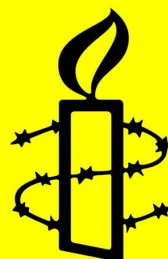


**AMNESTY  
INTERNATIONAL**



Submission to the  
RELIGIOUS DISCRIMINATION BILLS - EXPOSURE DRAFTS

2 October 2019

Submitted by  
Amnesty International Australia

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## **About Amnesty International**

Amnesty International is the world's largest independent human rights organisation, comprising more than seven 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. Amnesty recognises that the right to freedom of thought, conscience and religion as set out in Article 18 of the Universal Declaration.

Amnesty International also campaigns against direct or indirect discrimination on the basis of race, sex, sexual orientation and gender identity, 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 7 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 supporters base to take actions themselves and in their community - write letters, sign petitions, take to social media, mainstream media, and online activities - is what Amnesty has become known for and leads to our effective campaigning.

## 1. Summary

- 1.1 Amnesty International welcomes the opportunity to provide this submission to the Attorney-General's Department's inquiry into the exposure drafts of the *Religious Discrimination Bill 2019*, *Religious Discrimination (Consequential Amendments) Bill 2019*, and the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019* (the Religious Discrimination Bills).
- 1.2 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. 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.
- 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.
- 1.4 Amnesty International notes that under international law, it is clear that freedom of religion may be subject to limitations where they are "prescribed by law", and necessary to protect "the fundamental rights and freedoms of others". The right to freedom of religion is therefore not absolute, and may be mediated in order to uphold other fundamental rights.
- 1.5 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.
- 1.6 Religious discrimination harms people. The cumulation of the the effects of religious discrimination from multiple sources, is even more harmful. Amnesty International acknowledges that religious discrimination is multi-faceted and affects people in many ways. For example, a LGBTQI+ identifying, disabled person face discrimination at many levels.
- 1.7 This submission is to be read in companion with Amnesty International's submission to the Religious Freedom Expert Panel.<sup>1</sup> The international legal frameworks of the human rights of freedom of religion, equality and non-discrimination, and the limitations of these rights are set out in sections 2 and 5 of the submission.
- 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 protection. Amnesty International holds the strong position that the best form of rights protection is a Federal Human Rights Act.
- 1.9 Acknowledging that the Federal Government has to date rejected the proposal of a Federal Human Rights Act, this submission addresses several concerns that Amnesty International

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<sup>1</sup> Amnesty International Australia, *Submission to the Religious Freedom Review*, 2018, available at: <https://www.amnesty.org.au/wp-content/uploads/2018/02/Religious-Freedom-Review-Submission.pdf>

has in regards to the Religious Discrimination Bills, namely that they provide protection to religious belief or activity at the expense of others.

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

## **Recommendations**

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

### **A Human Rights Act**

- (1) The Government legislate a Human Rights Act for Australia, to ensure rights to freedom of religion and other fundamental rights are protected and appropriately balanced. The objectives of a human rights act 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, right to peaceful assembly and freedom of association, cultural rights (right to enjoy culture, declare and practise religion and use their language), rights to education and the rights of children in the criminal process, and their access to health care.
- (2) The New South Wales, Tasmanian, South Australian, Western Australian and Northern Territory Governments begin a process to legislate a Human Rights Act, reflective of the objectives outlined in recommendation 1, for their respective jurisdictions.

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

### **Prohibition of religious vilification**

- (3) The Government amend the Religious Discrimination Bills to include express prohibitions of racial and religious vilification in Australia and protects against racial and religious vilification in Australia in line with Australia's obligations under Article 20(2) of the International Covenant on Civil and Political Rights.
- (4) State and Territory Governments begin a process to review the harmonisation of anti-discrimination legislation to ensure that the prohibition of racial vilification is extended to religious vilification, as well as prohibiting the incitement of racial or religious hatred, is consistent in each jurisdiction.

### **Health care**

- (5) The Government remove Sections 8(5) and (6) from the Religious Discrimination Bill.

### **Employment**

- (6) The Government remove Sections 8(3) from the Religious Discrimination Bill.

### **Discrimination against students by religious educational institutions**

- (7) The Government amend Clause 10 to 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 disadvantage or expulsion of students.

