



Submission to the Parliamentary Joint Committee on Human Rights

Religious Discrimination Bill 2021 and related bills

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Submitted by
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About Amnesty International

Amnesty International is the world's largest independent human rights organisation, with more than ten million supporters in over 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 and 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, gender identity or sex characteristics. Amnesty International recognises 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, sex characteristics, religion or belief, political or other opinion, ethnicity, national or social origin, disability, or other status.

Amnesty International 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) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Amnesty International is a proud People Powered movement founded on the work of volunteers and activists all around the country.

1. Summary

1.1 Amnesty International Australia (AIA) welcomes the opportunity to provide this submission to the Parliamentary Joint Committee on Human Rights inquiry into the *Religious Discrimination Bill 2021 and Related Bills (the Bill)*.

1.2 AIA campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation and gender identity, variations of sex characteristics, religion or belief, and we advocate for states to fulfil their obligations to prohibit racial and religious vilification. AIA 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 the 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 AIA is concerned that the public discussions in relation to the Bill and the concept of religious freedoms has been framed as a dichotomy of religious freedom vs 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 multiple characteristics, including religious belief, is even more harmful. AIA 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 sex characteristics as well as discrimination in relation to their faith and their disability.

1.7 AIA has serious concerns that this Religious Discrimination Bill (the Bill) in its current form will condone behaviour, statements and environments that create unsafe or potentially harmful environments for some people and communities who are attempting to access essential services such as health, mental health, education, accommodation, crisis support services, 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

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.

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. AIA 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 Freedoms. 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 right outweighs another.

1.9 AIA notes that this Bill has the potential to significantly impact on many groups and individuals and that thorough and inclusive community consultation, outside of leaders of major religions, is vital. Australia is home to the oldest continuing culture in the world. AIA are concerned that the potential impact of this bill on First Nations people, their right to hold their belief systems and express their culture, has not been adequately assessed and that extensive consultation with First Nations people has not been conducted.

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 AIA has in regards to the Bill, 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. AIA 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 will draw on AIA's expertise in international human rights law and standards and outlines specific concerns regarding the Bill. It recommends amendments regarding the Bill's impacts on health care and employment, a lack of protection of students, teachers and staff in religious educational institutions, the effects of statements of belief which privilege religious belief over other human rights and would be conversion practices under State and Territory law and the ability of religious bodies to discriminate on the basis of their religious doctrines, tenets and beliefs while receiving government funding to provide necessary services to the public.

2. Recommendations

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

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

The Government must 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.

Religious Discrimination Bill 2021

The Bill, the Human Rights Legislation Amendment Bill 2021 and the Religious Discrimination (Consequential Amendments) Bill 2021 not proceed and be withdrawn.

If the Bill, the Human Rights Legislation Amendment Bill 2021 and the Religious Discrimination (Consequential Amendments) Bill 2021, are to proceed, AIA recommends:

Delete section 12, and associated definitions, from the Religious Discrimination Bill.

Delete sections 7 to 9 of the Religious Discrimination Bill.

Delete section 11 of the Religious Discrimination Bill and Schedule 2 of the Religious Discrimination (Consequential Amendments) Bill 2021.

Delete sections 40(2) to (7) of the Religious Discrimination Bill.

If the Committee determines that the above three recommendations should not be accepted, then replace sections 7 to 9, 11 and 40(2) to (7) with provisions consistent with Commonwealth, State and Territory laws.

The Religious Discrimination Bill's definitions and terminology must be reviewed to ensure that its definitions and terminology are consistent with existing Federal discrimination legislation.

Delete section 15 of the Religious Discrimination Bill (and associated definitions).

Delete section 16(3) of the Religious Discrimination Bill.

Human Rights Legislation Amendment Bill 2021

Delete the proposed s19 of the *Charities Act 2013* (Cth) from the Human Rights Amendment Bill.

Delete the proposed s47C of the *Marriage Act 1961* (Cth) from the Human Rights Amendment Bill.

3. International Legal Human Rights Framework

3.1 Through ratification of binding international human rights treaties and the adoption of United Nations (UN) declarations, the Australian Government has committed to ensuring that all people enjoy universally recognised rights and freedoms.

3.2 The Universal Declaration of Human Rights (UDHR) sets out the fundamental principles underpinning all human rights.³

3.3 *Article 1* UDHR 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.”

3.4 *Article 2* UDHR 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.” 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*, and that these statuses may change over time.

3.5 *Article 7* UDHR and *Article 26* International Covenant of Civil and Political Rights (ICCPR) provides that all people are equal before the law and are entitled without discrimination to equal protection of the law.⁴ *Article 26* of the 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’.

3.6 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 sex characteristics.

3.7 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 abuse.⁵

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; *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.

