

Submission to the RELIGIOUS DISCRIMINATION BILLS -
SECOND EXPOSURE DRAFT

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About Amnesty International

Amnesty International is the world's largest independent human rights organisation, comprising more than eight million supporters in more than 160 countries.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

Since 1961 Amnesty International has campaigned on behalf of thousands of prisoners of conscience – people who are imprisoned because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, colour, language or sexual orientation or gender identity. Amnesty recognises that the right to freedom of thought, conscience and religion as set out in Article 18 of the UDHR.

Amnesty International also campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation and gender identity, intersex variations, religion or belief, political or other opinion, ethnicity, national or social origin, disability, or other status. Amnesty calls for states to take measures that prohibit discrimination as well as positive measures to address long-standing or systemic disadvantages, and to prevent discrimination by non-state actors. Our work on non-discrimination is grounded in human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

We work both publicly with our supporter base of over eight million people, and privately with families and lawyers in determining the most strategic approach to bring about change at any given time and within the consent which we are given. Mobilising our large supporter base to take actions, individually and in their community.

1. Summary

1.1 Amnesty International welcomes the opportunity to provide this submission to the Attorney-General's Department's inquiry into the second exposure draft of the *Religious Discrimination Bill 2019*. The *Religious Discrimination (Consequential Amendments) Bill 2019*, and the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*, which are also proposed, have not changed materially since the first exposure drafts and are not referred to in this submission.

1.2 Amnesty International campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation and gender identity, intersex variations, religion or belief, and we advocate for states to fulfil their obligations to prohibit racial and religious vilification. Amnesty International is concerned about the growth of divisive political discourse in Australia and around the world that dehumanises and scapegoats religious and other minority groups for social, economic and security concerns they have no control over. Additionally Amnesty International notes the increase in organised and coordinated divisive political and media discourse around the LGBTQIA+ community, in particular, the trans and gender diverse community, during and following the marriage equality debate.

1.3 Australia has an international legal obligation to protect the right to freedom of thought, conscience and religion, protect against all forms of discrimination and prohibit racial and religious vilification. States are required to take 'all appropriate measures' to prevent intolerance on the basis of religion or belief.¹ Amnesty International is concerned, however, that this bill has the potential to increase rather than eliminate intolerance.

1.4 There is a clear distinction between the absolute right to hold a religion or belief (including a non-religious belief or a rejection of religious belief) and the right to manifest such a belief. While the right to freedom of thought and belief is absolute, in international law the freedom to manifest one's religion or beliefs may be subject to legitimate limitations where they are "prescribed by law", and necessary to protect "the fundamental rights and freedoms of others"².

1.5 Amnesty is concerned that the public discussions in relation to this Bill and the concept of religious freedoms has been framed as a dichotomy of religious freedom vs

¹ United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, United Nations General Assembly UN Doc. A/RES/36/55 (adopted 25 November 1981)

² ICCPR, Art 18.

LGBTQIA+ rights. The perception of two distinct groups in the community is false. Many LGBTQIA+ people are people of faith or hold strong spiritual beliefs and they consider their right to religious and spiritual belief vitally important.

- 1.6 Religious discrimination harms people. The cumulative impact, on a person, of discrimination based on from multiple characteristics, including religious belief, is even more harmful. Amnesty International acknowledges that religious discrimination intersects with discrimination based on other characteristics and affects people in many ways. For example, a LGBTQIA+ identifying, disabled person of faith may face discrimination in relation to their sexuality, gender identity or intersex variations as well as discrimination in relation to their faith and their disability.
- 1.7 Amnesty International has serious concerns that this Bill in its current form will create significant additional barriers for some people and communities attempting to access essential services such as health, education, accommodation, aged care and employment. This Bill will particularly impact on LGBTQIA+ people, people with a disability and/or lived experience of mental illness, Aboriginal and Torres Strait Islander people, rural and remote communities, single parents, divorcees, people of minority faiths and beliefs, people with limited support or resources, women, children and young people.
- 1.8 Noting that the issue of religious freedom and religious discrimination has been at the centre of public debate for some years, particularly at the time of the Australian Marriage Law Postal Survey, it has become apparent that the community expects a timely resolution to the question of rights protections. Amnesty International holds the strong position that the only feasible way to protect the rights of people of faith whilst not creating a situation that allows people of faith to discriminate against others, is a Federal Human Rights Act or Charter of Human Rights and Freedom. This Act or Charter would protect the rights of all Australians within a framework that ensures that all people's rights are universal and indivisible. In a situation where one person's accessing of their rights impacts or impinges on another person's ability to access their rights, an Act or Charter would fairly balance these rights. UDHR allows for the rights to be balanced with each other so that no one human rights outweighs another.
- 1.9 Amnesty International notes that this Bill has the potential to significantly impact on many groups and individuals and that there has been a lack of community consultation, outside of leaders of major religions. Australia is home to the oldest continuing culture in the world, we strongly recommend extensive community consultation with our First Nations people about the

impact of this bill before it is introduced. Additionally further consultation with broader civil society is required due to the far reaching impact of this Bill.

