



**Religious Discrimination Bill 2021 and related bills**  
***Submission to the Parliamentary Joint Committee on Human Rights***

***Joint Submission from Western Australian Peak Bodies***  
***21 December 2021***

## **About Us**

The Youth Affairs Council of Western Australia (YACWA) is the peak non-government youth organisation in Western Australia. YACWA operates primarily as a human rights organisation that seeks to address the exclusion of young people in a rapidly changing society. Across Western Australia, we represent approximately 100 youth service provider organisations, and many more individual young people and allied community members.

Our vision for Western Australia is one that celebrates and engages young people in all aspects of the community. Our role is to strengthen the trust, cooperation, collaboration, professionalism, and voice of the non-government youth service sector to better serve the young people of Western Australia. YACWA strongly believes that children and young people are the experts in their own experiences and wellbeing needs, and we are dedicated to ensuring that expertise is represented through equal access to community decision-making processes.

In recognition of the unique impacts of discrimination law on young people, YACWA was the lead author of this submission on behalf of the co-signatories.

## **Submission Endorsements**

This submission has been provided on behalf of the following organisations:

1. Advocare
2. Alcohol and Other Drug Consumer & Community Coalition
3. Community Employers WA
4. Community Legal WA
5. Community Skills WA
6. Connect Groups
7. Consumers of Mental Health WA
8. Council of the Ageing WA
9. Ethnic Communities Council of WA
10. Financial Counsellors WA
11. Health Consumers Council WA
12. Injury Matters WA
13. Link West
14. Men's Health WA
15. Mens Shed WA
16. Noongar Family Safety Council
17. Peel Community Development Group
18. People With Disabilities WA
19. Playgroup WA
20. Shelter WA
21. Stopping Family Violence
22. Volunteering WA

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23. WA Association for Mental Health
24. WA Network of Alcohol and Other Drug Agencies
25. WA Council of Social Service

## **Introduction**

We welcome the opportunity to provide a submission to the Parliamentary Joint Committee on Human Rights (the Committee) on the Religious Discrimination Bill 2021 and related bills (the Bill).

Discrimination law in Australia is currently inadequate, and provides insufficient protections for Lesbian, Gay, Bisexual, Trans, Intersex, Queer/Questioning, and Asexual (LGBTIQA+) individuals and communities. To this end, we believe there is a strong need for reform to Australian discrimination law to provide additional protections to individuals on the basis of gender and/or sexuality.

However, this Bill does not currently address these issues, and fails to provide proper protection for those of religious faith whilst weakening existing anti-discrimination protections across the various states and territories. In its current form, the Bill erodes protections already afforded to vulnerable community members, while not extending protections on the basis of gender and sexuality in a sufficient form.

One of the many flaws within the current draft of this Bill is that it effectively authorises employment-based discrimination as it provides a special category of protection for religious beliefs over the human right to beliefs of conscience and free thought. Instead of protecting individuals from religious discrimination, this will only serve to hinder the implementation of inclusive workplace and practice standards fundamental to the work of the community services sector.

Ultimately, the Bill's nature is broad, vague, contradictory and confusing — and leaves too much uncertainty in how it will be interpreted if enacted in law.

Of most concern, however, are the unique and elevated protections the Bill provides to religious bodies and beliefs, above and beyond those provided to other beliefs and non-religious organisations. In these circumstances, many individuals lacking choice and agency in seeking essential care and community support will be afforded no protection and no recourse, and may experience worse outcomes or be deprioritised in service waitlists.

Our recommendation is that the Bill should not be supported or enacted in its current form without significant amendments. In particular, we argue the Bill:

- effectively legalises discrimination against others by providing unique protections to statements of belief that are religiously-based.
- ensures LGBTIQA+ people, young people, and others, will have no protection against the creation of hostile environments under this Bill, and are likely to suffer an increase in discrimination and mental health impacts as a result.
- elevates specific religious interpretations above other religious and philosophical beliefs and provides special protection above any other human rights, contravening the indivisibility of human rights.