Freedom of Religion, Conscience and Belief

3.8 The rights to freedom of religion, conscience and belief are enshrined in *Article 18* of the UDHR and *Article 18* of the ICCPR. The right to be free from discrimination on the basis of religion, conscience and belief is protected by *Article 7* of the UDHR and *Article 2* of the ICCPR. *Article 26* of the ICCPR has been interpreted by the Human Rights Committee to not merely duplicate the guarantee in *Article 2*, but in itself to provide an autonomous right to non-discrimination. Legislation adopted by a State must comply with the *Article 26's* requirement that it not be discriminatory and that the rights protected are not limited to those provided for in the ICCPR.⁶

3.9 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 belief.⁷

Limitations on Freedom of Religion

3.10 AIA 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 (*Article 18(3)* of the ICCPR). Such limitations must be prescribed by law and be necessary for the protection of 'public safety, order, health, or morals or the fundamental rights and freedoms of others'.⁸

3.11 The United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (Declaration on Religion or Belief') at *Article 1(1)* closely reiterates the terms of *Article 18(1)* ICCPR. *Articles 1(2)* and *1(3)* of the Declaration on Religion and Belief are identical to *Articles 18(2)* and *18(3)* ICCPR.

3.12 *Article 4* of the Declaration on Religion and 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 legislation. *Article 4* also requires States to take 'all appropriate measures' to 'combat intolerance on the basis of religion or belief'.⁹

3.13 *Article 27* of the 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'.

Freedom of Expression

3.14 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).

⁶ UN Human Rights Committee, General Comment 18, Thirty-seventh Session (1989), para 12.

⁷ See *Article 18(3)* ICCPR, and UN Human Rights Committee, General Comment 22 (48) CCPR/C/21/Rev.1/Add.4 27 September 1993'.

⁸ ICCPR *Article 18(1)* and (3); See also *Article 14, Convention on the Rights of the Child*, United Nations General Assembly Resolution 44/25, 20 November 1989 (CRC).

⁹ *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), *Article 4* (Declaration on Religion or Belief)..

3.15 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 interests.¹⁰ Any such restrictions on freedom of expression must be prescribed by law and must conform to the strict tests of necessity and proportionality.¹¹ Importantly, governments also have a positive obligation to prohibit advocacy of national, racial or religious hatred.¹²

3.16 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 beliefs.¹³

3.17 These pieces of international law and standards form the basis of AIA's recommendations.

¹⁰ ICCPR Article 19(3).

¹¹ 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.

¹² ICCPR Article 20(2).

¹³ Yogyakarta Principles, Principle 21

4. Protection of Religious Freedoms in Australia

4.1 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 Commonwealth.*¹⁴

4.2 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 law.¹⁵

4.3 AIA 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 others.*¹⁶

4.4 For the purpose of this submission, AIA 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:

- 1) That relate to the nature and place of humanity in the universe and, where applicable, the relation of humanity to things supernatural;*
- 2) That encourage or require adherents to observe particular standards or codes of conduct or, where applicable, to participate in specific practices having supernatural significance;*
- 3) 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 belief’.*¹⁷

4.5 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’.

4.6 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-discrimination.¹⁸

¹⁴ Commonwealth of Australia Constitution Act 1900

¹⁵ Australian Human Rights Commission submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Submission 12, para. 5.

¹⁶ 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

¹⁷ Human Rights and Equal Opportunity Commission, (1998), Article 18: Freedom religion and belief, R2.5, p.v

¹⁸ For example, New Zealand, Canada and the United Kingdom

4.7 Victoria, the Australian Capital Territory and Queensland provide specific protections for freedom of religion through their human rights legislation.¹⁹

4.8 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).²⁰ A Human Rights Act or a Charter of Human Rights and Freedoms in similar terms would provide vital human rights protections for Australians.

4.9 A National Human Rights Consultation in 2008 found widespread community support for a national Human Rights Act.²¹ There is no indication that support for formal human rights protections has dwindled since that time.

¹⁹ 8 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).

²⁰ 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

²¹ 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 2021 and Related Bills

5a. A Human Rights Act or a Charter of Human Rights and Freedoms

5a.1 AIA'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.

5a.2 AIA 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 access to their human rights impacts on another person's ability to access their rights, an Act or Charter would fairly balance these rights.

5a.3 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.

5a.4 AIA 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.'²²

RECOMMENDATION

The Government should 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.

5b. Religious Discrimination Bill 2021

5b.1 AIA acknowledges that an Act or a Charter is not presently under consideration by the government.

5b.2 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.

5b.3 AIA believes that the Religious Discrimination Bill 2021 (the Bill) should not be passed in its current form. Its provisions go far beyond the terms of *Articles 18 and 26 ICCPR* and *Article 1 Declaration Religion or Belief*.

²² Human Rights Committee, Concluding observations on the sixth periodic report of Australia, CCPR/C/AUS/CO/6, 9 November 2017 [5]

5b.4 AIA'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. The rights of people of faith should not be preferenced 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. AIA is very concerned that should this Bill be enacted, it would entrench preferential treatment for some people into law and would enable discrimination against many people in Australia.