1.10 Acknowledging that the Federal Government has to date rejected the proposal of a Federal Human Rights Act, this submission addresses several serious concerns that Amnesty International has in regards to the Religious Discrimination Bills, namely that they provide protection to religious belief or activity at the expense of other rights and as such are likely to facilitate harm to members of the community. Amnesty International strongly believes the Bill should not proceed in its current form and that any Religious Discrimination Bill must protect people against discrimination, vilification and persecution based on their religious belief or lack of religious belief without preferencing the rights of people of faith at the expense of the human rights of others.

1.11 This submission outlines Amnesty International's specific concerns about the Religious Discrimination Bill, and recommends amendments, regarding its impacts on health care and employment, an outstanding need to expressly prohibit religious vilification, a lack of protection of students, teachers and staff in religious educational institutions, and the need to address conversion practices.

2. Recommendations

In order to adequately protect all human rights in Australia, Amnesty International recommends:

A Human Rights Act or a Charter of Human Rights and Freedoms

(1) The Government legislate a Human Rights Act or a Charter of Human Rights and Freedoms for Australia, to ensure that fundamental rights are protected and appropriately balanced. The objectives the Act or Charter should contain as a minimum: right to recognition and equality, right to life, right to freedom of movement, right to privacy and reputation, right to religion and belief, rights to peaceful assembly and freedom of association, cultural rights (right to enjoy culture, declare and practise religion and use their language), right to education, right to access health care and the rights of children in the criminal justice process.

In regards to the Religious Discrimination Bills under inquiry, Amnesty International recommends that:

Health care

(2) The Government removes Sections 8(6) and (7) and 32(7) from the Bill.

(3) The Government amend Sections 11, 32(8)-(11) and 33(2)-(5) so that religious organisations or institutions in receipt of public funding or providing service on behalf of the government or providing services for profit cannot discriminate in the provision of hospital, aged care or accommodation services in ways that would otherwise be unlawful.

Employment

(4) The Government removes Sections 8(3), (4) and (5) and 32 (6) from the Bill.

Discrimination against students by religious educational institutions

(5) The Government amend Section 11 so that religious organisations or educational institutions in receipt of public funding or providing service on behalf of the government

cannot discriminate in the provision of those services in ways that would otherwise be unlawful, particularly in relation to the discrimination against, disadvantage towards or expulsion of students.

LGBTQIA+ Conversion Practices

(6) The Government removes Section 42 from the Bill.

3. International Legal Human Rights Frameworks

Articles 1 and 2 of the UDHR³ set out the fundamental principles underpinning all human rights.

Article 1 states:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 relevantly states:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 7 UDHR and Article 26 ICCPR⁴ provide that all people are equal before the law and entitled without discrimination to equal protection of the law. Article 26 ICCPR requires State Parties, including Australia, to prohibit discrimination and guarantee protection against discrimination on the basis of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

It is now well established that phrase 'other status' has been interpreted by human rights treaty bodies to include attributes such as age, disability, sexual orientation, gender identity or intersex variations.

The Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (the Yogyakarta Principles) and the Yogyakarta Principles plus 10 state that sexual orientation, gender identity, gender expression and sex characteristics are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse⁵.

³ Universal Declaration of Human Rights, United Nations General Assembly Resolution 217 A(III), 10 December 1948 (UDHR).

⁴ International Covenant on Civil and Political Rights, United Nations, Treaty Series, (1966) vol.999, p.171 (ICCPR).

⁵ *The Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, 2007, Principle 2; *The Yogyakarta Principles plus 10 - Additional principles and State obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement The Yogyakarta Principles*, 10 November 2017, Preamble.

When thinking about human rights, it must always be remembered that human beings have multifaceted identities and will possess, at any time, more than one of the statuses referred to in Article 2 UDHR, and that these statuses may change over time.

Freedom of religion, conscience and belief

The rights to freedom of religion, conscience and belief are enshrined in Article 18 UDHR and Article 18 ICCPR. The right to be free from discrimination on the basis of religion, conscience and belief is protected by Article 7, UDHR and Article 2, ICCPR.

The right to freedom of religion, conscience and belief, also includes theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief⁶.

Limitations on freedom of religion

Amnesty International recognises the distinction between the absolute right to freedom of thought, conscience and religion (including a non-religious belief or a rejection of religious belief) and the right to manifest such a belief. While the right to freedom of thought, conscience and religion is absolute, in international law, the freedom to manifest one's religion or beliefs may be subject to legitimate limitations. Such limitations must be prescribed by law and be necessary for the protection of:

- national security or public order (or public safety in the case of freedom of association);
- public health or morals; or
- the rights and freedoms of others⁷.