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- violates the internationally recognised human rights of young people and Aboriginal and Torres Strait Islander people by providing inadequate time for consultation and input into the legislation under the Committee.
- undermines the ability of organisations and community service providers to maintain inclusive standards of practice that are critical to the provision of services.
- Directly contradicts and overrides a range of existing state and territory anti-discrimination legislation.
- is untenably vague and broad in its scope to provide any reasonable justification for passing into law, and may have broad-reaching impacts that are unforeseen without additional analysis.

**1. The timeframes for the Bill are inadequate for meaningful community consultation, and violate Australia's human rights obligations for input into decision-making**

We wish to express our deep concern with the process of consultation and submissions for this important piece of legislation under the Committee. Discrimination law is a critical element of our society, and works to ensure safety, harmony, and protection for many vulnerable groups in Australia. However, it is also complex and nuanced, and has many unique impacts across the diversity of our nation. Any reform in this area requires lengthy consideration and diverse viewpoints to ensure no unforeseen impacts and alignment with State legislation.

The short timeframe for review and submissions undermines the ability of many to provide meaningful comment, analysis, and evaluation of this Bill and its impacts. The timing of this in December raises additional barriers to many faith-based communities impacted by discrimination law, who may be in the middle of significant religious festivals, and to non-government organisations who see capacity drops over this period with holiday shutdowns.

In addition, the limitation of the Committee's submission process to only publishing written submissions from academics and organisations raises additional questions around the suitability of the consultation process. Encouraging individuals to instead complete a limited survey is unusual in this space, and limits the feedback provided by community members and the public policy debate that enables deeper engagement and scrutiny among stakeholders.

We find it deeply concerning that the process for the Committee, whose primary focus is to examine the alignment of legislation with existing Human Rights obligations, has weakened the ability of individuals to have their voices heard in decisions that affect them so profoundly. Further consideration must be given to how young people and other affected groups can have their voices extensively heard in the development of discrimination law reform, as children are entitled to the right to be heard in the decision-making processes that affect them under the *UN Convention on the Rights of the Child*.<sup>1</sup>

In particular, Article 3 of the *Convention on the Rights of the Child* affirms that any public or private social welfare institution must keep the best interests of a child as the primary consideration of their activities.<sup>2</sup> This is followed up by Article 14, which states that freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law to protect the fundamental rights and freedoms of others<sup>3</sup>.

We are concerned that the proposed amendments outlined in this Bill under Section 12 effectively prioritise statements of belief as non-discriminatory above and beyond the best interests and human rights of children and young people.<sup>4</sup> By treating the rights of young people

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<sup>1</sup> United Nations Treaty Series (1989). *Convention on the rights of the child*. Treaty no. 27531, 1577, pp. 3-178. Available at: [https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch\\_IV\\_11p.pdf](https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf)

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> *Religious Discrimination Bill 2021* (Cth). s 12.

as secondary to the views and opinions expressed by organisational staff and institutions via the justification of their faith, the Bill is in violation of Australia's commitments under the Convention.

It is our view that by providing insufficient opportunity for individuals to be heard, the process of consultation for this Bill alone is potentially in violation of these rights.

In light of this, and our significant concerns below with the Bill in its current form, we recommend that the Bill be withdrawn. Any future discrimination law reform must be conducted with significantly longer lead times for community input, consultation, and analysis to assess its impacts and effectiveness.

## **2. *The Religious Discrimination Bill weakens existing anti-discrimination protections***

There are many examples of where this Bill not only effectively legalises discrimination on the basis of religious belief, but also serves to create an artificial hierarchy and uneven valuation of the subjective and differing beliefs held by individuals within the same faith. Several clauses within the Bill provide significant exemptions to certain religious beliefs that may impact vulnerable groups, such as members of the LGBTIQ+ community, and contravene human rights in Australia.

The potential effect of this is the creation of hostile environments for vulnerable groups, who will be affected by then-lawful statements that they are not welcome.

Section 12 of the Bill is particularly problematic as it provides a protection to certain 'statements of belief' that an individual 'genuinely considers' to be in accordance with their religious faith<sup>5</sup>. Given that religious texts are ambiguous and subject to interpretation, legal enforcement of this may give many individuals and organisations license to make discriminatory statements about any topic or issue that they can then argue through the lens of their faith, even if this view is in contrast to the majority view of other religious members. This would mean that views that are linked to extremism and other harmful ideologies could be protected under law if they are a genuinely held religious belief of the individual.