5b(i) The Bill and Article 18(3) ICCPR

5b(i).1 Article 18 ICCPR is as follows:

- 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
- 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
- 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.*
- 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

5b(i).2 AIA notes that the 'Statement of Compatibility with Human Rights', at paragraph 13, in the Explanatory Memorandum to the Bill²³ refers specifically to Article 18(1) and (2) creating the protected attribute. However, there is no specific reference to Article 18(3), nor is it alluded to in the Statement. Appropriate and balanced human rights protections can only be achieved by considering all parts of Article 18.

5b(i).3 The ICCPR clearly acknowledges that the freedom to manifest one's religion or belief carries with it the potential to interfere with the fundamental rights and freedoms of others. Yet the Bill appears to have been drafted without proper regard to its impact. This aspect of the Bill appears in direct contradiction to the Australian Government's interpretation of the ICCPR, where the General Comment 22 confers religious belief is not elevated beyond freedoms of thought or conscience, and advocacy of hatred and/or propaganda must not constitute discrimination nor hatred²⁴. The Bill, with respect to statements of belief, also takes away existing anti-discrimination protection in state and territory laws on the grounds of race, religion, sex, marital status, disability, sexual orientation, gender identity or sex characteristics. Rather than creating legislation which balances peoples' human rights when they impact on each other, this Bill gives primacy to religious belief.

That this is the intention of the Bill is made clear from the section 3(1)(d), where an object of the Bill is stated to be 'to ensure that people can, consistently with Australia's obligations with respect to freedom of religion and freedom of expression, and subject to specified limits, make statements

²³ Explanatory Memorandum, Religious Discrimination Bill 2021 (Cth) (EM Religious Discrimination Bill).

²⁴ Australian Human Rights Commission, Freedom of Thought, Conscience and Religion or Belief (ICCPR Article 18).

of belief.’ Acknowledgment of the indivisibility and universality of human rights and the principle that every person is free and equal in dignity and rights (s3(2) Bill) does not recognise the need for competing rights to be balanced against each other.

5b(i).4 AIA is extremely concerned that the Bill will preference religious belief over other rights and strongly urges the government to amend the Bill so that human rights protections are improved for all persons rather than improving protections for some people whilst jeopardising access to other rights for many.

RECOMMENDATION

The Bill, the Human Rights Legislation Amendment Bill 2021 and the Religious Discrimination (Consequential Amendments) Bill 2021 not proceed and be withdrawn from Parliament.

5b(ii) Section 12: Statements of belief

5b(ii).1 AIA is aware that consultation has occurred prior to the drafting of this Bill and that some contentious provisions have been removed. However, the importance given to the ability of a religious person to make ‘statements of belief’ without regard to the discriminatory and negative impact of those statements remains a grave concern.

5b(ii).2 As defined by the Bill a ‘statement of belief’ occurs when a statement of a religious belief held by a person, is made in good faith by written or spoken words or other communication by the person and is of a belief that the person genuinely considers to be in accordance with the doctrines, tenets, beliefs or teachings of that religion (s5).

The reference to ‘good faith’ is connected to the manner in which a statement of belief is made, ‘by written or spoken words or other communications.’ ‘Good faith’ is not connected at all with the content of the statement.

5b(ii).3 Further, there is no requirement that the statement of belief in fact accords with the doctrines, tenets, beliefs or teachings of that religion. The statement, even if a person’s genuine, though incorrect, consideration that it is in accordance with their religion, does not constitute discrimination for the purposes of the Federal Age, Disability, Racial and Sex Discrimination Acts, or the Anti-Discrimination laws in the States and Territories (s12(1)).

5b(ii).4 By protecting only religious speech, and not statements based on thought or conscience, the Bill fails to enact the provisions in *Article 18(1) ICCPR* as it is claimed to do. As such the Bill prioritises religious belief over thought or conscience which may be just as important to one person as is another person’s faith to them.

5b(ii).5 This protection for statements of belief does not apply when a statement is malicious, or that a reasonable person would consider would threaten, intimidate, harass or vilify a person or group.²⁵ AIA notes that this is a higher threshold than exists, for example, in s18C(1), *Racial Discrimination Act 1975* (RDA), where it is unlawful for a person to do an act ‘if the act is reasonably likely, in all the circumstances to offend, insult, humiliate or intimidate another person or a group of people.’

²⁵ Bill, S12(2). Note that s12(3) refers to s35(1)(b) which covers expressions of religious belief that a reasonable person would conclude counsel, promote, encourage or urge conduct that would constitute a serious offence.

5b(ii).6 Statements of belief which a reasonable person would consider offends, insults or humiliates a person are lawful under the Bill. The Explanatory Memorandum to the Bill makes it clear that this result is intended.²⁶

5b(ii).7 Former Prime Minister Malcolm Turnbull wrote in the Forward to 'Australia's Multicultural Statement' that

Australia is the most successful multicultural society in the world

..... And we come from every culture, every race, every faith, every nation..

