Limits on Religious Freedom.

A SUBMISSION TO THE INQUIRY
BY THE ATTORNEY-GENERAL’S DEPARTMENT
HUMAN RIGHTS UNIT ON THE
RELIGIOUS FREEDOM BILLS PACKAGE

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**Glossary**

**Bisexual or Bi:** Refers to people whose sexual and romantic feelings are for both men and women, or more.

**Cisgender:** Refers to people whose sense of gender and/or sex matches the sex they were assigned at birth.

**Conversion Therapy:** A form of evangelising, practices or therapies promoting changing from LGBTIQ+ identification largely into heterosexual gender conforming/ aesthetically conforming alignments.

**Dominion:** Sovereignty or control over territory and/ or people, things and ideas.

**Evangelising:** Activity attempting conversion of others to a religion or sect.

**Gay:** People whose sexual and romantic feelings are primarily for the same sex (may refer to men).

**Gender Expression:** How a person, thinks, acts, dresses and speaks which distinguishes them as masculine or feminine. The sociological construction of one’s masculinity or femininity or androgyny etc.

**Gender Identity:** the gender-related identity, appearance or mannerisms or other gender-related characteristics of an individual with or without regard to the individual’s designated sex at birth.

**Gender Queer:** Can be used as an umbrella term similar to Transgender but commonly refers to people who do not identify or conform with traditional gender expectations.

**Homophobia/ Transphobia/ Anti-LGBTIQ + Bias:** An individual’s or social misunderstanding, fear, ignorance of, or prejudice against gay, lesbian and/or bisexual, transgender, intersex or queer people.

**Intersex status:** The status of having physical, hormonal or genetic features that are – (a) neither wholly female nor wholly male; or (b) a combination of female and male; or (c) neither female nor male.

**LGBTIQ+:** An umbrella acronym for lesbian, gay, bisexual, transgender, intersex, queer and other people.

**Lesbian:** Women whose sexual and romantic feelings are primarily for other women.

**Queer:** May refer to the LGBTIQ+ community, or an anti-identity, or inconsistent or fluid identity.

**Sex:** A human interpretation of the complex relationship of genetic, hormonal, morphological, biochemical, and anatomical characteristics that impact the physiology of the body and differentiation of the brain.

**Sexual Orientation:** The direction of one’s sexual and romantic attractions and interests.

**Theocracy:** Governance based on religious law, viewing leadership as divine and/ or divinely inspired.

**Trans, Transgender, Trans-spectrum:** A person who identifies as a gender different to the one assigned at birth. Describes a broad range of non-conforming gender identities and/or behaviours.

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1 Most definitions included here are repeated from past works (Jones, 2012).
Foreword

I thank the Australian Government and the Attorney-General’s Department for affording the public a chance to provide feedback on the Religious Freedom Bills Package. I support individuals’ freedom in choosing or rejecting religious belief, and in activity that is not harmful to others.

However, I highlight the lack of reflection of key constitutional and legislative restrictions crucial to fully realising religious freedom in the package, or Australian citizens’ reported preferences and experiences. I encourage pausing to revise the package in consideration of its legality, research-based feedback and direct consultation with groups for whom this package would have detrimental and discriminatory impacts.

I make this submission to you in my role as an academic expert in LGBTIQ+ policy issues at Macquarie University, with particular reference to my studies in the field and knowledge of human rights texts. However, this submission does not necessarily represent the views of Macquarie University as an organisation or its staff and students.