Statements of belief as defined in Section 5 are ones made in 'good faith by written or spoken words or other communication (other than physical contact)' and that these would be protected as outlined in Section 12(2)(b) if a 'reasonable person' would not consider the statement to threaten, intimidate, harass or vilify a person or group<sup>6</sup>. In addition, Section 12 of the Bill, as well as Paragraph 172 of the accompanying explanatory memorandum note that the Bill does not protect a statement that does not directly relate to the position of 'not having a belief' and is simply philosophical in nature<sup>7</sup>. These are problematic for the following reasons:

- **Section 5 - the 'good faith' clause:** There is no definition of what is a statement made in 'good faith' in the Bill and the attachment of this to the delivery method of communication

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<sup>5</sup> Ibid.

<sup>6</sup> *Religious Discrimination Bill 2021* (Cth). s 5, s 12(2)(b).

<sup>7</sup> *Religious Discrimination Bill 2021: Explanatory Memorandum*. (Cth) p 172.

(written or spoken words) implies that this is the only concern when determining the applicability of 'good faith' rather than the content of the statement. This gives credence to the idea that 'polite discrimination' would be tolerated but the level of impact on the individual who the statement is directed to as well as their ability refute the validity of the content would be limited even if it clearly intends to vilify and devalue their identity.

- **Section 12(2)(b) - the 'reasonable person' clause and statement of belief exemptions:** The concept of who is a 'reasonable person' is undefined and fails to acknowledge the strongly disputed nature of debate in Australia around what is considered threatening, harassing, intimidating or vilifying. The Bill explicitly mentions that speech that is offensive and/or insulting is not included under Section 12(2)(2) despite these terms' subjectivity and overlap with the exemptions listed above, as well as the inclusion of a statutory note which states that 'a moderately expressed religious view that does not incite hatred or violence would not constitute vilification'<sup>8</sup>. The inclusion of these statements in the Bill mean that it is likely that any result of legal challenges would likely align with the person making the statement of beliefs' definition of what is deemed 'offensive' rather 'vilifying' over the person affected, such as for example, an LGBTIQ+ young person being told that their gender and/or sexual identity is sinful and that they would be going to hell.
- **Section 12 of the Bill and Paragraph 172 of the Explanatory Memorandum - Valuing and protecting religious beliefs over all others:** The explicit wording that only statements of religious belief or directly related to 'not having a belief' are protected by the Bills means that the statements and opinions of Australians who have formed moral or ethical beliefs through philosophical, cultural, communal or other means are now legally considered less important and less worthy of protection under the law. This places an artificial state-imposed hierarchy on different beliefs and opinions, unequivocally stating that beliefs held on the basis of religion are superior to, and more worthy of protection than all others. This is a deeply concerning idea to be promoted by a Federal Government intended to be secular in nature and is in stark contrast to Australia's egalitarian values.

Alignment with state and territory legislation is also unclear, with particular concerns around how the proposed Bill would override protections from discrimination that are already enshrined into law, particularly affecting education settings as a result. Subsection 12(1)(c) will directly override a range of anti-discrimination acts enacted under the jurisdiction of various states and territories, many of which hold stronger protections from discrimination on the basis of gender and sexuality<sup>9</sup>. In addition, according to Paragraph 183 of the explanatory memorandum this provision will also allow the Commonwealth Government to disallow future legislation that 'unreasonably limit(s) freedom of religious expression'<sup>10</sup>. This contradicts Australia's Federal system where legislative responsibility over discrimination laws has traditionally been a state and territory responsibility, and this draconian measure will prevent state and territory

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<sup>8</sup> *Religious Discrimination Bill 2021* (Cth). s 12(2)(2).

