



## Equal Opportunity (Religious Bodies) Amendment Bill 2020 - November 2020

### *Introduction*

The Youth Affairs Council of South Australia (YACSA) is the peak body in South Australia representing the interests of young people, youth workers, organisations and networks throughout the non-government youth sector. Policy positions are independent and not aligned with any political party or movement. YACSA supports the fundamental right of all young people to participate in and contribute to all aspects of community life, particularly the decision-making processes that impact them.

YACSA acknowledges the Equal Opportunity (Religious Bodies) Amendment Bill 2020 and planned reforms are an important step in the right direction however, there is still scope in the legislation for religious bodies to discriminate against vulnerable students, employees and service users, and this will impact on the right of all citizens to be free from discrimination and to be equal before the law.

While the government states that the *Equal Opportunity Act 1984* (SA) reforms effectively strike the balance between equality and religious freedom rights, the legislation maintains the ability of some religious bodies to discriminate against already vulnerable populations and create a hierarchy of rights that places the right to hold and practice a religious belief ahead of any other right in certain instances<sup>1</sup>.

In our submissions to the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 and the Religious Freedom Bills - Second Exposure Drafts 2020, YACSA urged the Federal Government to cease the right of religious affiliated educational institutions and other service providers to lawfully discriminate against individuals based upon sexual orientation and gender identity, intersex status, marital status or pregnancy<sup>2</sup>.

The rights of one individual, organisation or institution should not be permitted to impinge upon the right of any other citizen to be equal before the law. Our international, national and state-based laws and obligations should be applied to all citizens regardless of the personal beliefs of any other citizen, group, organisation, business or institution<sup>3 4</sup>.

YACSA urges government to amend the Bill to ensure that religious and education bodies are no longer able to lawfully discriminate against individuals based upon sexual orientation and gender identity, intersex status, marital status, or pregnancy.

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<sup>1</sup> Human Rights Law Centre (2019). Getting the balance right: Submission on the Religious Discrimination Bill – Exposure Draft. Viewed online 20 November 2020, <https://www.hrlc.org.au/submissions/2019/11/27/submission-on-the-religious-discrimination-bill-getting-the-balance-right>

<sup>2</sup> Youth Affairs Council of South Australia (2019). Submission to the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018. Viewed online 19 November 2020, <https://www.yacsa.com.au/publications/sexdiscriminationamendment>

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

### ***The right to be equal under the law and free from discrimination***

The right to be equal under the law and free from discrimination is a foundation principle of all major treaties, charters and covenants on human rights<sup>5</sup>. Australia, as a signatory to those treaties, covenants and charters, is compelled to ensure that all citizens have equal rights. For example, Article 2 of the United Nations Covenant on the Rights of the Child (UNCRC)<sup>6</sup> states that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Article 7 of the United Nations Declaration of Human Rights (UDHR) compels Australian governments to ensure that all citizens are equal before the law and that all citizens, without discrimination, receive equal protection before the law<sup>7</sup>. Similarly, Article 14 of the International Covenant on Civil and Political Rights<sup>8</sup> requires Australian governments to ensure that all citizens are equal before the law.

While freedom of religious practice is also enshrined in international human rights instruments, these rights extend only to following and observing a religious doctrine. This right does not and should not provide an individual or group the right to impinge upon the inherent rights of others to be equal before the law and to be free from discrimination. Article 18 of the International Covenant on Civil and Political Rights<sup>9</sup> is clear that the right to adopt and observe a religious belief is subject to limitations and these limitations can be prescribed by law to protect the fundamental rights and freedoms of others. Article 14 of the UNCRC similarly states that the freedom to manifest one's religion is subject to limitations to “protect public safety, order, health or morals, or the fundamental rights and freedoms of others.”

Broadly, the UN treaties, charters and covenants recognise that basic rights and freedoms are inherent to all human beings regardless of country of residence, ethnic origin, sexual orientation and gender identity, religion or language. With the adoption of resolution 17/19 and 27/32 - Human rights, sexual orientation and gender identity and resolution 32/2 Protection against violence and discrimination based on sexual orientation and gender identity in the UDHR – the United Nations has made clear the obligations of signatories to protect the rights of the LGBTIQ+ population.

### ***The potential for continued discrimination***

With the government choosing to specifically name sectors in the Bill that will be affected by the proposed changes rather than removing the exemptions altogether, there is a risk that some students, employees, and other individuals and groups will still be impacted by discrimination. For example, pre-schools, primary and high schools are specifically covered under the legislation, but tertiary institutions are omitted; foster care services are named in the Bill, but adoption services are overlooked, and specific sectors are named such as health care and disability support and emergency accommodation, rather than a blanket description that covers all welfare and community services.

YACSA would like to see better protections written into this Bill that only allow religious organisations to discriminate on the basis of religious belief, and not in relation to personal characteristics such as sexual orientation, gender identity, intersex status, marital status or pregnancy.

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<sup>5</sup> Donald, A., Howard, E (2015). The right to freedom of religion or belief and its intersection with other rights. Discussion Paper. ILGA-Europe, Brussels, Belgium. Viewed 24 November 2020, [https://www.ilga-europe.org/sites/default/files/Attachments/the\\_right\\_to\\_freedom\\_of\\_religion\\_or\\_belief\\_and\\_its\\_intersection\\_with\\_other\\_rights\\_0.pdf](https://www.ilga-europe.org/sites/default/files/Attachments/the_right_to_freedom_of_religion_or_belief_and_its_intersection_with_other_rights_0.pdf)

<sup>6</sup> The United Nations. 1989. “Convention on the Rights of the Child.” Treaty Series 1577 (November): 3. Viewed 20 November 2020, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

<sup>7</sup> Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd session, 183 plen mtg, UN Doc A/810 (10 December 1948), Viewed 18 November 2020, <https://www.un.org/en/universal-declaration-human-rights/index.html>

<sup>8</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). Viewed 19 November 2020, <http://www.austlii.edu.au/au/other/dfat/treaties/1980/23.html>

<sup>9</sup> Ibid.

## ***Recommendations***

The *Equal Opportunity Act SA 1984 (SA)* needs to strike a greater balance between protecting the right to religious belief and religious observance, with protections for the rest of the community from discrimination.

Rather than remove the exemptions entirely, the government has listed a range of sectors in which lawful discrimination can no longer occur. However, this means that exemptions will still have the potential to impact individuals and communities in a range of areas. As such, YACSA makes the following recommendations:

- Repeal s 50(1)(c) entirely to ensure that religious bodies are not able to discriminate in the provision of education and public services<sup>10</sup>.
- If the list of affected sectors contained in the Bill is retained rather than a full repeal of s 50(1)(c), YACSA would like to see tertiary education, adoption agencies and an encompassing term for all welfare and community services added to the list.
- Replace s 34(3) with an exemption that only allows for discrimination in the area of employment on the basis of religious belief rather than on the grounds of sexual orientation and gender identity.

These amendments would not only be a demonstrative commitment by government to adhering to South Australia's obligations to human rights and ensuring all citizens are equal under the law but would also ensure that a discriminatory and damaging element of existing legislation is abolished.

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<sup>10</sup> South Australian Law Reform Institute (2016). 'Lawful Discrimination': Exceptions under the *Equal Opportunity Act 1984 (SA)* to unlawful discrimination on the grounds of gender identity, sexual orientation and intersex status. Viewed 18 November 2020, [https://law.adelaide.edu.au/system/files/media/documents/2019-01/eo\\_exemptions\\_final\\_report.pdf](https://law.adelaide.edu.au/system/files/media/documents/2019-01/eo_exemptions_final_report.pdf)



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