We are defined not by race, religion or culture, but by shared values of freedom, democracy, the rule of law and equality of opportunity - a "fair go".

The glue that holds us together is mutual respect - a deep recognition that each of us is entitled to the same respect, the same dignity, the same opportunities.²⁷

5b(ii).8 Human identity is complex. Culture, race, faith or nationality, exist in different combinations across those identities and people may face discrimination on that basis. Peoples' identities also intersect with other attributes such as sex, marital status, disability, sexual orientation, gender identity or sex characteristics which may also result in discrimination. The glue of mutual respect holding the community together, recognises that people with many intersecting identities are entitled to the same respect, the same dignity and the same opportunities.

5b(ii).9 AIA believes that the provisions in s12 of the Bill, do not reflect the shared values and mutual respect referred to by Mr Turnbull. Rather, by overriding existing anti-discrimination legislation and protecting statements of belief, which are permitted to offend, insult or humiliate a person, s12 allows statements of belief to be directed to people when they are vulnerable, when accessing services and when people are simply participating in community life.

5b(ii).10 AIA is also concerned about the cumulative effect of repeated and persistent statements of belief that offend, insult or humiliate individual people or communities. This cumulative effect has the potential to have a significant impact on the health and wellbeing of individuals and communities, particularly minority communities, and on the social cohesion of the broader Australian society.

Healthcare

5b(ii).11 Australia's human rights obligations to ensure the right to access to medical care or health services are found in:

- 1) Article 25 UDHR, Article 25 International Covenant on Economic, Social and Cultural Rights (ICESCR);²⁸
- 2) Articles 3 and 24 of the Convention on the Rights of the Child (CRC);²⁹
- 3) Article 6 of the Declaration on the Rights of Disabled People (DRDP);³⁰

²⁶ EM Religious Discrimination Bill, [186].

²⁷ Multicultural Australia, United Strong Successful, Statement on Multiculturalism, Australian Government, <https://www.homeaffairs.gov.au/mca/Statements/english-multicultural-statement.pdf>.

²⁸ United Nations General Assembly Resolution 2200A (XXI), 16 December 1966 (ICESCR).

²⁹ United Nations General Assembly Resolution 44/25, 20 November 1989 (CRC).

³⁰ United Nations General Assembly Resolution 3447 (XXX), 9 December 1975 (DRDP).

- 4) Articles 12 and 14(2)(b) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);³¹
- 5) Principles 17 and 18 of The Yogyakarta Principles and Principle 32 and Additional State Obligations relating to Principle 17 of The Yogyakarta Principles plus 10.³²

5b(ii).12 People seek health or support services because they need those services. If people encounter health professionals or support service staff who make statements of belief during the provision of services, there can be a negative impact on the person's wellbeing or self image. As a consequence, the person may not be able to engage with the service, may be re-traumatized, may be prevented from disclosing relevant information and may disengage from health or support services altogether. If they disengage, they may not re-engage. Disengaging from health services may have long term effects on the health and well being of the person.

5b(ii).13 Statements of belief in healthcare and support settings can themselves be intrusive, coercive or damaging. 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 where they live;
- a survivor of institutional sexual abuse being re-traumatized by religious comments or paraphernalia and being unable to continue accessing the service.

5b(ii).14 Repetition of statements of belief, even those which appear to have a lesser impact, accumulate and can result in people disengaging from services. These negative impacts are heightened when they are repeated, cumulative or occur at times of crisis. Depending on the person's health and support requirements, and where they live, there may not be another service for them to access. Options for support under NDIS are not always available. Disengagement from treatment and support services because of the way they are provided may lead to adverse, but preventable, health outcomes.

5b(ii).15 Further examples of the complex and cumulative impact of statements of belief by health, medical or support staff. For example:

- a person who grew up in a religious setting with obsessive compulsive disorder (OCD), may have manifested OCD relating to religious beliefs and ideas;
- a child with anxiety may have grown up with intense fears of hell;
- persons with intersecting identities, such as a LGBTQIA+ child with anxiety surrounding religion may have additional anxiety around this fear of hell due to their LGBTQIA+ identity.

Statements of belief from health or support professionals that provide services that are directed to people with these experiences may cause distress and cause them to feel unsafe.

5b(ii).16 Health services and support services should, at a minimum, be required to do no harm.

5b(ii).17 Depending on the circumstances, the health needs and prior experience of the person accessing the service, a single statement of belief may cause them to disengage from the service.

³¹ United Nations General Assembly Resolution 34/180, 18 December 1979 (CEDAW).

³²

For another person, the cumulative effect of many statements of belief may result in disengagement. It takes little imagination to see that statements of belief which offend, insult and humiliate the person to whom they are addressed can and will have devastating effects.

5b(ii).18 Further, these concerns cannot always be addressed by the person moving to another service provider. Many essential services are provided by religious organisations whilst being funded by public money. For many of these services, there is no easily accessible alternative service or no alternative service provider at all. For example, at major public hospitals run by religious organisations, a public patient can not easily access services outside of their health district, if at all. For many people living in these catchment areas there would be no way to avoid hearing statements of belief whilst accessing treatment unless they disengaged from treatment altogether.