### **LGBTQA+ Conversion Practices**

- (8) The Government remove Section 41 from the Religious Discrimination Bill.

## **2. Overarching Rights Protection in Australia**

- 2.1 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 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.<sup>2</sup>

- 2.2 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<sup>3</sup>.

- 2.3 Amnesty International supports the definition of ‘freedom of religion’ of the United Nations Human Rights Committee in its General Comment on the International Covenant on Civil and Political Rights (ICCPR), in which it states:

The right to freedom of thought, conscience and religion (which includes the freedom to 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.<sup>4</sup>

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

“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;

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<sup>2</sup> *Commonwealth of Australia Constitution Act 1900*

<sup>3</sup> Australian Human Rights Commission submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Submission 12, para. 5.

<sup>4</sup> 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.

- 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”.<sup>5</sup>

- 2.5 Unlike other countries with comparable legal systems, Australia does not have overarching human rights legislation to balance the freedom of religion with other fundamental human rights, such as the right to freedom of expression and the right to non-discrimination.<sup>6</sup>
- 2.6 Victoria and the Australian Capital Territory provide specific protections for freedom of religion through their human rights legislation.<sup>7</sup>
- 2.7 In Queensland, the *Human Rights Act 2019* will commence in its entirety on January 1 2020.<sup>8</sup>
- 2.8 The *New Zealand Human Rights Act 1993* protects New Zealanders from discrimination in specified areas of public life. The 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).<sup>9</sup> Such an Act would provide vital human rights protections for Australians.
- 2.9 A National Human Rights Consultation in 2008 found widespread community support for a Human Rights Act.<sup>10</sup> There is no indication support has declined since that time.

**Recommendation 1:** The Government begin a process to legislate a Human Rights Act for Australia, to ensure rights to freedom of religion and other fundamental rights are protected and appropriately balanced. The objectives of a human rights act 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, right to peaceful assembly and freedom of association, cultural rights (right to enjoy culture, declare and practise religion and use their language), rights to education and the rights of children in the criminal process, and their access to health care.

**Recommendation 2:** The New South Wales, Tasmanian, South Australian, Western Australian and Northern Territory Governments begin a process to legislate a Human Rights Act, reflective of the objectives outlined in recommendation 1, for their respective jurisdictions.

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

<sup>6</sup> For example, New Zealand, Canada and the United Kingdom

<sup>7</sup> Charter of Human Rights and Responsibilities Act 2006, art 14 (Vic); Human Rights Act 2004, art 14 (ACT).

<sup>8</sup> *Human Rights Act 2019* QLD, s2

<sup>9</sup> 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](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Freedomofreligion/Submissions)

<sup>10</sup> 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>

### 3. Prohibition of religious vilification

- 3.1 Australia has a positive obligation to prohibit and provide remedy for racial and religious vilification in accordance with Article 20(2) of the ICCPR.<sup>11</sup>
- 3.2 The *Racial Discrimination Act* provides civil remedies for offensive behaviour based on racial hatred, however it is not clear whether these protections extend fully to individuals that are subject to discrimination on the basis of their religion.<sup>12</sup>
- 3.3 At a Federal level there is no explicit prohibition against inciting racial and religious hatred. Section 85ZE of the *Crimes Act 1914* to use the internet to intentionally disseminate material that results in a person being menaced or harassed, was repealed in 2004 and replaced with section 474.17 of the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act 2004* which makes it an offence to use a carriage service to menace, harass or cause offence. The section can be used for menacing, harassing or offensive content which is racial in its nature, but does not specifically prohibit advocacy of racial or religious hatred.
- 3.4 Whilst it is Amnesty International's position that a Federal Human Rights Act would be the most effective way to prohibit religious vilification, Amnesty International acknowledges that the Religious Discrimination Bills could provide this protection, in part, if amended.
- 3.5 The states and territories have different legislative frameworks for racial and religious vilification. Queensland,<sup>13</sup> Victoria, Tasmania and the Australian Capital Territory prohibit both racial and religious vilification - Queensland, Victoria and the ACT under the criminal law, and Tasmania under the civil law. However legislation in New South Wales, Western

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<sup>11</sup> United Nations, Treaty Series, (1996) vol. 999, p. 171.