<sup>9</sup> *Religious Discrimination Bill 2021* (Cth). s 12(1)(c)

<sup>10</sup> *Religious Discrimination Bill 2021: Explanatory Memorandum*. (Cth) p 183.



governments from updating legislation to meet the changing expectations and values of modern society. Some laws and policies that may be undermined and impacted by this Bill are:

- Policies to guide the management and delivery of Western Australian Specialist Homelessness Services.
- Victoria's *Change or Suppression (Conversion) Practices Prohibition Bill* passed in February 2021 and laws in other states and territories banning or restricting conversion practices.
- Western Australia's *Public Health Amendment (Safe Access Zones) Bill* passed in August 2021 and laws in other states and territories enforcing safe access zones around abortion clinics.

Based on the evidence provided above it is clear there is very little evidence that the Bill will have the effect of protecting individuals from religious discrimination as intended, and some evidence that it will actually act to the contrary and provide state-mandated privileges to certain religious individuals and organisations over others.

It is therefore completely unjustified for this Bill to be passed and therefore override a range of existing federal, state, and territory laws, many, such as the *Tasmania Anti-Discrimination Act 1997*, provide much more comprehensive and clear cut protections for religious and non-religious individuals whilst adequately maintaining the balance between free speech and hate speech. For this reason and the litany of others outlined below there is clearly insufficient justification for this Bill to be passed into law.

### **3. The proposed amendments do not provide protection for people of diverse sexuality and/or gender**

LGBTIQA+ young people in Australia face high rates of discrimination in their daily lives and in their education, with one study finding 57.6% of all LGBTIQA+ young people had experienced some form of verbal harassment in their lives.<sup>11</sup> The impacts of this discrimination can be tied to increased rates of mental ill health and distress, higher rates of suicide, and more<sup>12</sup> as there is a clear body of evidence which demonstrates that poorer health outcomes for the LGBTIQA+ community are due to their experiences of social, cultural, and legal discrimination, and not an inherent part of their identities<sup>13 14</sup>.

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<sup>11</sup> Hill A., Lyons A., Jones J., McGowan I., Carman M., Parsons M., Power J., Bourne A. (2021) "Writing Themselves In 4: The health and wellbeing of LGBTQIA+ young people in Australia. National report, monograph series number 124." *Melbourne: Australian Research Centre in Sex, Health and Society, La Trobe University*.

<sup>12</sup> Verrelli, S, White, FA, Harvey, LJ, Pulciani, MR. Minority stress, social support, and the mental health of lesbian, gay, and bisexual Australians during the Australian Marriage Law Postal Survey. *Aust Psychol*. 2019; 54: 336– 346. <https://doi.org/10.1111/ap.12380>

<sup>13</sup> LGBTIQ+ Health Australia. (2021). Snapshot of Mental Health and Suicide Prevention Statistics for LGBTIQ+ People. Retrieved from [https://d3n8a8pro7vhnmx.cloudfront.net/lgbtihealth/pages/549/attachments/original/1620871703/2021\\_SnAPSHOT\\_of\\_Mental\\_Health2.pdf?1620871703](https://d3n8a8pro7vhnmx.cloudfront.net/lgbtihealth/pages/549/attachments/original/1620871703/2021_SnAPSHOT_of_Mental_Health2.pdf?1620871703)

<sup>14</sup> Higa, D et al. (2014). 'Negative and Positive Factors Associated with the Well-Being of Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning (LGBTQ) Youth. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4337813/>

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While we support people of faith being protected under the law, it is important to note that the link between the opposition to LGBTIQ+ identities and the core of religious doctrine is tenuous, and highly disputed within major faith groups.

Religious identities and LGBTIQ+ identities are not mutually exclusive. Many LGBTIQ+ individuals and young people have strong connections with their faith and faith-based communities. We must be careful in discrimination law reform to acknowledge this intersectionality, and ensure reforms are appropriate for the diversity of our communities.

As a collective, we support additional protections for LGBTIQ+ communities to provide protection and recourse against discrimination, harassment, and vilification. However, the Bill in its current form does not provide adequate protections in this space.

Under the statements of belief clause<sup>15</sup>, people of diverse gender and sexuality do not appear to be protected from statements of belief that may harm them, or otherwise engender discriminatory attitudes towards them. Alone, this is highly concerning, and undermines fundamental human rights related to the wellbeing of LGBTIQ+ individuals.