5b(ii).19 The person seeking health or support services may not have the resources or resilience to continually change service providers in an effort to find one where they feel safe and accepted enough to engage with the service, this is particularly true for people with intersecting identities.

Education

5b(ii).20 Australia's human rights obligations to ensure access to education are:

1. Article 26 UDHR, Article 13 ICESCR;
2. Articles 28 and 29 CRC;
3. Article 6 DRDP;
4. Article 10 CEDAW;
5. Principle 16 Yogyakarta Principles and Additional State Obligations relating to Principle 16 of The Yogyakarta Principles plus 10.

5b(ii).21 Principle 16(A) of the Yogyakarta Principles requires Australia to 'take all necessary legislative, administrative and other measures to ensure equal access to education, and equal treatment of students, staff and teachers within the education system, without discrimination on the basis of sexual orientation or gender identity.'

5b(ii).22 Principle 16(E) requires that laws and policies provide 'adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment.'

5b(ii).23 The provisions of s12 of the Bill do not comply with either Principle 16(A) or 16(E). To the contrary, they permit discrimination and bullying of any student, staff member or teacher in any school, public, independent or religious, on the basis of their sexual orientation or gender identity.

5b(ii).24 School may be the only place where a child or young person sees people who are just like them in some ways and very different in others. This is where they have an opportunity to learn about and accept diversity.

5b(ii).25 All children will have difficulty learning if they are not in a safe environment. A school environment may not be safe for a child if there is no other student, staff or teacher like them. If the school environment does not encourage inclusivity and acceptance and/or there are negative

statements of belief made about some people, children are at risk of feeling excluded, unsafe, not accepted and by inference, feeling like a “freak” or “against God”.

5b(ii).26 The school environment is not safe for children and young people when potential role models, such as LGBTQIA+ and disabled teachers and staff, have to hide their identity or hide their acceptance of their identity. These circumstances are a likely consequence of individuals being told they need to be “healed”, or other similar statements of belief, and where the school is not an inclusive and affirming environment.

5b(ii).27 If you live in a family which adheres to a particular faith, or is from a particular cultural or racial background, you may experience discrimination based on that faith or culture or race. Many people experiencing this type of discrimination will have family members or community members who have also had similar experiences because they share the same religion, race or culture and thus they can provide support based on those experiences. Eg A child raised in the same faith as their parents, who then hears an insulting or humiliating statement of belief by another person towards the child’s religion, usually would have adults who can understand their experience and support them.

5b(ii).28 If you are a child or young person whose sexual orientation, gender identity or sex characteristics fall within the LGBTQIA+ umbrella, there is a high likelihood you will not have someone else like you within your close or extended family. As a child or young person, you often have limited opportunity to find community other than the one your parents belong to. It is very important for young people beginning to understand their sexual orientation or gender identity to see people like them, living, working, socialising and participating in the broader community. Similarly it is important for people with variations in sex characteristics to know others with variations in sex characteristics, to be able to access peer support. School is often the one of the only places an LGBTQIA+ child or young person can find people like them or people who accept them. S12 does not encourage this environment in schools.

5b(ii).29 If you have a disability, you may also be the only person in your close or extended family who is like you. Seeing someone with a disability living, working, socialising and participating in the school community is significant. Seeing others with disability accepted and respected is vital for a child or young person with a disability. This is particularly so when a person with a disability has an intersecting identity such as being LGBTQIA+. Again s12 does not support this environment.

5b(ii).30 Even in circumstances where there is not active hate speech directed at students who have diverse identities, generalised attitudes of disapproval and/or pity can be more difficult to confront and constant, low level statements that offend, insult and humiliate can be disastrous for people. It is not necessary to overtly promote discrimination: the absence of visibility makes schools less safe for LGBTQIA+ students and those with disability. The need for teachers, support and ancillary staff to remain hidden, to mask their identities, damages them and prevents students seeing role models.

5b(ii).31 Section 12 creates a grave danger to teachers, staff and children who have identities about which a person may have a religious belief that they are ‘broken,’ ‘need to be healed, or that ‘God doesn’t love you’. It is not difficult to imagine that repeated statements of belief, which offend, insult or humiliate could amount to bullying and have devastating consequences. This could amount to conversion practices in some circumstances.

5b(ii).32 Having teachers and staff in schools able to be fully themselves helps children to accept diversity and become well rounded and respectful members of the community. They are also able to play a support role in the event that children are bullied or discriminated against. As children

mature they will be participating in the workforce, where they come face to face with people of different backgrounds and identities. As a community we do them a disservice if we do not properly prepare them for the diversity in the Australian community.

Discrimination toward Students by religious educational institutions

5b(ii).33 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. One 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.

