



15 August 2025

NSW Law Reform Commission
Department of Communities and Justice
Locked Bag 5000 Parramatta NSW 2124

Via email: ADAreview@dcj.nsw.gov.au

Dear Secretariat

Anglicare Sydney submission on the review of the Anti-Discrimination Act 1977 (NSW)

This submission has been prepared in response to the *Review of the Anti-Discrimination Act 1977 (NSW): Unlawful conduct* Consultation Paper (Consultation Paper) prepared by the NSW Law Commission (the Commission). We welcome the opportunity to assist the review and consent for this submission to be made public. If Anglicare can be of further assistance or clarification is required please contact in the first instance

1. About Anglicare Sydney

Anglican Community Services trading as Anglicare Sydney (Anglicare) is a Christian not-for-profit organisation providing care to older people and community services throughout Sydney, the Blue Mountains, Illawarra, Southern Highlands, New England North West, Central West and Norfolk Island. Anglicare is a large charity registered with the Australian Charities and Not-for-Profits Commission, accountable to governments, regulators, clients, supporters and donors, and the Synod of the Sydney diocese of the Anglican Church. Anglicare is a registered Public Benevolent Institution (PBI) with a sub registration of advancing religion among others.

Anglicare has been serving those in need for nearly 170 years, employing over 5,500 staff and serving alongside 1,500 volunteers.

Anglicare provides a diverse range of services including delivering care through residential aged care homes, at home care services, retirement living communities, affordable homes for people over 55, community services for children, families, and those experiencing social isolation, disaster recovery in times of crisis, out of home care, and helping to effect change through research and advocacy.

As a Christian charity, Anglicare's religious ethos motivates and sustains the provision of care and support to all people - believers of all faiths, agnostic, atheist - anyone who relies upon the organisation. The same ethos means we employ a wide and diverse cohort of carers, nurses, administrators and many other roles across the organisation. Anglicare's religious identity reflected in our vision, mission and values, and our inclusive model of Christian service to all motivates our many donors, volunteers, and supporters to make a positive impact on the community. Our Christian commitment as a religious organisation, is fundamental to Anglicare's long history, our current work and our future direction. That commitment calls us to serve anyone in need, irrespective of their religious beliefs, including those with no religious beliefs.

2. General comments

Anglicare affirms that religious freedom is a fundamental human right, enshrined in international law, including Article 18 of the *International Covenant on Civil and Political Rights (ICCPR)*. This freedom protects both individual believers and religious institutions.

To sustain NSW's success as a multicultural, multifaith, and pluralistic society, it is essential that people of all faiths are not only protected from discrimination but also supported in living out their faith personally and through religious organisations. Further, the essential role of many religious organisations is providing care and support to the vulnerable, the aged, and the poor, in building social capital and community, delivering education, and in fostering volunteering. These attributes are worthy of protection to create a better state for all of us.

Since the *Anti-Discrimination Act 1977 (NSW)* (the ADA) was enacted, the position of religious individuals and institutions in NSW has shifted significantly. Both the Commonwealth and NSW anti-discrimination frameworks remain deficient: they fail to include religion as a protected attribute and instead rely on exemptions or exceptions rather than recognising religious freedom as a positive right. The Consultation Paper claims that exemptions for religious bodies are '*One of the most controversial issues in discrimination law is whether and, if so when, religious bodies should be granted exceptions that allow them to discriminate*'¹. Anglicare rejects this framing as unhelpful, because it suggests that the human right not to be discriminated against is a higher human right than the human right to religious freedom.

Anglicare supports the proposition that religious belief be explicitly included as a protected attribute under both Commonwealth and NSW law as per the unimplemented recommendation of the Ruddock Religious Freedom Review.

Anglicare believes this review of the ADA is an opportunity for the Commission to recommend to government reforms that affirm and protect the free exercise of religious belief and activity by individuals and religious organisations in NSW as a positive right, replacing the current mere exemptions. Further, the Commission must recommend that reforms to the ADA should provide that religious organisations are taken not to discriminate in circumstances where they engage in

¹ *Review of the Anti-Discrimination Act 1977 (NSW): Unlawful conduct* Consultation Paper p.130 paragraph 7.5

conduct that they genuinely believe is necessary to maintain the religious traditions, beliefs, customs and mission or ethos of the organisation.

