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Government of South Australia

Office of the Commissioner for  
Equal Opportunity

9 March 2022

Ms Jane Mussard  
Chief Executive  
COTA

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Dear Jane,

Thank you for your letter of 15 February on behalf of the LGBTI Advisory Group requesting information following the debate about the Religious Discrimination Bill 2021 ('the Bill'). I apologise for the delay in my response.

As you know, significant concerns were expressed when the Bill was debated (and beforehand) that it could undermine state and Federal protections from discrimination against LGBTIQ+ individuals.

While the Bill is, as you stated in your letter, "now stalled", I appreciate that concerns exist both as a result of the public discourse, and in anticipation of future attempts to introduce a similar Bill. It is difficult to speculate about what a new Bill might include. The current legal protections are outlined below.

South Australia's Equal Opportunity Act 1984 ('the Act') (section 85T(7)) provides an express provision that protects individuals from unfavourable treatment based on their *appearance or dress* when those features are tied to their religion.

However, there are no protections against discrimination based on religious *beliefs*. Hence, it is not unlawful to treat another person unfavourably because of their religious beliefs. As far as I can ascertain, this has always been the case.

South Australia's legal protections in a range of other areas for members of the LGBTIQ+ community mirror Australia's Federal protections. It is unlawful to discriminate against an individual in areas such as employment, education, the provision of goods and services, and accommodation because of their sex, sexual orientation or gender identity. The protections provided by South Australian legislation are found in Part 3 of the Act.

There are, however, some exemptions to these laws. Discrimination on the basis of sex, sexual orientation or gender identity is *not unlawful* where:

- There are genuine, reasonable requirements that the person possess a specific sex, sexual orientation or gender identity;
- The discrimination is intended to benefit or achieve equality of opportunity for persons of a particular sex, sexual orientation, gender identity or intersex status. This exemption can be found in sections 45 and 47 of the Act;
- The discriminating body is a religious body acting in accordance with its religious precepts or in relation to the ordination of members of the religious order. This exemption derives from section 50 of the Act;

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- The discriminating body is an educational authority and the discrimination concerns employment in accordance with the institution's religious precepts, as long as those precepts are expressed through a written policy that is provided to the potential employee (see section 34(3) of the Act).

You have referred to "hurtful expressions" in your letter. While there is no general protection for religious beliefs, hurtful expressions may not be enough for a complaint in any other area to progress in our office. The Act requires that a person is treated unfavourably because of the particular attribute they possess, and that they suffer a detriment. While that could include humiliation or denigration, complaints are carefully considered, and of course, every complaint has its own factual complexities.

Interestingly, in the last 5 years this office received between 3 and 9 complaints each year in relation to discrimination/unfavourable treatment based on religious appearance or dress. Since my appointment in April last year, I am unaware of anyone who has contacted our office wanting to make a complaint about religious discrimination not confined to appearance or dress.

I trust this has been of some assistance.

Yours sincerely



JODEEN CARNEY

Commissioner

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