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About the Author

Dr Tiffany Jones is an Associate Professor and sociologist at Macquarie University’s Department of Educational Studies. Dr Jones lead or collaborated on many projects in LGBTIQ+ Studies funded by the ARC, UNESCO and other bodies. Her peer-reviewed books include the recent book 'Improving Services for Transgender and Gender Variant Youth' (2019). Dr Jones liaises and constructs technical, policy and data reports with UNESCO and other UN bodies, including the recent report 'Bringing it Out in the Open: Monitoring school violence based on sexual orientation, gender identity or gender expression in national and international surveys' (2019). She also works with various international and local/ state government and non-government organisations, on policy development around LGBTIQ+ issues in Australia and overseas. She sits on the editorial board of the peer-reviewed academic journals and was awarded the 2018 AARE Raewyn Connell Award for leadership in gender and sexuality education research.
Executive Summary

Limits on Legislation
One’s religious freedom requires limitations, to ensure respect for others’ religious freedoms and rights. In international law Australia is a party to, clear limitations were written into protections for religious freedom. These limitations include, for example: public safety, health and other individual’s rights, including their enjoyment of freedom of thought without coercion. These limitations also include key protections for rights against discrimination on the bases of sexual orientation, gender identity and expression and intersex status. Australia’s Constitution pro-actively prevents religious theocracy, and particularly government evangelising or dominionistic religious rule in law and programs. However, proposed protections for religious bodies (alongside existing Commonwealth funding and protection for such bodies) appears an over-step by the Australian Government in support of religious organisations rather than Australians. This section of the submission argues that extensive protections for religious freedom already cover individuals, whilst proposed protections for religious organisations sometimes go too far in allowing discrimination against Australians.

Specific Sector Considerations
Research on LGBTIQ+ peoples’ experiences highlights the need for more careful limitation of religious freedom to prevent discrimination on the basis of actual or perceived sexual orientation, gender identity and gender expression, and intersex status in a variety of sectors. For brevity, only three are addressed in this submission: health, employment and education. The submission outlines the existing problems in healthcare of widespread refusals of service for transgender people, enforced interventions for people with intersex variations and complexities in finding mental health support for same-sex attracted people. These issues make it especially important not to limit healthcare provisions to this group. The submission then explores data on employment discrimination for transgender and gender diverse people, data on people with intersex variations who usually did not tell their employers and colleagues about their variations, and organisational discrimination by some religious schools against LGBTIQ+ teachers – problems which would be worsened by the introduction of this bills package. Finally this section explores education issues including transphobic discrimination, high drop-out for people with intersex variations and heterosexual conversion attempts in education settings – urgently emphasising the need to ban discrimination against LGBTIQ+ students.

Conclusion & Recommendations
The conclusion argues against progressing the Religious Freedom Bills package in its current form. It makes the case that there is a greater need for a bill of rights, and for limitations on coercive discrimination and any enforced treatment intervention on the basis of religion than for more (already protected) religious freedom protections. It points out the need to consider ‘belief’ and ‘activity’ as distinct, with the latter as carrying more potential for harm in some cases. Some key bodies and groups are recommended, for consultations, around complexities that arise in the very wide-reaching and problematic proposed package.
1. Limits on Legislation

The Religious Freedom Bills package (Australian Government, 2019a) must be considered against existing laws and sector-specific considerations. This section of the submission considers the protections and limits placed on religious freedom in international and domestic legislation. It explains both the limits in religious freedom provisions and in protections against discrimination for example on the basis of sexual orientation, gender identity, gender identity and expression and intersex status.

1.1 International Law

(People) are free to disapprove of same-sex relationships, for example. They have an absolute right to believe – and to follow in their own lives – whatever religious teachings they choose. But that is as far as it goes. The balance between tradition and culture, on the one hand, and universal human rights, on the other, must be struck in favour of rights (Pillay, 2012).

Religious freedom for one person requires limitations to allow the religious freedom of another. Under the international treaties Australia is a party to, clear limitations were written into the original protections for religious freedom. These limitations include, for example: public safety, health and other individual’s rights, including their enjoyment of freedom of thought without coercion. This is seen in:

- **The Refugee Convention** (United Nations High Commissioner for Refugees, 1951)
  - Article 1 refugee protections on grounds including ‘religion’ and ‘opinions’ include in Article 2 limitations for compliance with laws and regulations in the new country;
- **The C111 Discrimination (Employment and Occupation) Convention** (International Labour Organisation, 1958)
  - Article 1 exclusions of (a) ‘distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin’ in employment or occupation’; and (b) ‘such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation’ include in Article 2 specific limitations for jobs’ ‘inherent requirements’;
- **The International Covenant on Civil and Political Rights** (United Nations, 1966)
  - Article 18 rights to freedom of thought, conscience and religion include (3) limitations ‘necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others’ (thus limiting all claims) and (2) ‘coercion which would impair his freedom to have or to adopt a religion or belief of his choice’ (thus limiting coercive evangelising),
  - Article 26 protections for all persons ‘equal and effective protection against discrimination on any ground’ (thus balancing all claims), and
  - Article 27 protections for ‘ethnic, religious or linguistic minorities’ ensure minority community cultures are not erased by dominionistic dominant religious cultures; and
- **The C158 Termination of Employment Convention** (International Labour Organisation, 1982)
  - Article 5(d) invalidates employment termination on the bases of ‘race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin’ – thus providing both protections for religious and atheist employees, and limits on certain religious employers.

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2 My emphasis.
Limitations were further clarified in the 2000s and particularly when the United Nations Human Rights Council adopted resolution 17/19 – the first United Nations resolution on human rights, sexual orientation and gender identity. It received support from Council members from all key regions. All people have a basic human right to equity free from discrimination regardless of sexual orientation, gender identity and expression and intersex status (UNESCO, 2016b, 2016c; United Nations, 1948). Nations are to ensure these rights in legislation (United Nations, 2012, p. 13). UN Human Rights Chief Navi Pillay (2012) explained that the right to freedom of religion does not include a right to discriminate against LGBTQ+ s’ fundamental human rights to non-discrimination, education and employment equity. Indeed it is limited by it:

- A/HRC/RES/27/32 Human Rights Council resolution - Human rights, sexual orientation and gender identity (United Nations, 2014) urges states to ‘prevent loss of life’ and highlights the need for prompt, exhaustive and impartial investigations into ‘killings of persons belonging to national or ethnic, religious and linguistic minorities or because of their sexual orientation or gender identity’;
- A/HRC/RES/32/2 Protection against violence and discrimination based on sexual orientation and gender identity (United Nations, 2016) affirms that all human rights ‘are universal, indivisible and interdependent and interrelated’, to be ‘in a fair and equal manner, on the same footing, and with the same emphasis’. While the significance of ‘religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights’ including non-discrimination around sexual orientation and gender identity. The United Nations has placed pressure on Australia to support greater recognition of discrimination on the basis of sexual orientation, gender identity and gender expression in religious institutions (UN Human Rights Council, 2011; UNESCO, 2015, 2016a, 2016b; United Nations, 2012; United Nations High Commissioner for Human Rights, 2011). For people with intersex variations, actions called for which may impact the Religious Freedom Bills include (Free & Equal United Nations for LGBTI Equality, 2018; United Nations, 2012):
  - Prohibiting medically unnecessary surgery and procedures on the sex characteristics of intersex children, protecting their physical integrity and respecting their autonomy;
  - Prohibiting discrimination including in education, health care, employment, sports and access to public services; and
  - Ensuring intersex people and organizations are consulted in the development of relevant legislation.

The religious freedom and right to non-discrimination of LGBTQ+ people and others impacted by these Religious Freedom Bills must be primarised over religious organisations’ or individuals’ dominion – which is not protected. Religious freedom is a shield enabling an individualistic ‘I choose to follow and be impacted by MY religious views’ approach; not a sword enabling a dominionistic ‘YOU must follow and be impacted by MY religious views’ approach.

1.2 Australia’s Constitution & Laws

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 (Commonwealth of Australia, 1900, Section 116)³.