Like the experience of other religious organisations, many of our staff find the mission and vision (which is explicitly Christian service) of Anglicare highly motivating and a reason to choose to join the organisation. Research shows that the highest influencing factor (31%) for our clients and residents choosing Anglicare as a service provider is emotion and values-based drivers, with the most associated feelings being Faith & Belief (22%) and Community (14%)². This suggests that clients and residents are drawn to Anglicare not just for its services, but because they resonate with the organisation's values and doctrines.

These individuals are exercising their right to choose and to live out their right to practice their religion freely. I want to reiterate, while Anglicare, as a religious organisation, has a distinctive faith-based ethos which attracts many people of the Christian faith, we proudly employ an ethnically and religiously diverse workforce (again of all faiths and no faith), who support our purpose of serving those in need.

Anglicare endorses the proposition that that religious freedom is NOT a second order right, that must give way to other 'higher' human rights if this leads to discrimination. Unless rejected, this proposed approach could adversely impact the ability of religious bodies like Anglicare to provide a wide range of services such as health and aged care, adoption, fostering, and counselling services. The refusal to recognise the right of religious organisations not to participate on the grounds of conscientious objection to the taking of a human life, in the *Voluntary Assisted Dying Act 2022* (NSW) is one example of the right to freedom of religion being overridden by another right with little consideration of balancing the conflict. The law in Victoria on this issue is a poor precedent for the Commission and should be ignored.

Anglicare rejects proposals to use the ADA to compel religious organisations like us to act contrary to our Christian convictions. The only possible response would be to withdraw from providing the service, leaving the community exposed and potentially under serviced.

If the Commission accepts and recommends that religious belief and activity be included as a protected attribute in the ADA, then Anglicare recommends that the Commission also recommend that the State be constrained and unable to discriminate against individuals and religious organisations because of their religious belief or activity. This means that the State should not be able to override religious institutional practices, ethos, or beliefs. For example, the State should not be able, either by law or by the terms of a grant or funding contract, to:

- restrict the ability of faith-based fostering or adoption charities licensed or funded by the government to foster children's access to both mothering and fathering where possible;
- require a faith-based health or aged care facility to perform abortions or conduct voluntary assisted dying; and

² Lewers Brand Research 2024

- require or restrict certain religious based teaching or codes of conduct within religious based organisations.

Below are several key issues identified by Anglicare to help inform and guide this review process. These reflect our commitment to ensuring that religious freedom, charitable integrity, and service pluralism are maintained or enhanced in NSW's anti-discrimination framework.

3. Customer and people value proposition

Anglicare is able to differentiate our services to the market based on our values and beliefs. This differentiation is valuable to our customers, employees and volunteers.

As stated, research shows that the highest influencing factor (31%) for our clients and residents choosing Anglicare as a service provider is emotion and values-based drivers, with the most associated feelings being Faith & Belief (22%) and Community (14%)³.

Anglicare customers often select Anglicare services on the basis of our commitment to Christian doctrine and tenants. Anglicare conducts Customer/Client/Resident Experience surveys annually and asks the question 'Does Anglicare display the values and beliefs consistent with being a Christian organisation?'. In 2024, 90% of Anglicare's community services clients agreed with this statement⁴. Customer experience of these values and beliefs is a key differentiator for Anglicare.

Our faith-based approach also has a positive impact on the lives of residents in both our residential care homes and in our Retirement Villages. From the Residential Care residents survey in 2024, 74% of respondents thought that the chaplaincy and pastoral care team had a positive or very positive impact. From the Retirement Living residents survey in 2024, 62% of more than 2,600 respondents felt that village life connected them to a Christian community. 52% felt supported in their faith by living in the village. 47% of respondents thought that the chaplaincy and pastoral care team had a positive or very positive impact.

Anglicare's mission and values based on our Christian values has some influence on staff attraction and retention. In a staff engagement survey in 2023, 55% of staff indicated that they attended church at least monthly or more often, which is significantly greater than the national average. Additionally, the engagement survey reports that staff strongly supported that statement that thought 'Anglicare's service displays values and beliefs that are consistent with what I would expect from a Christian organisation' (with a Net Promoter Score of 53%).