5b(ii).34 Another obvious example, and one that is also of concern to AIA, is LGBTQIA+ students. 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 cent 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 education.³³

5b(ii).35 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.³⁴

5b(ii).36 Supportive, affirming and non-discriminatory environments, including school, have been shown to strongly mitigate the negative impacts of discrimination and abuse.³⁵

5b(ii).37 The broad exemptions given to religious bodies under the *Sex Discrimination Act 1984* (Cth) authorise discrimination against LGBTQIA+ people. Even if a publicly available policy effectively permits LGBTQIA+ people to be refused admission to a religious school, that does not mean that there will be no LGBTQIA+ students in that school. Young people often take time to understand and accept their sexual orientation or gender identity and usually require additional time before they feel ready to come out, or are comfortable telling their parents. Even then, not all parents support their child. They may ignore or deny what their child has told them and enroll them in a religious school. Or parents may accept and respect their child's identity but still enrol them in a religious school to be at the same school as siblings or other family members for support. AIA is gravely concerned that LGBTQIA+ students will continue to face discrimination in religious schools. Statements by politicians and administrators of schools that LGBTQIA+ students will not be expelled is of little comfort when repeated statements of belief can be used to bully a student out of

³³ National LGBTI Health Alliance, Statistics at a Glance, available at: <https://lgbtihealth.org.au/statistics/?fbclid=IwAR2Z3wcmxboxQSZ9sqO1A7xzLkbyrqDDikMuFZkCS8It9H5vw7foavpSED>; 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

³⁴ Jones, Brown, Carnie, 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.

³⁵ 9 Olson, Durwood and McLaughlin, 2016, Mental health of transgender children who are supported in their identities, Pediatrics, 2016, 137(3) available at <https://pubmed.ncbi.nlm.nih.gov/30065001/>

the school. The devastating effects of bullying, from mental health issues to suicide, are well known.

5b(ii).38 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.

5b(ii).39 AIA 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.

5b(ii).40 AIA also holds the strong position that privately funded schools and organisations providing compulsory education to children or vulnerable adults should not discriminate in the provision of those services in ways that would otherwise be unlawful.

LGBTQIA+ Conversion Practices

5b(ii).41 AIA 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.

5b(ii).42 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+.³⁶

5b(ii).43 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".³⁷

5b(ii).44 'Statements of belief' are the tools of the conversion practices movement. The ideology opposing LGBTQIA+ 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.

5b(ii).45 AIA is concerned that provisions of any State and Territory legislation banning conversion practices could be prescribed by regulation under s12(1)(c) of the Bill, which would protect statements of belief that would otherwise amount to LGBTQIA+ conversion practices.

5b(ii).46 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. AIA 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. AIA 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.

³⁶ SOCE Survivors, The SOCE Survivors Statement, 2018, available at: <http://socesurvivors.com.au/>

³⁷ Human Rights Law Centre, Preventing Harm, Promoting Justice, 2018, available at: <https://www.hrlc.org.au/reports/preventing-harm>

RECOMMENDATION

Delete section 12, and associated definitions, from the Religious Discrimination Bill.

5b(iii) Religious Educational Institutions, Religious Hospitals, Aged Care Facilities and Accommodation Providers

5b(iii).1 The objects of the Bill, set out in s3, include eliminating, 'so far as is possible, discrimination against persons on the ground of religious belief or activity.' In many cases, people of different or no religious belief are not protected if they are employed, enrolled or rely on certain services delivered by religious bodies to the public.

5b(iii).2 Sections 7, 8, 9, 11, 40(2) -(7) all permit religious bodies (educational institutions, a registered charity or any other body other than one that engages solely or primarily in commercial activities s5 Bill) 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 in the areas of employment, enrollment or reliance on services delivered by religious bodies.

5b(iii).3 Further, religious bodies are able to give preference to persons who share the same doctrines, tenets, beliefs or teachings as adhered to by the organisation (s7(2) and (3)). The religious body engaging 'in good faith, in the conduct to avoid injury to the religious susceptibilities of adherents of the same religion as the body' is not discriminatory conduct (s7(4), s9(3)(c), 9(5)(c)).

5b(iii).4 The Bill requires religious bodies, who engage, 'in good faith, in conduct that a person of the same religion as the religious body could reasonably consider to be in accordance with the doctrines, tenets, beliefs or teachings of that religion' to have a publicly available policy (s7(6), s9(3)(d) and 9(5)(d)). The effect of the policy will be to identify people, including people of different or no faith, with any other attribute that would otherwise be protected by other State, Territory and Federal anti-discrimination laws, who would not be considered for employment. The policy is a license to discriminate.

5b(iii).5 Section 19 prohibits discrimination by an employer against a person on the basis of the person's religious belief or activity with respect to hiring and terms and conditions of employment. Section 20 prohibits discrimination in relation to the forming of partnerships of 3 or more persons and between partners.