Article 27 ICCPR provides particular protection for ethnic, religious, or linguistic minorities to 'enjoy their own culture, to profess and practise their own religion or to use their own language'.

⁶ See Article 18(3) ICCPR, and UN Human Rights Committee, General Comment 22 (48) CCPR/C/21/Rev.1/Add.4 27 September 1993'

⁷ ICCPR Article 18(1) and (3).

The United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief further provides that States shall take ‘effective measures to prevent and eliminate discrimination on the grounds of religion or belief,’ including the enactment or repeal of legislation⁸. Under the Declaration, States shall also take ‘all appropriate measures’ to prevent intolerance on the basis of religion or belief.

Freedom of expression

Religious groups and individuals also enjoy the protection of the right to freedom of expression and the right to freedom of association (Articles 19 and 22 of the ICCPR).

Freedom of expression is a fundamental human right. It is essential to, and interrelated with, the realisation and exercise of all human rights. Every human being has the right to hold opinions, receive information and express themselves freely. Like all human rights, freedom of expression must be protected and balanced alongside other rights. Governments may impose some legitimate restrictions on certain forms of speech, as long as they are demonstrably necessary to ensure respect for the rights of others, such as the right to be free from discrimination, or for the protection of certain specified public interests⁹. Any such restrictions on freedom of expression must be prescribed by law and must conform to the strict tests of necessity and proportionality¹⁰. Importantly, governments also have a positive obligation to prohibit advocacy of national, racial or religious hatred¹¹.

The Yogyakarta Principles and Yogyakarta Principles plus 10 call on States to take all necessary legislative, administrative and other measures to ensure the right of persons, regardless of sexual orientation, gender identity, gender expression or sex characteristics to hold and practise religious and non-religious beliefs, alone or in association with others, to be free from interference with their beliefs and to be free from coercion or imposition of beliefs¹². R

⁸ United Nations General Assembly UN Doc. A/RES/36/55 (adopted 25 November 1981).

⁹ ICCPR Article 19(3).

¹⁰ United Nations Human Rights Committee, *General Comment 34: Article 19: Freedoms of opinion and expression*, 102nd sess, UN Doc CCPR/C/GC/34, 12 September 2011, para. 22.

¹¹ ICCPR Article 20(2).

¹² *Yogyakarta Principles*, Principle 21

4. Protection of Religious Freedoms in Australia

Freedom of religion in Australia is recognised in the Australian Constitution. Section 116 states that:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth¹³.

According to the Human Rights Commission in its submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into the status of the human right to freedom of religion or belief, although Australia has an international legal obligation to protect the right to freedom of thought, conscience and religion, there is only limited protection of that right in our domestic law¹⁴.

Amnesty International supports the definition of 'freedom of religion' of the United Nations Human Rights Committee in its General Comment on ICCPR, in which it states:

The right to freedom of thought, conscience and religion (which includes the freedom to not hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others¹⁵.

For the purpose of this submission, Amnesty International references the then Human Rights and Equal Opportunity Commission's (HREOC) definition of 'religion or belief' which is:

'A particular collection of ideas and/or practices:

- that relate to the nature and place of humanity in the universe and, where applicable, the relation of humanity to things supernatural;
- that encourage or require adherents to observe particular standards or codes of conduct or, where applicable, to participate in specific practices having supernatural significance;
- that are held by an identifiable group, regardless of how loosely knit and varying in belief and practice, that are seen by adherents as constituting a religion or system of belief¹⁶.

¹³ *Commonwealth of Australia Constitution Act 1900*

¹⁴ Australian Human Rights Commission submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Submission 12, para. 5.

¹⁵ General Comment No. 22 (1993) paragraph 1 in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.3, 1997, page 36.

¹⁶ Human Rights and Equal Opportunity Commission, (1998), *Article 18: Freedom religion and belief*, m R2.5, p.v

Amnesty International notes that the language of ‘religious belief’ used in the Bill is likely to be interpreted more narrowly by readers of the Bill and the community when compared to language such as ‘religion or belief’. The explanatory memorandum states the Bill’s intent is that ‘religious belief’ includes ‘Indigenous spirituality’. Amnesty International understands that many Aboriginal and Torres Strait Islander people do not describe their beliefs as ‘religious belief’.

Unlike other countries with comparable legal systems, Australia does not have overarching human rights legislation to, for example, balance the freedom of religion with other fundamental human rights, such as the right to freedom of expression and the right to non-discrimination¹⁷.

Victoria, the Australian Capital Territory and Queensland provide specific protections for freedom of religion through their human rights legislation¹⁸.