<sup>12</sup> See para 2.107, Parliamentary Joint Committee on Human Rights, Freedom of speech in Australia: Inquiry into the operation of Part IIA of the Racial Discrimination Act 1975 (Cth) and related procedures under the Australian Human Rights Commission Act 1986 (Cth), 28 February 2017, (Freedom of Speech Inquiry) available from

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights\\_inquiries/Freedomspeech/Australia/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights_inquiries/Freedomspeech/Australia/Report)

<sup>13</sup> *Anti-Discrimination Amendment Act 2001* (Qld), ss.124A 131A, *Racial and Religious Tolerance Act 2001* (Vic), s.7., *Anti-Discrimination Act 1998* (Tas) s.19., Serious vilification on the ground of race or 'religious conviction', Criminal Code 2002, s.SECT 750, *Anti-Discrimination Act 1977* (NSW) s. 20D. Prosecution can only occur with consent of the Attorney General and carries penalties of fines up to \$10,000 for individuals and \$100,000 for corporations and up to six month imprisonment for individuals. See also Legislative Council Standing Committee on Law and Justice, "Racial vilification law in New South Wales". A Parliamentary inquiry into the system found its effectiveness has been hindered by a number of procedural impediments, so NSW is currently overhauling the laws., 3 December 2013, p26, available at <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5807/Racial%20vilification%20law%20in%20New%20South%20Wales%20-%20Final.pdf>., *Criminal Code 1913* (WA), ss.76-80, amended in 2004 to include strict liability offences. A private member's bill to amend the Anti-Discrimination Act to make racial vilification unlawful was introduced in the Northern Territory in 2014 but did not pass. See [http://www.austlii.edu.au/au/legis/nt/bill\\_srs/aab2014294/srs.html](http://www.austlii.edu.au/au/legis/nt/bill_srs/aab2014294/srs.html).



Australia and South Australia which prohibits racial vilification do not extend to religious vilification. The Northern Territory has no laws against inciting racial or religious hatred.<sup>14</sup>

- 3.6 In its report on freedom of religion and belief in Australia, the Human Rights and Equal Opportunity Commission (HREOC, currently the Australian Human Rights Commission) recommended that the Commonwealth Parliament should enact a Religious Freedom Act which would recognise and give effect to the right to freedom of religion and belief.<sup>15</sup> Amnesty International supports this recommendation.
- 3.7 HREOC recommends<sup>16</sup> that a Religious Freedom Act should, at least:
- affirm the right of all religions and organised beliefs as defined to exist and to organise and determine their own affairs within the law and according to their tenets.
  - cover the full range of rights and freedoms recognised in ICCPR article 18 and Religion Declaration articles 1, 5 and 6.
  - permit only those limitations on the right to manifest a religion or belief which are prescribed by law and necessary to protect public safety, health or morals or the fundamental rights and freedoms of others.
  - be applicable to individuals, corporations, public and private bodies and all other legal persons who may be subject to Commonwealth legislation.
- 3.8 In conducting its review of Traditional Rights and Freedoms, the Australian Law Reform Commission recommended the Parliament could consider “whether existing Commonwealth laws serve their purposes, including in discouraging the urging of violence towards targeted groups distinguished by race, religion, nationality, national or ethnic origin or political opinion. Greater harmonisation between Commonwealth, state and territory laws in this area may also be desirable.”
- 3.9 Amnesty International agrees with this approach, and we urge the Government to consider recommending the harmonisation of Commonwealth, state and territory laws to close the gaps in racial and religious vilification protections. There is strong imperative to improve these legal protections now, at a time when religious minority groups in Australia, particularly Muslim Australians, report growing discrimination and hate crimes.<sup>17</sup>

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<sup>14</sup> Anthony Klann, “NSW government to overhaul race hate laws after Parramatta shooting”, The Australian, 19 October 2015, available at <http://www.theaustralian.com.au/national-affairs/state-politics/nsw-government-to-overhaul-race-hate-laws-after-parramatta-shooting/news-story/10d8d7d3dee7b1d4be235c8621846d4b>; see also <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5807/Racial%20vilification%20law%20in%20New%20South%20Wales%20-%20Final.pdf>.

<sup>15</sup> Human Rights and Equal Opportunity Commission, *Article 18: Freedom religion and belief*, 1998, p.v, available at: [https://www.humanrights.gov.au/sites/default/files/content/pdf/human\\_rights/religion/article\\_18\\_religious\\_freedom.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/human_rights/religion/article_18_religious_freedom.pdf).