Alignment of this Bill with other legislation is also unclear, and hinders our ability to analyse and provide comment on the impacts of this reform. For example, the *Sex Discrimination Act 1984* currently provides exemptions for religious bodies to discriminate on the basis of sexuality and gender — however, this reform will be delayed for 12 months or more according to recent reporting.<sup>16</sup> Reform in this area must be considered in tandem with the Religious Discrimination Bill (Cwlth) 2021 to understand how these powers will align.

Given that a large proportion of youth services in Western Australia are religious-based organisations, we are also concerned that this Bill will further alienate many LGBTIQ+ youth workers, who may feel that they will be unable to adequately deliver support to vulnerable young people in the community if their job is at risk due to their sexuality and/or gender identity.

The impacts of this are obvious, however lesser recognised is the impact of this on creating a hostile environment for young people — seeing an LGBTIQ+ identifying teacher be expelled sends a message to a young person that they are not welcome.

The Youth Pride Network's (YPN) recent report into LGBTIQ+ young people's experiences of the youth accommodation system in Western Australia revealed that over 41% of the young people surveyed to inform the report would choose not to access a service because it was religiously affiliated.<sup>17</sup>

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<sup>15</sup> *Religious Discrimination Bill 2021* (Cth), s12.

<sup>16</sup> OutInPerth (2021). Michaelia Cash says Sex Discrimination Act reform must wait. 16 December 2021. Retrieved from: <https://www.outinperth.com/michaelia-cash-says-sex-discrimination-act-reform-must-wait/>

<sup>17</sup> Gance, C., Schweizer, K., Kealy, A., Bruce-Truglio, S., Henderson-Watkins, C., Evans, R. & Rothwell, M. (2021). State of Play Report: LGBTIQ+ Young People's Experiences of the Youth Accommodation System. *Youth Pride Network*. Retrieved from: [https://www.youthpridenetwork.net/\\_files/ugd/34ec50\\_e736401c8c10402f93fef358737805eb.pdf](https://www.youthpridenetwork.net/_files/ugd/34ec50_e736401c8c10402f93fef358737805eb.pdf)

If this Bill passes into law, it is reasonable to assume that the number of LGBTIQA+ young people avoiding religious-based services entirely for fear of discrimination will significantly increase. This will be the result of the legal protections afforded to individuals under the Bill for making discriminatory statements without recourse from their employer, invalidating any previous attempts that the service has made to be inclusive.

This would potentially cause further harm to a cohort that already faces significant discrimination, with YPN's report noting that the impact of negative/discriminatory experiences on LGBTIQA+ young people including developing a negative self-belief that they are worthless or broken, developing a severe mistrust of services, making re-engagement with support significantly more difficult, and a longer time spent homeless and under threat from further harm as a result<sup>18</sup>.

#### **4. The 'statements of belief' clause undermines organisational and workforce standards of inclusive and safe practice**

Section 15 provides exemptions for 'qualifying bodies' that are 'empowered to confer, renew, extend, revoke, vary or withdraw an authorisation or qualification that is needed for, or facilitates' practice, trades, or occupational requirements<sup>19</sup>.

This provision is unworkable and would have wide-ranging impacts upon the community services sector, preventing professional bodies and employers from delivering consequences for discrimination that falls under this exemption. For example, should a worker in a youth homelessness service extol that all LGBTIQA+ young people are 'going to hell' based on a religious belief, the protection afforded under this section would mean an organisation would have no recourse to discipline the worker and take steps to ensure a safe environment for clients.

Inclusive practice and service standards rely on a workforce that is trained and adheres to certain protocols in engaging with community members. This is particularly vital for organisations to provide effective and safe services to vulnerable communities, including LGBTIQA+ communities, refugee and or migrant communities, young people with disabilities and Aboriginal and Torres Strait Islander people — among many others.

Standards such as the WA Youth Work Code of Ethics and Rainbow Tick Accreditation, are widely used and adopted across the community services sector, and provide frameworks for organisations to maintain inclusive practice standards. Many organisations have internal codes of conduct policies that dictate the need for affirming and inclusive practice.