The New Zealand Human Rights Act lists the grounds where discrimination is prohibited subject to some exceptions. Prohibited grounds of discrimination include religious belief and ethical belief (including the lack of religious belief)¹⁹. A Human Rights Act or a Charter of Human Rights and Freedoms in similar terms would provide vital human rights protections for Australians.

A National Human Rights Consultation in 2008 found widespread community support for a national Human Rights Act²⁰. There is no indication that support for formal human rights protections has dwindled since that time.

¹⁷ For example, New Zealand, Canada and the United Kingdom

¹⁸ Charter of Human Rights and Responsibilities Act 2006, art 14 (Vic); Human Rights Act 2004, art 14 (ACT); Human Rights Act 2019, s 20 (Qld).

¹⁹ Hon. Amy Adams to Hon. Kevin Andrews MP, 17 February 2017, in *Inquiry into the status of the human right to freedom of religion or belief*, Submission 39, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Freedomofreligion/Submissions

²⁰ Out of the 35,014 people who made submissions to the Committee, an overwhelming 29,153 (over 80%) were in favour of a Human Rights Act. See Amnesty International, Feedback on the National Human Rights Action Plan background paper, 18 February 2011, available at: <https://www.ag.gov.au/Consultations/Documents/NationalHumanRightsActionPlanBackgroundPaperpublicsubmissions/Amnesty%20International.pdf>

5. Religious Discrimination Bill 2019 - Second Exposure Draft

Amnesty International's strong belief is that everyone in the Australian community would benefit from a Human Rights Act or a Charter of Human Rights and Freedoms which fosters understanding and respect for human rights and provides tools to challenge injustice.

Amnesty International knows that the only feasible way to protect the rights of people of faith whilst not creating a situation that allows people of faith to discriminate against others is a Human Rights Act or a Charter of Human Rights and Freedoms. An Act or Charter would protect the rights of all Australians within a framework that ensures that all people's rights are universal and indivisible. In the situation where one person's accessing of their human rights impacts on another person's ability to access their rights, an Act or Charter would fairly balance these rights.

The Act or Charter should be based on the principles articulated in the UDHR and the ICCPR regarding identified universal and inalienable human rights. The Act or Charter would prohibit discrimination and guarantee protection against discrimination. Most importantly, where it appears that honouring one person's right intersects with and impinges on another's, the Act or Charter would include a means of resolving the matter.

Amnesty International notes that the UN Human Rights Committee, in its review of Australia's compliance with the ICCPR, recommended in November 2017 that Australia 'adopt comprehensive federal legislation giving full effect to all [ICCPR] provisions across all state and territory jurisdictions.'²¹

Recommendation

A Human Rights Act or a Charter of Human Rights and Freedoms

The Government legislate a Human Rights Act or a Charter of Human Rights and Freedoms for Australia, to ensure that fundamental rights are protected and appropriately balanced. The

²¹ Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, CCPR/C/AUS/CO/6, 9 November 2017 [5].

objectives the Act or Charter should contain as a minimum: right to recognition and equality, right to life, right to freedom of movement, right to privacy and reputation, right to religion and belief, rights to peaceful assembly and freedom of association, cultural rights (right to enjoy culture, declare and practise religion and use their language), right to education, right to access health care and the rights of children in the criminal justice process.

Amnesty International acknowledges that an Act or a Charter is not presently under consideration by the government. In these circumstances, a Religious Discrimination Act which protects the right to freedom of thought, conscience and religion (Art 18 ICCPR) and which prohibits discrimination and guarantees protection from discrimination (Art 26 ICCPR) would be appropriate.

Amnesty International believes that the Second Exposure Draft Religious Discrimination Bill (Bill) should not be enacted in its current terms as they go far beyond the terms of Articles 18 and 26 ICCPR. Amnesty International's strong recommendation is that any Religious Discrimination Act must protect people against discrimination, vilification and persecution based on their religious belief or lack of religious belief without preferencing the rights of people of faith at the expense of the human rights of others. The effect of the Bill is to prioritise and privilege religious beliefs over other human rights. Amnesty International is very concerned that this Bill in its current form would entrench preferential treatment for some people into law and would enable discrimination against many people in Australia.

Healthcare

Amnesty International is deeply concerned that under the Bill people will be refused access to health services based on the service provider's religious belief.

This Bill appears to contravene Australia's obligations regarding the right to access to medical care or health services as provided for by:

- Article 25 UDHR, Article 25 International Covenant on Economic, Social and Cultural Rights (ICESCR);²²

²² United Nations General Assembly Resolution 2200A (XXI), 16 December 1966 (ICESCR).

- Articles 3 and 24 of the Convention on the Rights of the Child (CRC);²³
- Article 6 of the Declaration on the Rights of Disabled People (DRDP);²⁴
- Articles 12 and 14(2)(b) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);²⁵
- Principles 17 and 18 of The Yogyakarta Principles and Principle 32 and Additional State Obligations relating to Principle 17 of The Yogyakarta Principles plus 10.