<sup>16</sup> *Article 18: Freedom religion and belief*, R2.2-R2.6, p v-vi

<sup>17</sup> See for example testimony provided to the Freedom of Speech inquiry, p. 38 and p. 132, available from [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights\\_inquiries/Freedomspeech/Australia/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights_inquiries/Freedomspeech/Australia/Report); See also the Islamophobia Register, available from: <http://www.islamophobia.com.au/>

3.10 Amnesty International has consistently made these recommendations throughout the public debate on religious freedoms.<sup>18</sup>

**Recommendation 3:** The Government amend the Religious Discrimination Bills to include express prohibitions of racial and religious vilification in Australia and protects against racial and religious vilification in Australia in line with Australia's obligations under Article 20(2) of the International Covenant on Civil and Political Rights.

**Recommendation 4:** State and Territory Governments begin a process to review the harmonisation of anti-discrimination legislation to ensure that the prohibition of racial vilification is extended to religious vilification, as well as prohibiting the incitement of racial or religious hatred, is consistent in each jurisdiction.

#### 4. Religious Discrimination Bills and healthcare

4.1 Amnesty International is deeply concerned that under the Religious Discrimination Bills people will be refused access to health services on religious grounds. As such, Amnesty International holds the position that this Bill may contravene Australia's obligations under international law, including the Universal Declaration of Human Rights (UDHR)<sup>19</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>20</sup>

##### Conscientious objection

- 4.2 Section 8(5) of the Religious Discrimination Bills enforces existing State and Territory laws that regulate conscientious objection in healthcare.
- 4.3 Where there are health services that are not covered by existing conscientious objection laws, Section 8(6) of the Religious Discrimination Bills means that employers and professional health bodies can only restrict or prevent conscientious objection by a health professional if it causes an unjustified adverse impact on the health of the patient.
- 4.4 The effect of this - prioritisation of personal religious views of a health professional over their patient's health - is unprecedented.
- 4.5 Under the Religious Discrimination Bills therefore, 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.
- 4.6 Amnesty International is concerned that health practitioners may assess patients without full knowledge of their circumstances, leaving them without access to healthcare due to conscientious objection.

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<sup>18</sup> Amnesty International Australia, *Submission to the Religious Freedom Review*, 2018, Recommendations 9 and 10

<sup>19</sup> United Nations General Assembly Resolution 217 A(III), 10 December 1948

<sup>20</sup> United Nations General Assembly Resolution 2200A (XXI), 16 December 1966

- 4.7 It is clear that under these far-reaching conscientious objection regulations, a health practitioners religious beliefs override a patients 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.

**Recommendation 5:** The Government remove Sections 8(5) and (6) from the Religious Discrimination Bill.

## 5. Religious Discrimination Bills and employment

- 5.1 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, or whose characteristics fall outside that particular religious belief (particularly the LGBTQIA+ community and women). 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 the ICESCR and ICCPR.

### Privileging those with religious views in the workplace

- 5.2 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 outside of work hours, regardless of the context.
- 5.3 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 any topics. Non-religious people will only be protected when expressing their views about religion.
- 5.4 The rules under this section may prevent large employers with public missions from taking action that do not align with those missions. For example, an organisation that provides refuge for domestic violence victims 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".

**Recommendation 6:** The Government remove Sections 8(3) from the Religious Discrimination Bills.

## 6. Discrimination of students by religious educational institutions

- 6.1 Section 10 of the Religious Discrimination 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 is of the position that this clause is a license for religious organisations to discriminate.

- 6.2 Amnesty International is deeply concerned that under the Religious Discrimination Bills, religious schools will be able to disadvantage or expel students according to their religious beliefs, or due to them not adhering to certain religious beliefs. An obvious example, and one that is of concern to Amnesty International, is LGBTQIA+ students.
- 6.3 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.
- 6.4 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.<sup>21</sup> 80 per cent of homophobic bullying involving LGBTQI+ young people occurs at school and has a profound impact on their well-being and education<sup>22</sup>.
- 6.5 The 'Preventing Harm, Promoting Justice' report while focussing on LGBT conversion therapy 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.<sup>23</sup>
- 6.6 Supportive, affirming and non-discriminatory environments, including school, have been shown to strongly mitigate the negative impacts of discrimination and abuse.<sup>24</sup>

**Recommendation 7:** The Government amend Section 10 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 disadvantage or expulsion of students.