³ My emphasis.
Section 116 of the Australian Constitution decrees a separation of Church and State (Commonwealth of Australia, 1900). Australia is a secular nation in which individuals are free to believe or not, whatever they like, and to carry out religious activities where these do not impinge on the rights of others, or break laws. Australia’s Constitution not only protects the religious freedom of atheists, agnostics and those who though within established religious groups hold differentiated ideals to that group’s norms… it very pro-actively prevents religious dominion in law, or theocracy. Most especially, it prevents government evangelising in Commonwealth law and programs. It is unconstitutional for the Australian Commonwealth to make any law for imposing any religious observance – including allowance for the exclusion of or discrimination against LGBTIQ+ s in religious schools as currently exists in the SDA. It is also unconstitutional for the Australian Commonwealth to allow a religious test for qualifying for working in Australia’s government-funded religious education sectors and schools for LGBTIQ+ teachers and staff; and unconstitutional (given our legal requirement that all young people whether religious or not be physically at school until of age) to enforce such religious compliance tests for LGBTIQ+ students. Other protections and limitations for freedom of religion are provided under:

  – Section 351 Discrimination protects against adverse actions against an employee/ prospective employee, because of their ‘race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer’s responsibilities, pregnancy, religion, political opinion, national extraction or social origin’ – with limitations based on jobs’ ‘inherent requirements’ and also in key circumstances for religious institutions,
  – Section 772 Employment not to be terminated on certain grounds protects against employment termination on the above grounds with similar limitations;
- Migration Act 1958 (Australian Government, 2019b)
  – Section 36 Protection visas provides for refugee status where people were previously persecuted internationally for reasons of ‘race, religion, nationality, membership of a particular social group or political opinion’;
- Age Discrimination Act 2004 (Government, 2017)
  – Section 35; provides some age discrimination allowances for a body established for some religious purposes limited by conformity to doctrine and adherents’ ‘religious sensitivities’.
  – Section 37 provides (overly-generous) exemptions to discrimination sex, sexual orientation, gender identity, marital or relationship status for religious bodies with limitations on Commonwealth-funded aged care or employment of people in aged care;
  – Section 38 provides (overly-generous) exemptions for those educational institutions established for religious purposes exemptions around staff/ contractors/ provision of education and training supposing offense for ‘the religious susceptibilities of adherents’ and currently lacks limitations on Commonwealth-funding of such religious education;
- The Evidence Act 1995 (Australian Government, 2016)
  – Section 24 declares a religious oath in giving evidence unnecessary,
  – Section 127 provides for the clergy of any church or religious denomination to refuse to divulge that a religious confession was made, with limitations on communications for criminal purpose.

Further, state and territory equal opportunity and anti-discrimination laws protect freedom of religion through various exemptions and human rights acts (seen in the ACT and Victoria).
In sum, strong safeguards for religious freedom already exist internationally and domestically, which work to over-generously protect religious freedom in Australia for both individuals and institutions even though there is some clear evidence of limitations… I claim some safeguards are ‘overly-generous’, because there is existing allowance made for harm and discrimination by religious organisations and for religious bases within them. However, the changes proposed in the draft Religious Freedom Bills would be restricting individuals’ religious freedom through imposing too much dominionistic religious rule in a range of new areas affecting Australian citizens livelihoods, and essential service delivery (employment, healthcare, commonwealth law and programs etc.) and through disregarding other protected rights to non-discrimination – particularly on the basis of sex, gender identity and expression, sexual orientation and intersex status. The bill does not separate out the freedom to choose one’s own religious belief or activity, from any allowance for imposing engagement in one’s religious belief or activity on others. This is in part because it makes no distinction between its treatment of belief and activity (activity requires a greater need for limitation) and between unharmful activity and harmful activity (harmful activity is of the type of concern). Thus religious freedom protection needs to be more carefully thought-out to be consistent with existing laws and their logic of limitations, and to reign in existing over-play of allowances for the imposition of religious activity that is harmful to others. To protect religious freedom tighter restrictions around coercive evangelising could be needed to shield vulnerable parties unable to withhold their consent such as children, people with mental disabilities and people experiencing the coercive vulnerabilities inherent to being in employment, healthcare, education, accommodation or other services. Commonwealth funding of religious organisations seeking exceptionalism in being able to discriminate against Australian citizens contributes, alongside the proposed package, to a sense that the Australian Government will be over-stepping in promoting religious bodies above citizens. The next section of this response looks at specific sector considerations where some forms of religious freedom are problematic.
2. Specific Sector Considerations

The Religious Freedom Bills package (Australian Government, 2019a) should be considered against sector specific considerations. This section of the submission explores some key research first on health, secondly employment and thirdly education. The studies cited show the need for more careful limitation of religious freedom to prevent discrimination on the basis of actual or perceived sexual orientation, gender identity and gender expression, and intersex status.