Amnesty International notes that aged care facilities and hospitals are vital services. We also note the large proportion of government funded health care and aged care services provided by religious organisations including some major public hospitals. People often have no (or limited) choice in relation to changing to another service if they experience discrimination. Aged care facilities are people's homes and contain some of the community's most vulnerable people as evidenced during the Aged Care Royal Commission. In relation to hospital patients (both inpatient and outpatient), as the severity of illness increases so does the patient's vulnerability to experiencing discrimination without being able to leave that situation, safely make a complaint, seek alternate treatment or change hospitals. Discrimination has a negative impact on health and wellbeing. This Bill allows for discrimination by religious organisations towards our society's most vulnerable without providing them with protections.

Similarly this Bill will have an impact on people with a disability or lived experience of mental illness accessing services and will allow discrimination by religious organisations towards people with a disability or with lived experience of mental illness. Access to healthcare and support services are vital for people with a disability/lived experience of mental illness to be able to live a life of dignity and fully participate in society. The Disability Royal Commission is hearing evidence that people with disability experience high levels of violence, abuse and discrimination and that as a large group within our society, regularly do not have access to their human rights. This Bill will allow religious organisations and individuals to further discriminate against disabled people and those with lived experience of mental illness.

Amnesty International is concerned that the negative impact of "statements of belief" in the context of healthcare or support services has not been considered in relation to this Bill. Predominantly people seeking health or support services are doing so because they need those services. If people encounter health professionals or support services that make statements of

²³ United Nations General Assembly Resolution 44/25, 20 November 1989 (CRC).

²⁴ United Nations General Assembly Resolution 3447 (XXX), 9 December 1975 (DRDP).

²⁵ United Nations General Assembly Resolution 34/180, 18 December 1979 (CEDAW).

belief during the receipt of these services this can have a negative impact on the person's wellbeing or self image, may mean the person can not engage with that service, may re-traumatize the person and may prevent the person from disclosing relevant information.

Statements of belief in healthcare and support settings can themselves be intrusive, coercive or damaging. These negative impacts are heightened when they are repeated, cumulative or occur at times of crisis. Amnesty International is also concerned that the Bill says that statements of belief that are "seriously intimidating" would not be allowed however this allows for lower level intimidation to be acceptable. No intimidation is acceptable and Amnesty International is concerned that repeated lower level intimidation can be more damaging than one incident of serious intimidation. The impact of intimidation is also cumulative. For example: a person with lived experience of psychosis being told the voices they hear are the devil and they must pray harder to defeat them, a person with a disability repeatedly told that God gave them a disability as a test, a nursing home resident feeling they have to hide their sexuality or gender identity because of statements of belief by the service they live in, or a survivor of institutional sexual abuse being re-traumatized by religious comments or paraphernalia and being unable to continue accessing the service.

Amnesty International notes that many people in our society are not able to decide to use alternate services to avoid religious organisations or practitioners that may have a negative impact on them. This can be because those alternate services are not available due to the limited number of people experienced in the area, because alternative services are inaccessible due to cost or distance or because the process of finding accepting, respectful and appropriate services is too challenging. Amnesty International is concerned that in practical terms this Bill will impact many people's human rights in relation to accessing healthcare and support services.

Conscientious objection

Section 8(6) of the Bill enforces existing State and Territory laws that regulate conscientious objection in healthcare, such as abortion or assisted dying.

Where there are health services that are not covered by existing conscientious objection laws, the definition of 'health practitioner conduct rule' in Section 5 and Section 8(7) of the Bill, means that employers and professional health bodies can only restrict or prevent conscientious objection by a health practitioner if the refusal to provide or participate in a particular kind of health service causes an unjustified adverse impact on the health of the patient. The extent of the

definition of a 'particular kind of health service' is unclear. What constitutes 'unjustified adverse impact' is also unclear, as is what constitutes a justified adverse impact. Amnesty International notes that the ability of health sector employers and professional bodies to impose rules restricting or preventing a health professional from refusing to provide a health service, as an 'inherent requirement of the job' (see Section 32(7)).

The potential effects of prioritising the personal religious beliefs of a health professional over their patient's health is of serious concern to Amnesty International. The accepted Australian community expectation of healthcare practitioners is that they will treat a person who is sick or injured. Should this Bill be enacted, there will no longer be an expectation that, if you are unwell, you will be able to access treatment and care, and not be denied a health service.

The effect of Sections 8(6) and 8(7) is that a health provider's personal religious belief giving rise to a conscientious objection about a health service (other than abortion or assisted dying regulated by State and Territory law), is given priority over their employer's or professional regulator conduct standards and their patient's health. Expanding the role of conscientious objection to this extent in health services is very concerning: the health and wellbeing of patients is no longer a priority.