5b(iii).6 However, section 7 permits religious educational institutions, with a 'publicly available policy' to discriminate against people not of their faith with respect to their conduct generally and specifically in employment relationships. If the religious body creates a 'publicly available policy' containing its discriminatory religious employment policies and acts in accordance with that policy, then the Bill permits the religious body to discriminate against people of different or no faith. Section 11 overrides prescribed State and Territory laws, regarding employment practices of religious bodies that are educational institutions.

5b(iii).7 Similarly to section 7, section 9 allows religious bodies (religious hospitals, aged care, facilities, accommodation providers and disability service providers) to discriminate on the basis of the doctrines, tenets, beliefs or teachings of their religion in relation to hiring and conditions of employment. Again, a publicly available policy is required. The effect is that religious bodies are given permission to explicitly discriminate against people of different faiths or no faith, and give preference to applicants whose faith is the same as the religious body.

5b(iii).8 AIA acknowledges that there are roles within a religious body, 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 body's operation. Not all positions in the religious body fall into this category. Religious bodies often receive public funds, contributed to by all members of the community, to provide services to the public at large.

5b(iii).9 AIA's firm position is that religious bodies in receipt of public funding or providing services on behalf of the government for hospitals, accommodation services, disability services and aged care facilities, must not discriminate in the provision of those services or in the employment of staff, in ways that would otherwise be unlawful.

5b(iii).10 Sections 24 (education), 25 (access to premises), 26 (goods, services and facilities), 27 (accommodation), 28 (land), 29 (sport) and 30 (clubs) all make it unlawful to discriminate against a person on the ground of the person's religious belief or activity. Exceptions are made for religious camps and conference sites where conduct occurs in the course of establishing, directing, controlling or administering a camp or conference site. In these circumstances a person's conduct may discriminate against another person, on the ground of the first person's religious belief or activity, if that conduct is in accordance with a publicly available policy (s40(2), (5)). There is no requirement that the discrimination by a religious body on the ground of religious belief or activity conform with the doctrines, tenets or beliefs of a religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion. AIA is concerned that discrimination on the basis of religious belief is permitted in the context of a commercial transaction for profit.

RECOMMENDATION

Delete sections 7 to 9 of the Religious Discrimination Bill.

RECOMMENDATION

Delete section 11 of the Religious Discrimination Bill and Schedule 2 of the Religious Discrimination (Consequential Amendments) Bill 2021.

RECOMMENDATION

Delete sections 40(2) to (7) of the Religious Discrimination Bill.

RECOMMENDATION

If the Committee determines that the above three recommendations should not be accepted, then replace sections 7 to 9, 11 and 40(2) to (7) with provisions consistent with Commonwealth, State and Territory laws.

5b(iii).11 AIA notes that the drafting of the Bill contains definitions of some terms which differ from that in other legislation. For example, the *Sex Discrimination Act 1984* at s37 refers to 'religious bodies' as those 'established for religious purposes, that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.' The Bill, however, defines a 'religious body' as any educational institution, registered charity or any other kind of body, other than one that engages solely or primarily in commercial activities, that are conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion.' The reason for the difference is not clear.

5b(iii).12 AIA's view is that defining a 'religious body as being established for a religious purpose' with reference to the doctrines, tenets or beliefs of that religion, properly enacts *Article 18 ICCPR*.

RECOMMENDATION

The Religious Discrimination Bill's definitions and terminology be reviewed to ensure that its definitions and terminology are consistent with existing Federal discrimination legislation.

'Publicly available policy'

5b(iii).13 AIA is deeply concerned that the Bill permits religious bodies, with a publicly available policy, to discriminate against and 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, AIA's position is that this Bill may contravene Australia's obligations under international law on the rights of equality and non-discrimination, including *Articles 2(2), 3 - 7 ICESCR* and *Articles 2, 3 and 26 ICCPR*.

5b(iii).14 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+ people accessing disability services may also not see disability workers or service providers who are LGBTQIA+. These are very isolating experiences likely to have a negative impact on wellbeing. There is also the potential to greatly reduce the number of safe workplaces for some individuals, for example, LGBTQIA+ people, potentially creating significant barriers to employment.

RECOMMENDATION

The Bill be amended to prohibit discrimination based on religious belief by faith-based organisations delivering any health or aged-care services, disability, homelessness, family and domestic violence, financial assistance and other community services or government funded services to the public.

5b(iv) Qualifying bodies

5b(iv).1 Many people work in professions where requirements are set for admission and continued membership of that profession. Qualifying bodies exist to assess applicants for admission and to ensure that members of that profession continue to meet standards of behaviour. These rules exist to protect public trust in those professions.

5b(iv).2 Section 15(1) of the Bill allows a person to make a statement of belief, which they believe accords with the doctrines, tenets or beliefs of their religion, outside of their work and that statement, no matter how harmful, prejudicial or dangerous it is, is not able to be taken into account by a qualifying body. To do so, would be to discriminate against the statement maker.