In a 2025 survey conducted with Anglicare's volunteers, 27% reported a religious connection as a reason for volunteering with Anglicare, compared to 14% across NSW (all volunteers).

³ Lewers Brand Research 2024

⁴ Anglicare Community Services Social Impact Report 2025

4. Public funding

Anglicare urges the Commission not to proceed with the Consultation Paper proposal to remove the exceptions within the ADA that apply to religious institutions because they receive government funding. The receipt of public funding does not nullify the religious character of an institution. This proposal is discriminatory, fails to appreciate the role of religious organisations in assisting to build and maintain a multicultural, multifaith, and pluralistic society, and would amount to a denial of freedom of religion as a fundamental human right.

The proposal represents a differentiation between religious and non-religious institutions that is not justified by reasonable and objective criteria. As such, it would amount to discrimination against religious believers through detrimental action against their associated institutions that non-religious equivalent institutions are not subject to. Non-religious institutions are not subject to the withdrawal of funding that religious institutions are proposed to be made subject to.

Anglicare is proud of our decades of work with governments to provide support and care to the vulnerable. Equally, we are comfortable being held accountable for the acquittal of government funding, to compete with other religious, non-religious, commercial and non-profit providers for government support and to comply with the legislative and regulatory regimes established by government.

5. Employment

The Consultation Paper canvasses possible reforms to Section 56, which currently provides exceptions enabling religious bodies to make employment and service-related decisions in accordance with their doctrines. We are concerned by proposals that would narrow or remove these provisions. Key concerns include:

- Loss of faith alignment: Faith-based organisations like Anglicare could lose the ability to require employees to share or live in accordance with their religious values;
- Increased legal exposure: Greater risk of complaints regarding employment decisions made on faith-based grounds; and
- Shifted burden: A proposed move to “reasonableness” or “proportionality” tests places the burden on religious bodies to justify decisions, rather than recognising their inherent right to act in accordance with their faith.

Replacing explicit legal protections with tribunal-assessed reasonableness tests as seen in jurisdictions like the ACT and Victoria undermines legal certainty and infringes upon the right to religious freedom protected under Article 18(3) of the ICCPR, which only permits limitations when necessary for public safety, health, public order, or the fundamental rights of others.

The Consultation Paper raises the possibility that current exceptions (allowing religious bodies to make faith-based employment and service decisions) may be narrowed, reframed, or removed. This is critical because:

- Current exceptions (ADA s56) allow religious organisations to act “in conformity with the doctrines of that religion” in employment, education, and other services; and
- Proposed reforms suggest shifting from exceptions to a more restrictive model requiring religious conduct to pass “reasonableness” or “proportionality” test.

Anglicare urges the Commission to reject any proposal that narrows the employment protection for religious associations as they pose an existential threat to the religious character of associations. Undermining the religious character threatens individual human rights within society, as individuals would be deprived of the ability to express or explore their religion in association with like-minded or similarly committed individuals.

Instead, Anglicare recommends that the Commission recommend that these rights for religious organisations should be expressed as *positive rights* in the ADA, not exceptions or exemptions, and should be rooted in international human rights law like Article 18 of the ICCPR. The Consultation Paper’s proposed shift toward “reasonableness” or “proportionality” tests is potentially problematic and should be rejected.

6. Adoption and foster care

Anglicare acknowledges that discussions surrounding the intersection of religious freedom, and the rights of same-sex attracted and gender-diverse individuals are complex and deeply sensitive. At Anglicare, we approach these matters with humility and care, recognising the dignity and worth of every person, an approach that finds its foundation in our religious ethos.

At the same time, we are mindful of the practical implications that could arise if the legal precedent established in *OW & OV v Members of the Board of the Wesley Mission Council* were to be overturned through legislative change.

Like Wesley Mission, Anglicare provides foster care services in partnership with the NSW Government. While the demand for safe and nurturing foster homes continues to exceed supply, faith-based providers often engage Christian carers who are drawn to the role because they are engaged, trained, and supported within a community that shares and respects their faith convictions, viewed as an extension of their wider church community,

The current legal framework allows faith-based agencies to operate in accordance with their religious beliefs, with the child’s interests as paramount, while ensuring that same-sex couples can access fostering opportunities through many other excellent organisations, Barnardo’s being just one example. This balanced approach ensures no practical barriers to participation in the foster care system, while maintaining the integrity of pluralism within service provision.