Under the Bill, there is no obligation to refer a patient to alternate care if a practitioner objects to treating them on religious grounds, or to treat a patient if the patient's health needs cannot be met due to considerations such as delay, cost or distance. This is particularly difficult if government funded services in your area are provided by religious organisations or your local public hospital is run by a religious organisation. We are concerned that LGBTQIA+ people, women, First Nations people, rural and remote, young people, those in minority communities, people with a disability or lived experience of mental illness or people with limited resources will be unable to access treatment or will need to compromise their privacy to enlist help to find alternate treatment.

Amnesty International is concerned that health practitioners with a conscientious objection to the provision of a particular kind of health service, will be assessing the adverse impact of their refusal of treatment without full knowledge of the patient's circumstances, leaving them without access to healthcare. Health care professionals do not know the entirety of a patient's health, mental health, financial status, social situation, cultural background or life experience and as such can not make an accurate assessment about whether that person can find, organise, afford and attend an alternate health professional to receive the same service. For example a woman seeking to end a

possible pregnancy with emergency contraception (morning after pill) may not disclose to the health professional that she is living in a domestic violence situation and has been recently raped by her partner. She may not be able to access services again during the timeframe required for emergency contraception due to the controlling nature of her partner.

It is clear that under these far-reaching conscientious objection regulations, a health practitioner's religious beliefs override a patient's rights to access healthcare. Amnesty International is particularly concerned that this will be harmful to the LGBTQIA+ community, and women and girls seeking access to reproductive health services. This will have a disproportionate impact on individuals and communities that experience multiple layers of discrimination and/or have complex specific needs, for example a Deaf Aboriginal lesbian seeking a trauma-informed service.

Recommendation: The Government removes Sections 8(6) and (7) and 32(7) from the Bill.

Religious hospitals, aged care facilities and accommodation providers

Sections 11, 32(8)-(11) and 33(2)-(5) all permit organisations who conduct their activity in accordance with the doctrines, tenets, beliefs or teachings of a particular religion, to discriminate against others who do not share those beliefs. Further, this type of organisation is able to give preference to persons who share the same doctrines, tenets, beliefs or teachings as adhered to by the organisation.

Amnesty International acknowledges that, for example, there are roles within a religious hospital, such as chaplaincy services, where it is appropriate that those positions are occupied by a person with the same religious beliefs as those which underpin the hospital's operation. The concern, however, is that religious hospitals receive public funds to provide services to the public at large. Amnesty International's firm position is that religious organisations in receipt of public funding or providing services on behalf of the government for hospitals, accommodation services and aged care facilities, cannot discriminate in the provision of those services or in the employment of staff, in ways that would otherwise be unlawful.

The provisions in Section 33(2), permits religious camps and conference sites to discriminate against a person on the grounds of that person's religious belief. Amnesty International has concerns that discrimination on the basis of religious belief is permitted in the context of a commercial transaction for profit.

Recommendation: The Government amend Sections 11, 32(8)-(11) and 33(2)-(5) so that religious organisations or institutions in receipt of public funding or providing service on behalf of the government or providing services for profit cannot discriminate in the provision of hospital, aged care or accomodation services in ways that would otherwise be unlawful.

Employment

Amnesty International is deeply concerned that under the Religious Discrimination Bills, people who hold religious beliefs will be able to harm Australians who do not hold, or whose characteristics fall outside, that particular religious belief (particularly the LGBTQIA+ community, women and members of minority religious faiths). As such, Amnesty International holds the position that this Bill may contravene Australia's obligations under international law on the rights of equality and non-discrimination, including Articles 2(2), 3 to 7 ICESCR and Articles 2, 3 and 26 ICCPR.

In some areas of employment, for example support services for people with disability or lived experience of mental illness and aged care, religious organisations receive a large proportion of government funding used to provide these services. Any legislation that facilitates or entrenches discrimination in the employment of a diverse staff team has an impact, not only on those seeking employment in the field, but on clients receiving services. For example, a Catholic aged care facility, on the basis of their religious belief, refusing to hire LGBTQIA+ staff may mean that the older gay man living full time in a nursing home never sees his identity reflected in those around him. Similarly LGBTQIA+ children attending a religious school that refuses, based on their religious beliefs, to hire LGBTQIA+ staff, never have the opportunity to see adult LGBTQIA+ role models amongst their teachers. These are very isolating experiences likely to have a negative impact on wellbeing. This also has the potential to greatly reduce the number of safe workplaces for some individuals, for example, LGBTQIA+ people, potentially creating significant barriers to employment.

Privileging those with religious views in the workplace

Section 8(3) of the Religious Discrimination Bill will limit the ability of private employers of at least \$50 million annual income to prevent an employee from making religious remarks other than in the course of the employee's employment, regardless of the context. Section 32(6) prevents such a rule being an 'inherent requirement' of the job.