## 7. LGBTQA+ Conversion Practices

- 7.1 Amnesty International is deeply concerned that efforts to stop the harmful effects of LGBTQA+ conversion practices in Australia will be overridden and undone.
- 7.2 Conversion practices generally employ individual or group counselling or pastoral care to encourage LGBTQA+ people to live 'healthy heterosexual lives, sexually pure lives through celibacy, or to ultimately change their gender identity or sexual orientation.<sup>25</sup> Conversion practices are grounded in ideologies based on the belief that it is wrong to be LGBTQA+.

<sup>21</sup> National LGBTI Health Alliance, Statistics at a Glance, available at:

<https://lgbtihealth.org.au/statistics/?fbclid=IwAR2Z3wcmxboxQSZ9sqO1A7xzLkbyrqDDikMuFZkCS8t9H5vw7foavpSEDY>

<sup>22</sup> 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](https://www.humanrights.gov.au/sites/default/files/7_FTF_2014_LGBTI.pdf)

<sup>23</sup> 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.

<sup>24</sup> Olson, Durwood and McLaughlin, 2016, Mental health of transgender children who are supported in their identities, Pediatrics

<sup>25</sup> SOCE Survivors, *The SOCE Survivors Statement*, 2018, available at: <http://socesurvivors.com.au/>

- 7.3 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.”<sup>26</sup>
- 7.4 Several global jurisdictions have classified conversion practices as fraudulent and have attempted to outlaw them, while Malta has criminalised conversion practices and referrals.<sup>27</sup>
- 7.5 In Australia, Victoria moved to ban conversion practices in 2019.<sup>28</sup> The legislation has limited capacity to challenge the prevalence of the practices. 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 spaces.<sup>29</sup>
- 7.6 All other Australian jurisdictions have made a commitment to either ban, or investigate the banning of conversion practices.<sup>30</sup>
- 7.7 Section 41 of the Religious Discrimination Bill protects “statements of belief” from all Commonwealth, State and Territory anti-discrimination protections.
- 7.8 Section 41(2) excludes conduct which is in bad faith, malicious, harassing, vilifying or incites hatred or violence.
- 7.9 ‘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, as mentioned in 7.2.
- 7.10 Amnesty International shares the concern of survivors of conversion practices that Section 41 may override the Victorian ban, and other future laws by protecting ‘statements of belief’.<sup>31</sup>

**Recommendation 8:** The Government remove Section 41 from the Religious Discrimination Bills.

## 8. Conclusion

- 8.1 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.
- 8.2 Acknowledging that the Federal Government has rejected the proposal of a Federal Human Rights Act, Amnesty International is deeply concerned that the proposed Religious Discrimination Bills provide protection to religious belief or activity at the expense of others. It

<sup>26</sup> Human Rights Law Centre, *Preventing Harm, Promoting Justice*, 2018, available at: <https://www.hrlc.org.au/reports/preventing-harm>

<sup>27</sup> National Taskforce on the LGBTQA+ Conversion Movement, *Actions for change*, 2019, available at: [https://drive.google.com/file/d/1THvy5sqGEZoV8Q-ZDgynEM\\_rk8ISMCDc/view](https://drive.google.com/file/d/1THvy5sqGEZoV8Q-ZDgynEM_rk8ISMCDc/view)

<sup>28</sup> The Hon. Daniel Andrews, *Statement on Conversion Therapy*, available at: <https://www.premier.vic.gov.au/statement-on-conversion-therapy/>

<sup>29</sup> National Taskforce on the LGBTQA+ Conversion Movement, *Actions for change*, 2019

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<sup>31</sup> Jordan Hirst, ‘*Conversion Therapy*’ warning for religious discrimination bills, 2019, available at: <https://qnews.com.au/new-problem-with-morrison-governments-religious-discrimination-bill/>

should be amended according to the proposals of this submission, and be subject to further scrutiny from civil society, particularly the LGBTQIA+ community, women, and religious community (especially minority faiths).