5b(iv).3 For example, s17(1), *Legal Profession Uniform Laws (NSW) 2014* provides that to be admitted to the Australian legal profession, a person must have appropriate legal qualifications, have completed practical legal training and be 'a fit and proper person.' Evidence of an applicant's

'fame and character' is required for the assessment to be made as to whether the applicant is a fit and proper person for admission.³⁸ No matter what harmful, prejudicial or dangerous a statement an applicant has made, based on their understanding of their religion, s15(1) of the Bill says that taking that statement into account is discriminatory.

5b(iv).4 Similarly, after a person is admitted to a profession, statements of belief, made outside work, cannot be taken into account when disciplinary matters are being considered. Statements of belief by members of professions may well reflect badly on their employer, interfere with the ability of their employer to provide professional services to the whole community and damage the reputation of the profession as a whole.

5b(iv).5 It is easy to see that enacting s15 of the Bill will have a devastating effect on the ability of qualifying bodies to properly assess whether or not an applicant is a fit and proper person for admission to the profession, to manage the conduct of their members after admission and to counteract and prevent harmful public statements being made by their members.

RECOMMENDATION

Delete section 15 of the Religious Discrimination Bill (and associated definitions).

5b(v) Human rights protect human beings.

5b(v).1 The UDHR, ICCPR, ICESCR, CEDAW, CRC, the Declaration on Religious Beliefs and the Yogyakarta Principles and the Yogyakarta Principles +10 all protect the rights of human beings. They do not protect the rights of corporate entities.

5b(v).2 It is appropriate that sections 16(1) and (2) of the Bill provide protection from discrimination to a person who has an association with another individual who holds a religious belief or activity, as if that person held the same religious belief.

5b(v).3 It is not appropriate to stretch the concept of association to include, in the context of an anti-discrimination Bill to protect the human right of freedom of thought, conscience and religion, a body corporate having an association with an individual (s16(3)). The body corporate has no human rights to protect, even if a reasonable person would 'closely associate the body corporate with the individual'.

RECOMMENDATION

Delete section 16(3) of the Religious Discrimination Bill.

5c. Human Rights Legislation Amendment Bill 2021

5c.1 An amendment is proposed for the *Charities Act 2013* (Cth) that conclusively presumes that an entity that advances, expresses or supports a view of marriage as a union of a man and a woman, or encourages this view, is 'presumed, conclusively, to be for the public benefit and not contrary to public policy.'

5c.2 It is entirely unclear why this amendment is needed. Ministers of religion may refuse to solemnise any marriage which does not conform to the doctrines, tenets or beliefs of the minister's

³⁸ Legal Profession Uniform Admission Rules 2015, r 16.

religion.³⁹ There are no restrictions on people of faith believing that a marriage is a union between a man and a woman.

5c.3 The fact remains that the legal definition of 'marriage' is 'the union of 2 people to the exclusion of all others, voluntarily entered into for life.'⁴⁰ Some couples will be married by a minister of religion, and others will be married by a marriage celebrant or a religious marriage celebrant. Those marriages are all lawful.

5c.4 An explanatory note to s11 *Charities Act* states that activities are not contrary to public policy simply because they are contrary to government policy. We note that Equality Australia's submission states that no charities advocating for marriage equality and against government policy were disqualified in the lead up to the postal survey. There appears to be little to no risk of a charity losing its status because it advocates for marriage being between a man and a woman.

RECOMMENDATION

Delete the proposed s19 of the *Charities Act 2013* (Cth) from the Human Rights Amendment Bill.

An amendment to the *Marriage Act 1961* (Cth) is proposed which would allow religious educational institutions to refuse to make facilities available or provide goods or services for the purposes of the solemnisation of a marriage provided that the refusal conforms with their religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.⁴¹ There are existing exemptions for religious bodies in s47B *Marriage Act 1961* (Cth) and under ss 37-38 *Sex Discrimination Act 1984* (Cth). The need for the proposed s47C is not clear.

RECOMMENDATION

Delete the proposed s47C of the *Marriage Act 1961* (Cth) from the Human Rights Amendment Bill.

³⁹ *Marriage Act 1961* (Cth), s47(3).

⁴⁰ *Marriage Act 1961* (Cth), s5.

⁴¹ Human Rights Legislation Amendment Bill 2021, Sch1, cl 6 (proposed 47C *Marriage Act 1961* (Cth)).

6. Conclusion

AIA 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. The differences in language, definitions of terms and provisions overriding other Federal, State and Territory anti-discrimination legislation contained in the Bill clearly demonstrate the urgent need for a Human Rights Act or Charter of Human Rights and Freedoms to protect the human rights of all and to balance competing rights appropriately.

Acknowledging that the Federal Government has rejected the proposal of a Federal Human Rights Act, AIA 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 cause harm to individuals and communities and 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.

AIA's strong position is that the Bill should not be enacted.

If the Committee supports proceeding with the Bill, it 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 and/or lived experience of mental illness, survivors of institutional abuse and religious communities (especially minority faiths) and other minority or vulnerable communities.