The rules under this section will cover religious people making statements that align with their faith, but for non-religious people, it only covers statements they make about religion. Religious people are able to express their views, on the basis of their religious belief, on any topic. Non-religious people will only be protected when expressing their views about religion.

The rules under this section may prevent large employers with public missions from taking action in relation to employee statements that do not align with those missions. For example, an organisation that provides refuge for people escaping domestic violence may not be able to take action against an employee who publicly states on the basis of their religious belief that "women should submit to their husbands".

The exception to this is when the employer can show that financial harm is being done by the employee's comments. Other forms of harm to the company such as reputational harm, harm to the wellbeing of other employees and harm to the clients or customers of that company are not considered. We note that large companies and organisations can have a positive impact on the health, wellbeing and cohesion of Australian society and that many seek to do this via their diversity and inclusion policies. This Bill may hamper these goals. We also note that large companies and organisations who take assertive action to become a respectful and inclusive workplace are often a valued safe employment option for individuals who experience regular discrimination such as LGBTQIA+ people, First Nations people and people with a disability. This Bill would jeopardise a company's ability to take action against an employee who makes statements of religious belief that contradict the company's diversity and inclusive policies and stated goals.

Section 8(4) prevents qualifying bodies, those authorities and bodies which register and authorise people to practice a profession, carry on a trade or engage in an occupation, are not able to impose any rule restricting or preventing a person from making a statement of belief, other than in the

course of their profession, trade or occupation. This provision may impede efforts of qualifying bodies to set standards for their profession or trade and may impede efforts to diversify occupations.

A statement of religious belief that is malicious, or that would or is likely to harass, threaten, seriously intimidate or vilify another person or group of persons is not protected by the terms of Sections 8(3) and (4) (see Section 8(5)). Amnesty International is greatly concerned that statements of religious belief which amount to lower levels of harassment, threats, intimidation or vilification, and which are persistent and on-going, are acceptable under the Bill.

Recommendation: The Government removes Sections 8(3), (4) and (5) and 32(6) from the Bill.

Discrimination against students by religious educational institutions

Section 11 of the Bill provides that a religious body does not discriminate if they engage 'in good faith, in conduct that may reasonably be regarded as being in accordance' with religious doctrine, tenets, beliefs or teachings. Amnesty International believes that this clause is a license for religious organisations to discriminate. The impact of this section is compounded by sections 5, 11, 32(8), 33(2) that suggests statements need only be held by one other person to be recognized as statements of belief and thus exempt from being considered discriminatory.

Amnesty International is deeply concerned that under the Bill, religious schools will be able to discriminate against, disadvantage or expel students if the school asserts that the student's religious belief (or lack of belief) does not align with theirs or if characteristics of the student mean the school deems that they are not adhering to the school's religious beliefs. This Bill will also allow religious schools to treat students in ways that enforce ideas about student characteristics that may be harmful to the child's wellbeing, self worth and mental health. An obvious example, and one that is of concern to Amnesty International, is LGBTQIA+ students. Another example is that students who have or acquire a disability or health condition may be told this is a test from God or they just need prayer.

Amnesty International holds the strong position that religious organisations or educational

institutions in receipt of public funding or providing services on behalf of the government should not discriminate in the provision of those services in ways that would otherwise be unlawful.

Research indicates that LGBTQIA+ children and young people are more likely to experience discrimination, bullying and abuse than other children and young people and are significantly more at risk of suicide, self-harm and mental health impacts as a result. 80 per cent²⁶ of bullying based on sexual orientation or gender identity of LGBTQIA+ young people occurs at school and has a profound impact on their well-being and education²⁷.

The 'Preventing Harm, Promoting Justice' report while focussing on LGBT conversion practices in Australia, said that when in religious schools 'students are taught that LGBT students are 'sinful', 'sick' or 'broken', this creates an atmosphere where they feel emboldened to bully LGBT students, with potentially devastating impacts.²⁸

Supportive, affirming and non-discriminatory environments, including school, have been shown to strongly mitigate the negative impacts of discrimination and abuse²⁹.

Children and young people have a right to education and the states require children to go to school however in almost all cases, children do not decide which school they attend. As such the protection of children's rights and wellbeing whilst at school must be prioritised over the right of religious organisations to express their views to those children.

Recommendation: The Government amend Section 11 so that religious organisations or educational institutions in receipt of public funding or providing service on behalf of the government cannot discriminate in the provision of those services in ways that would otherwise be unlawful, particularly in relation to the discrimination against, disadvantage towards or expulsion of students.