Not only does this Bill undermine these organisational and workforce standards of inclusive and safe practice, it may also override many state-based approaches and policies that guarantee

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<sup>18</sup> Ibid.

<sup>19</sup> *Religious Discrimination Bill 2021* (Cth). s 15.

protections from discrimination for young people, including those who are LGBTIQ+ when accessing youth services. For example, Standard 9 of the Western Australian State Government's Specialist Homelessness Service Standards states that agencies must provide a service to people regardless of their gender, culture, race, disability or sexuality.<sup>20</sup> This provision and the constitutionally defined right of States to manage the direction of their community threats are under threat as a result of this Bill.

The YPN's 2021 report into the experiences of LGBTIQ+ young people in the homelessness system has demonstrated that discrimination is already rife within service providers. Now is the time to be strengthening protections for these groups through robust service standards and evidence-based inclusive practice approaches. This Bill in its current form erodes existing approaches with an unclear scope, and hinders the fundamental tenets of ensuring basic needs can be met by all.

**5. *The scope of the Bill provides special exemptions for religious organisations and beliefs over those of others, and may allow undue harm to LGBTIQ+ communities, people with disabilities, women, and others***

The *International Covenant on Civil and Political Rights* provides that everyone shall have 'the right to freedom of thought, conscience, and religion'. Current wording of the Bill within Section 12 only applies protections to statements of belief relevant to religious beliefs or 'relates to the fact of *not* holding a religious belief'.<sup>21</sup> This does not protect other beliefs.

Under Sections 7 to 9, the Bill provides exemption to the conduct of certain religious bodies providing health and community services, where conduct is done 'in good faith', in accordance with a publicly available policy, and a person of the same religion as the body could reasonably consider the conduct to be in accordance with the doctrines, tenets, beliefs or teachings of that religion'. Further, Section 7(3) provides exemptions for religious bodies to 'preference to persons of the same religion as the religious body'<sup>22</sup>.

The effect of these exemptions is unclear, but appears wide-reaching and likely to have unique impacts by authorising discrimination for vulnerable populations without recourse. We are concerned that this prioritises the beliefs of those with discriminatory views over the views of others, with dire consequences for vulnerable groups who would lack protection and recourse from this discrimination. This is particularly insidious when many groups who may be subject to such discrimination — people of faith other than that of the religious service provider, LGBTIQ+ people, women, and people living with a disability — may lack provider choice and avenues for their voice to be heard. Whether the Bill further allows services to prioritise religious clients over others is also unclear, and a concerning possibility.

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<sup>20</sup> Government of Western Australia (2016). *Specialist Homelessness Service Standards*. Perth: Western Australia. Retrieved from:

[https://www.dcp.wa.gov.au/servicescommunity/Documents/SHS%20Service%20Standards%20Guide\\_Complete.pdf](https://www.dcp.wa.gov.au/servicescommunity/Documents/SHS%20Service%20Standards%20Guide_Complete.pdf)

<sup>21</sup> *Religious Discrimination Bill 2021* (Cth) s 5, s12.

<sup>22</sup> *Religious Discrimination Bill 2021* (Cth) s 7(3).

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For LGBTIQ+ young people of faith, there is a risk that as a result of this Bill that they will be unable to access services or other institutions that are in accordance with their faith if those services are openly hostile towards LGBTIQ+ people. Many LGBTIQ+ community members are also people of faith, with one study estimating this to be almost 30% of all young LGBTIQ+ people.<sup>23</sup>

All individuals have a right to be treated equal before the law. This Bill as it currently stands will undermine this core principle of our democracy and Australia's commitment to the *United Nation's Universal Declaration of Human Rights*, as it prioritises those with discriminatory views over others within communities of faith.

This approach contradicts the indivisibility of human rights, by providing special status to beliefs and views that are drawn from religious institutions and backgrounds.

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<sup>23</sup> Hill AO, Lyons A, Jones J, McGowan I, Carman M, Parsons M, Power J, Bourne A (2021) "Writing Themselves In 4: The health and wellbeing of LGBTQ+ young people in Australia. National report, monograph series number 124." *Melbourne: Australian Research Centre in Sex, Health and Society, La Trobe University.*