2.1 Health

Transgender and Gender Diverse People

*I’ve been refused treatment by two doctors this year, and I said to one doctor, ‘you just told me to go somewhere else,’ and he said, ‘I don’t treat your kind, I don’t know anything about you,’ and I wasn’t asking him for any medication for being trans, he was actually supposed to be arranging a colonoscopy for cancer, but I said to him, ‘what are you talking about? I’ve got the same organs as everyone else, my blood’s red, I’m not from another planet’* (Trans woman with prostate cancer in Kerr, Fisher, & Jones, 2019, p. 50).

Transgender people are significantly discriminated against in Australian healthcare already, without adding new legal allowance for health professionals to forego their healthcare service duties to the group. The TRANSscending Discrimination in Health and Cancer Care (Kerr et al., 2019) survey of 537 transgender and gender diverse (TGD) Australians aged 18+yrs showed over 90% had experienced discrimination or abuse in general. One in five were physically assaulted, over a quarter were sexually assaulted. These TGD Australians face appalling difficulties accessing healthcare:

- One in five were refused general healthcare.
- 14.2% were verbally harassed, 5.7% experienced unwanted sexual contact and 2.3% were physically attacked within a healthcare setting.
- 37.7% were asked unnecessary/invasive questions about their trans status, not related to their visit.
- One in four avoided attending the emergency department because they were TGD.
- Most sometimes or often stopped going to the doctor due to inability to find a doctor they are comfortable with (68.9%), and fear of mistreatment (58.8%).
- One in eight participants never disclose their gender to healthcare worker.

Gender affirming care is especially hard to find (Kerr et al., 2019):

- Few were able to see their usual GP/HCP for gender affirming care (37.0%), under a third felt they seemed informed (28.3%).
- Almost half (43.2%) were unable to access a doctor who could give gender affirming care in the last year at all when they needed to.
- Almost a third had to educate their healthcare provider on TGD issues in the last year, almost a quarter were refused gender affirming care.
- Most participants were either very uncomfortable or uncomfortable (81.3%) discussing their needs as a TGD person with a healthcare provider that they did not know.
- Almost a tenth of trans women had to get hormones from sources other than a healthcare provider.
• Transgender people commonly find themselves driving to another city to get care, one in ten must fly to another city/state. One in ten trans women had flown to another country.
• Within a healthcare setting, 14.2% have been verbally harassed, 5.7% have experienced unwanted sexual.

**People with Intersex Variations**

*I am a fairly ordinary woman in most respects. The difference is I developed testes instead of ovaries. I also take a large shoe size. I had constant messages and pressure to be feminine as a kid and as a young woman from parents and doctors. Really messed me up. I was given the very loosest process information about my treatments, no messages at all on the risks to my life. I nearly died of septicaemia as a teenager, due to my genital surgery, I missed so much school I actually had to drop out entirely. It changed my whole life. Immense emotional impact to this day. I suffered PTSD and depression, and attempted suicide. I have struggled to get or keep jobs and felt trapped in a cycle of being outside of the normal social systems. I feel good about the way my body was naturally now that I have read more and talked to more people. I will never feel good about the surgical changes I was made to endure at an age too young to know better* (Woman with intersex variation in Jones, Hart, et al., 2016, p. 99).