²⁶ National LGBTI Health Alliance, Statistics at a Glance, available at: <https://lgbtihealth.org.au/statistics/?fbclid=IwAR2Z3wcmxboxQSZ9sqO1A7xzLkbyrqDDikMuFZkCS8It9H5vw7foavpSED>

²⁷ Australian Human Rights Commission, 2014, Face the facts: Lesbian, Gay, Bisexual, Trans and Intersex People, available at: https://www.humanrights.gov.au/sites/default/files/7_FTF_2014_LGBTI.pdf

²⁸ Jones, Brown, ICarnie, Fletcher and Leonard, 'Preventing Harm, Promoting Justice, Responding to LGBT conversion therapy in Australia', (2018) La Trobe University and Human Rights Law Centre, page 69.

²⁹ Olson, Durwood and McLaughlin, 2016, Mental health of transgender children who are supported in their identities, Pediatrics

LGBTQIA+ Conversion Practices

Amnesty International is deeply concerned that efforts to stop the harmful effects of LGBTQIA+ conversion practices in Australia will be overridden and undone if the Bill is enacted.

Conversion practices generally employ individual or group counselling or pastoral care to encourage LGBTQIA+ people to live 'healthy heterosexual lives, sexually pure lives through celibacy, or to ultimately change their gender identity or sexual orientation. Conversion practices are grounded in ideologies based on the belief that it is wrong to be LGBTQIA+ ³⁰.

The Human Rights Law Centre found "that religious conversion [practices] ... are pervasive in many faith communities in Australia and causing real harm to lesbian, gay, bisexual and trans people"³¹.

Several global jurisdictions have classified conversion practices as fraudulent and have attempted to outlaw them, while Malta has criminalised conversion practices and referrals³².

In Australia, Victoria moved to ban conversion practices in 2019. The legislation has limited capacity to challenge the prevalence of the practices³³. This is because it is primarily grounded in an ideology and is therefore expressed through a very broad range of practices, many of which occur in private spaces³⁴.

All other Australian jurisdictions have made a commitment to either ban, or investigate the banning of conversion practices³⁵.

Section 42(1) of the Bill removes "statements of belief" from all Commonwealth, State and Territory anti-discrimination protections.

³⁰ SOCE Survivors, *The SOCE Survivors Statement*, 2018, available at: <http://socesurvivors.com.au/>

³¹ Human Rights Law Centre, *Preventing Harm, Promoting Justice*, 2018, available at: <https://www.hrlc.org.au/reports/preventing-harm>

³² National Taskforce on the LGBTQIA+ Conversion Movement, *Actions for change*, 2019

³³ The Hon. Daniel Andrews, *Statement on Conversion Therapy*, available at: <https://www.premier.vic.gov.au/statement-on-conversion-therapy/>

³⁴ National Taskforce on the LGBTQIA+ Conversion Movement, *Actions for change*, 2019

³⁵ Jordan Hirst, 'Conversion Therapy' warning for religious discrimination bills, 2019, available at: <https://qnews.com.au/new-problem-with-morrison-governments-religious-discrimination-bill/>

Section 42(2) excludes conduct which is malicious, would or is likely to harass, threaten, seriously intimidate or vilify another person or group of persons.

‘Statements of belief’ are the tools of the conversion practices movement. The ideology opposing LGBTQA+ people is projected through these statements by a variety of means, often persistently at a level that this Bill considers acceptable, but which cumulatively creates great harm.

Amnesty International shares the concern of survivors of conversion practices that Section 42 may override the Victorian ban, and other future laws by protecting ‘statements of belief’³⁶.

The collective and public speaking out of survivors about their experiences has only relatively recently reached the general public’s attention despite conversion practices having a long history. Amnesty International is aware of anecdotal evidence that LGBTQ people navigating the mental health and psychiatric systems have also had exposure to persistent discounting and pathologising of their identities. Amnesty International are concerned that repeated statements of belief are the tools of conversion practices in these cases as well and that there are further victims of conversion practices who have yet to speak out about their experiences.

Recommendation: The Government remove Section 42 from the Bill.

³⁶ Jordan Hirst, ‘Conversion Therapy’ warning for religious discrimination bills, 2019, available at: <https://qnews.com.au/new-problem-with-morrison-governments-religious-discrimination-bill/>

6. Conclusion

Amnesty International maintains the strong position that the best form of rights protection, including that of the freedom of religion, is a Federal Human Rights Act or Charter of Human Rights and Freedoms.

Acknowledging that the Federal Government has rejected the proposal of a Federal Human Rights Act, Amnesty International is deeply concerned that the proposed Bill protects the right to religious belief at the expense of other rights and this Bill has the potential to increase disharmony in society. Human Rights legislation should always promote the idea that all members of society are free and equal in dignity and rights.

The Bill should be amended according to the recommendations of this submission, and be subject to further scrutiny from civil society, particularly the LGBTQIA+ community, women, First Nations people, people with a disability or lived experience of mental illness, survivors of institutional abuse and religious communities (especially minority faiths) and other minority or vulnerable communities.