

**AMNESTY
INTERNATIONAL**



20 November 2018

Senator Louise Pratt
Chairperson
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

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Dear Senator Pratt

INQUIRY INTO LEGISLATIVE EXEMPTIONS THAT ALLOW FAITH-BASED EDUCATIONAL INSTITUTIONS TO DISCRIMINATE AGAINST STUDENTS, TEACHERS, AND STAFF

Amnesty International Australia welcomes the opportunity to submit to this inquiry. Amnesty International campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation and gender identity, religion or belief, and we advocate for states to fulfil their obligations to prohibit racial and religious vilification.

Enclosed is Amnesty International Australia's submission to the Religious Freedom Review Expert Panel. Sections 2 and 5 of the submission are expressly relevant to this inquiry, as it sets out the international legal frameworks of the human rights of freedom of religion, equality and non-discrimination, and discusses the limitations of these rights.

In that submission, Amnesty International Australia recommends that:

The Australian Government amend anti-discrimination legislation to prohibit religious organisations or educational institutions in receipt of public funding or providing service on behalf of the government discriminating in the provision of those services in ways that would otherwise be unlawful.

Amnesty International reiterates the importance of this recommendation, and submits it to the Committee for consideration. To enact this recommendation, we ask that :

The Australian Government repeal subsection 38(3) of the *Sex Discrimination Act* and amend subsection 37(1)(d) to clarify that it does not apply to the treatment of students, teachers and other staff by religious schools.

International Legal Framework

Every person is born free and equal in dignity and rights and is entitled to the rights and freedoms in the Universal Declaration of Human Rights (UDHR) without distinction of any kind.¹ As a signatory to the UDHR, the Australian Government is obliged to uphold the right to hold and practice religious and non-religious beliefs,² the right to decent and productive work,³ and the right to an education.

¹ United Nations General Assembly Resolution 217 A(III), 10 December 1948, (UDHR) Article 1, 2.

² UDHR, Article 18; International Covenant on Civil and Political Rights (ICCPR), United Nations, Treaty Series, (1996) vol. 999, p. 171, Article 18; *Yogyakarta Principles*, Principle 21.

³ UDHR, Article 23; International Covenant on Economic, Social and Cultural Rights (ICESCR), United Nations, Treaty Series Vol 993, page 3, Articles 6 and 7; *Yogyakarta Principles*, Principle 12.

It is crucial that the Committee is also guided by the by the Convention on the Rights of the Child which states that ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.’⁴

Amnesty International Australia recommends that the Committee take special consideration of the Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (the ‘Yogyakarta Principles’). It states that sexual orientation and gender identity are integral to every person’s dignity and humanity and must not be the basis of discrimination or abuse.⁵

Students

Research indicates that LGBTQI 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.⁶ Supportive, affirming and non-discriminatory environments, including school, have been shown to strongly mitigate the negative impacts of discrimination and abuse.⁷

Amnesty International Australia welcomes the Prime Minister’s position of removing schools’ ability to expel students on the basis of their sexuality.⁸

This would be best achieved by repealing subsection 38(3) of the *Sex Discrimination Act* and amending subsection 37(1)(d) to clarify that it does not apply to the treatment of students, teachers and other staff by religious schools.

Teachers and staff in educational institutions

It is Amnesty International’s position that the same protections from discrimination which are proposed for students, are also extended to teachers and staff.

Two thirds of LGBTQI people conceal their LGBTQI identity or status at work.⁹ Enabling teachers, staff and contract workers to acknowledge their sexual orientation, gender identity or intersex status without fear of discrimination or losing their job or contract, will benefit the students and the whole of the school community.

When balancing the tensions between the right to hold a religious belief, and the manifestation of that belief in the form of discrimination, Amnesty International Australia draws the Committee to Yogyakarta Principle 16 which says that States should ‘take all necessary legislative, administrative and other measure to ensure equal access to education, and equal treatment of students, staff and teachers within the education system’ and to ensure that in addition to education being directed to the development of students’ fullest potential, that it ‘responds to the needs of students of all sexual orientations and gender identities.’¹⁰

⁴ Convention on the Rights of the Child (CRC), United Nations, Treaty Series, vol 1577, page 3, Article 3.,

⁵ International Commission of Jurists, *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*, 2007, Principle 2.

⁶ National LGBTI Health Alliance, x, *Statistics at a Glance*, available at:

<https://lgbtihealth.org.au/statistics/?fbclid=IwAR2Z3wcmxboxQSZ9sqO1A7xzLkbyrqDDikMuFZkCS8lt9H5vw7foavpSEDY>

⁷ Olson, Durwood and McLaughlin, 2016, *Mental health of transgender children who are supported in their identities*, Pediatrics

⁸ Paul Karp, 2018, *Scott Morrison backtracks on law to expel gay students*, The Guardian

⁹ Diversity Council Australia, 2018, *Out at work: from prejudice to pride*, available at:

<https://www.dca.org.au/media-releases/out-work-prejudice-pride>.

¹⁰ *Yogyakarta Principles*, Principle 16, A, B and E.

Amnesty International Australia recommends that the Government amend the relevant legislation in order to prohibit religious educational institutions that receive public funding from discriminating in any way.

Summary of Recommendations

1. The Australian Government repeal subsection 38(3) of the *Sex Discrimination Act* and amend subsection 37(1)(d) to clarify that it does not apply to the treatment of students, teachers and other staff by religious schools.
2. The Australian Government amend anti-discrimination legislation to prohibit religious organisations or educational institutions in receipt of public funding or providing service on behalf of the government discriminating in the provision of those services in ways that would otherwise be unlawful.

I thank the Committee in advance for your time and consideration. If the Committee requires any further information from Amnesty International please don't hesitate to contact Joel Clark on joel.clark@amnesty.org.au or 0424 242 112.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'EB', written in a cursive style.

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