People with intersex variations are significantly discriminated against in Australian healthcare already, without adding new legal allowance for health professionals to impose or forego healthcare service duties to the group. The ‘Australians born with Congenital Variations in Sex Characteristics (Intersex/DSD/hormonal, chromosomal or other biological variations/conditions)’ (Tiffany Jones, Hart, et al., 2016) survey of 272 people with intersex variations aged 16+yrs showed 66% had experienced discrimination about their intersex variations from strangers in general. Around 27% had disabilities and most (64%) learned about their variations aged under 18yrs, a third learned as adults. Whilst many were influenced by negative messaging and felt negatively about their variations when first told of them, over half felt positively about them now. Australians with intersex variations face terrible difficulties in accessing supportive healthcare and are often coerced or enforced into unnecessary healthcare procedures according to other peoples’ beliefs about sex-gender ideals, particularly in infancy and youth:

• Doctors were most likely to know about participants’ intersex variations (for 92% of participants) but less than a third of Australians with intersex with variations found their doctor supportive.
• Most participants (60%) reported that they had experienced a medical treatment intervention related to their intersex variation. On average they had experienced at least two interventions. The most commonly reported interventions were hormonal treatments and genital surgeries of varying kinds.
• Over half of all treatments were delivered to participants when they were aged under 18yrs.
• One fifth of the participants had been given no information at all about any surgical or hormonal treatments they had received and the majority were not told about risks related to the interventions, their right to not have these often life-changing treatments or other related information.
• Participants reported various physical, mental and psychological impacts from treatments.
• Wellbeing risks were high – 42% of participants had thought about self-harm and 26% had engaged in it; 60% had thought about suicide and 19% had attempted it – specifically on the basis of issues related to having a congenital sex variation.
• The group mostly attributed their wellbeing risks to negative social responses from others, difficulties around having undergone interventions or issues around gender/identity. Overall their mental health service experiences were mixed.
Overall, 44% of the group reported receiving counselling/training/pressure from institutional practitioners (doctors, psychologists etc.) on gendered behaviour; and 43% from parents. Many participants desired improvements in training for mental health services/workers.

**Lesbian, Gay and Bisexual People (+)**

*Don't have a lot of faith in the public system so I use informal supports while I wait for a psych/GP appointment. Also have quite a stigmatised illness and have had a bunch of bad experiences with counsellors, psychologists and specialists before so don’t have a lot of trust for practitioners I don’t already know/aren't explicitly at LEAST queer friendly* (Bisexual woman in Waling, Lim, Dhalla, Lyons, & Bourne, 2019, p. 26).

Same sex attracted youth aged 14-21yrs in the *Writing Themselves in* surveys over time showed participants increasingly disclosed being same sex attracted to their doctors – from around a tenth in 1998 to around a third of 3,134 participants in 2010 (Hillier et al., 2010). The *Understanding LGBTI+ Lives in Crisis* survey of 472 LGBTIQ+ participants showed experiences of discrimination were widespread amongst the community (Waling et al., 2019). Lesbian, gay and bisexual people have faced widely recognised discrimination in healthcare including assumptions around STI status and vulnerabilities, and mistreatment of next of kin.

