTIQ+ people to live in a society where they can access goods, services, employment and recreational activities without impediment is central to meeting their basic human rights. And as a matter of principle, the human rights of people who identify as LGBTIQ+ should never be defined, as ever starting and finishing at the state border.

If the Religious Freedom Bills become law in their current form, faith-based health and community care providers will continue to have the right to deny employment to LGBTIQ+ people. This contravenes Article 23 of the Universal Declaration of Human Rights, which states that everyone has the right to free choice of employment. In that context, and if genuinely reform-minded, we urge that your government do everything possible to prevent the federal Religious Freedoms Bills proceeding in their current form and to ensure it is amended so as to address the issues that are fundamental to advancing the human rights of all members of the LGBTIQ+ community.

The best clarification may be achieved by excising both s 34(3) and s 50(1)(c)

A number of the key amendments to *Equal Opportunity (Religious Bodies) Amendment Bill 2020* are directed at narrowing and clarifying those services/areas of service that can and cannot discriminate on the basis of religious belief.

That said, a number of people have identified that even with these clarifications, there are still many areas of uncertainty with the existing legislative framework.

For example, we note that by not removing s 34(3), religious schools will still be able to discriminate in the employment of teachers and support staff on the grounds of sexual orientation, gender identity or intersex status.

We believe this makes a mockery of any proposition that LGBTIQ+ students will in fact be treated equally at religious schools because while a teacher who identifies as LGBTIQ+ will be able to be removed, a student who identifies as LGBTIQ+ will not be able to be removed from their school

We note that the dismissal of a teacher who identifies as LGBTIQ+ on this basis, will be sure to be witnessed by the whole school community. No matter what, the action will both consciously and unconsciously carry messages to the whole school community that people who identify as LGBTIQ+ are neither welcome or to be treated equally. Thus, any student who sees themselves as having any similarity in identity will inevitably understand that someone with that identity is not welcome in the school. Other students, by default, will be taught that they can act discriminatively. Furthermore, all students (and indeed the broader school community) by default, will all be taught that they can in fact act discriminately against anyone who identifies with the LGBTIQ+ community.

This of course runs completely counter to the idea that we are seeking to secure and uphold the human rights of children, young people and adults, who identify as LGBTIQ+ and directly undermines the notion of equality and fairness in our society. On this basis we believe there are very good reasons for removing this clause.

Similarly we are strongly persuaded by the recommendation we understand SARAA has put forward in its own submission, that rather than amending s 50(1)(c) as proposed to attempt to provide greater definition, it too, should simply be excised. This would be consistent with a recommendation first made by the South Australian Law Reform Institute (SALRI) in its 2016 report *'Lawful discrimination': Exceptions under the Equal Opportunity Act 1984 (SA) to unlawful discrimination on the grounds of gender, identity, sexual orientation and intersex status.*[1]

---

[1] South Australian Law Reform Institute (SALRI), *'Lawful discrimination': Exceptions under the Equal Opportunity Act 1984 (SA) to unlawful discrimination on the grounds of gender, identity, sexual orientation and intersex status,* report, June 2016. Available at https://law.adelaide.edu.au/system/files/media/documents/2019-01/eo_exemptions_final_report.pdf.

Moving to a 'discrimination by application' model

We also concur with SARAA that by adopting in its place a 'discrimination by application' model we would be far more likely to create *"a fairer and more robust approach to balancing the needs to protecting the LGBTIQ+ community from discrimination, while allowing religious bodies to discriminate in limited and exceptional circumstances."*

Under such a provision, should any religious body actually need to discriminate on the grounds of sex, sexual orientation or gender identity for reasons other than those explicitly outlined in s 50(1)(a)-(ba), they would simply make an application outlining the basis on which they believe such an exemption is required.

This model would therefore allow exceptions to be assessed on a case-by-case basis and only granted where there's a genuine and reasonable need to discriminate.

Extending the list of services covered if s 50(1)(c) is not removed

If, however, the government is of a mind not to remove s 50(1)(c), we believe the current list of defined services will limit, rather than extend, protection from discrimination, given it excludes a range of other services that are equally likely to be relied upon by members of the LGBTIQ+ community, (e.g. legal and financial services, tertiary education etc.)

With this in mind, at minimum we recommend the current list be supplemented by at least adding the following services:

- Financial support/financial counselling
- Legal support
- Food relief
- Tertiary education
- Adoption agencies
- Welfare services generally.

Ensuring stakeholders and the community generally are all aware of EO protections

Finally, we also note that it is imperative that there is adequate resourcing available to build awareness and support access to the protections available (existing and proposed) of the EO Act. A number of stakeholders reflected on the fact that in its 2016 review the SALRI found that there was a general lack of awareness of the relevant legal frameworks in its 2016 review, and subsequently recommended a wider review of equal opportunity protections and services, including the resourcing and powers of the Equal Opportunity Commission.

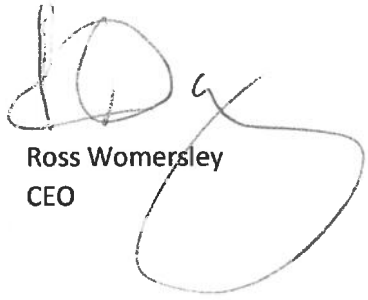
We believe such a review is an important adjunct to giving real life to the Act and ensuring any new provisions are effective and accessible.

In closing

Thank you again for the opportunity to comment on the proposed amendments, and we would be very happy to provide further comment or clarification if requested. We of course hope that any changes do result in ensuring everyone in LGBTIQ+ community has their human rights better protected and upheld.

We are also committed to assisting in building awareness about any of the changes that may be forthcoming, and would be very happy to support the State government in ensuring the federal Religious Freedoms Bills actually amplify and strengthen the human rights of the LGBTIQ+ community.

Yours sincerely,



Ross Womersley
CEO