Research⁵ shows that a large proportion of foster carers (81 per cent) identify with a religion, and that the LGBTQIA+ community is a growing cohort. In an era where foster recruitment continues to decline (noting Anglicare's carer numbers remain stable), any potential negative impact to these groups would risk significant further reduction to carer numbers.

It serves the public interest to continue allowing space for a diversity of perspectives, practices, and specialist support networks within the foster care system. These are complex and often deeply personal matters involving beliefs about family, parenting, and child development. A pluralistic society like NSW should be able to hold space for differing convictions, including religious views and the role of Christian community in support of families.

Response to Question 7.4 - Exceptions for providers of adoption services

Anglicare supports the retention of existing legislative provisions that allow adoption and foster care services to operate within the context of their religious beliefs. If the framework of exceptions is retained, the current exceptions remain appropriate.

However, we would also support the Act being reframed to express this as a positive right to enable faith-based organisations to continue serving their communities in a manner consistent with their ethos.

7. Charitable benefits

Anglicare's view is that Section 55 should be retained to protect donor intent, especially where it aligns with an organisation's mission. Section 55 currently exempts certain charitable benefits in wills or legal instruments from being considered discriminatory. Repealing or narrowing Section 55 could:

- Lead to legal challenges against such gifts;
- Encourage litigation from family members;
- Undermine the clarity and security of charitable bequests; and
- Discourage religiously motivated giving.

The Commission should reject this proposal, especially as it would impinge on an individual's right and freedom to choose.

While we do not actively encourage conditional donations, donors must be free to designate how their contributions are used both during their lifetime and after death without facing legal barriers.

Response to Question 7.8 - The Charities Exception:

The ADA should provide exceptions which permit registered charities and individuals to

⁵ UNSW: *The Availability of Foster Carers: Main Report*
University of Wollongong: *The science of attracting foster carers*

confer charitable benefits on people based on their religious belief and manifestation of that belief should they wish to do so.

8. Age-based and sex-based accommodation exception

Anglicare supports the continuance of the aged-based and sex-based accommodation exemption as set out in ADA sections 49ZYO(3)(c) and 59.

As the Consultation Paper notes, private households are exempt from the ADA, and the continuance of this exemption was supported by the NSW Law Reform Commission in 1999 and exists in other States. Anglicare argues that the distinction between private homes and other forms of accommodation for aged people fails to understand that for these latter residents, the retirement village or aged care facility is their home. We are dedicated to treating residents as though they are living in their own home. As their own home, they have the right to be physically and culturally safe and secure, and abolishing this exemption risks creating fewer welcoming places for older Australians.

In addition to aged care, the exception which currently exists and allows establishments to provide "housing accommodation for aged persons" also allows the limit of admission to particular people based on sex, marital or domestic status, or race. This is important for Anglicare and other providers who provide social and affordable housing, including housing sites designed to meet the specific needs of older women over 55, a group at significant risk of homelessness. The potential impacts of the removal of this exception, where it is not sufficiently replaced in a special measures mechanism, could be significant.

Anglicare recommends that the Commission reject calls to abolish the exemption for age-based or sex-based accommodation.

Response to Question 6.8 - The Accommodation Exception:

The ADA should provide an exception for the provision of accommodation if provided in good faith to a person because of their age and/or sex.

9. Conclusion

Anglicare Sydney supports legislative reform that upholds religious freedom as a positive right, not merely as an exception. Such reform must also respect the role of faith-based organisations and charities in providing education, aged care, foster care, and community services in accordance with the religious traditions, beliefs, customs and mission or ethos of the organisation, and the hundreds of thousands of volunteers, employees and donors who support and deliver services through these faith-based organisations to Australians in need.

We encourage the NSW Law Reform Commission to ensure that any recommended changes to the *Anti-Discrimination Act 1977* (NSW) preserve pluralism, respect religious belief, and maintain a fair and diverse civil society.

Yours sincerely
Simon Miller
Chief Executive Officer