- 71% of LGBTIQ+ people did not reach out to a crisis support service during their most recent personal or mental health crises, 32.6% reported anticipation of discrimination as a key barrier (for a third of respondents) (Waling et al., 2019).
- Some same sex attracted youths’ only source of information on safe sex was their health professionals or doctor. Health professionals are particularly encouraged to take sexual histories and also talk about future sexual possibilities in a non-judgemental manner with young people, when determining the information, referrals and reproductive advice they may need (Hillier et al., 2010).
- How healthcare professionals respond to same sex attracted youths’ identity disclosures matters. Same sex attracted youths’ rates of suicide and self-harm when they have experienced physical abuse, are significantly lower if they received support about their identity disclosure to their doctors and especially their school nurses (the rates of suicide attempts were over 70% with rejection from the school nurse, and just above 40% with the school nurse’s support, Hillier et al., 2010, p.76).
- Rurality increased the risk of already high negative mental health outcomes for same sex attracted youth, likely due to the lack of supportive communities and services – 37% of rural participants had self-harmed compared to 28% in urban areas and nearly a quarter of rural participants had attempted suicide compared to 15 per cent in urban areas (Hillier et al., 2010; Jones, 2015a).
In sum, key issues for LGBTIQ+ people are that health providers and professionals may discriminate against them by directly refusing or enforcing health service access or treatments, or mistreating them in other ways in healthcare provision already impacting their mental health. This makes it especially important not to limit their healthcare rights even further. No individual health professional’s religious freedom erases the healthcare and bodily autonomy rights, or justifies the refusal or enforcement of treatments, for LGBTIQ+ people. Equitable healthcare for LGBTIQ+ people must be guaranteed. Since emergency and also specialised medical needs may arise at any time for any LGBTIQ+ around Australia, the Australian Government must ensure equitable service is supplied at all health services. Failing to do this leaves the Australian Government vulnerable to lawsuits due to unconstitutionality of its writing religious coercion into law through these Religious Freedom Bills. Further, legislative provisions that categorically outlaw conversion practices in mental health services would send a clear message that this conduct is ineffective according to research and professional codes, unprincipled and harmful according to all key psychological bodies’ well established statements (American Psychological Association, 2011; APA Task Force on Appropriate Therapeutic Responses to Sexual Orientation, 2009; Australian Psychological Society, 2007). Researchers and lawyers have pushed for a ‘specific provision that unequivocally prohibits conversion practices, whether or not an individual complaint is made’ (Timothy Jones, Brown, Carnie, Fletcher, & Leonard, 2018, p. 66). Legislators should intervene to protect children from conversion therapies (Timothy Jones et al., 2018, p. 66) and infants/children with intersex variations from medically unnecessary aesthetically or ‘normalising’ medical interventions (Jones, Hart, et al., 2016). We must recall that Article 18 (3) of The International Covenant on Civil and Political Rights (United Nations, 1966) limits the freedom of religion from preventing public safety and health of others.

2.2 Employment

Transgender and Gender Diverse People

‘(employers) keep fretting about ‘but which bathroom will you use?’ and how I am ‘a HR nightmare’; ridiculous things like that’ (Younger transgender male who said he does not yet ‘pass’ in Jones, del Pozo de Bolger, Dunne, Lykins, & Hawkes, 2015, p. 88).

The E-males study of 273 Transgender FtM Australians aged 16+ (Jones, 2016a; Jones et al., 2015), showed around a third of the survey participants were engaged in study, the majority were employed (58%). However, a sizeable portion of the participants were unemployed (15%). This difference in comparison to the general Australian population is perhaps made more poignant by the fact that the group’s average age was 30.5 (an age level associated with greater employment stability in Australian culture) and the group was highly educated – 69% had a post-secondary schooling qualification, a higher portion than in the general Australian population (57%, Australian Bureau of Statistics, 2012). The rate of unemployment was higher than the 9% for the Australian transgender population cited for the also highly educated population in Tranznation (Couch et al., 2007). The survey showed:

- Places of post-school study (universities, TAFEs) are perceived as ‘safer’ spaces to the workforce for transgender people, who sometimes delay entering it or are simply not ‘let in’ due to employment discrimination.
- The majority (52%) were earning under $41K per year and 43% were earning less than $20K – a significantly larger portion than the 22-35% in other Australian studies which included MtF transgender populations (Couch et al., 2007).
• Most participants were not ‘out’ (but generally being read as their allocated birth sex by colleagues), and had concerns about losing their job if they disclosed their gender identity or engaged in further gender affirmations.
• Those who were out as transgender, identifiably gender non-conforming or transitioning, were often discriminated against directly in employment loss/prevention or promotions. Applying for work in discriminatory workforces was particularly complicated by having conflicting gender identity, presentation and/or history in their CV/qualifications/references which meant one could not ‘go stealth’.
• A third smaller group of participants who had either already transitioned, been read as ‘male’ socially or were otherwise living their life in a way congruent with their gender identity, had not ever discussed their gender identity at work at all to prevent career obstacles. Several people spoke of the concept of ‘stealth’: either passing as a man without aids, transitioning fully and not telling anyone about their gender history, or presenting as a masculine female/gender fluid person without specific explanation or coming out processes. They used phrases like ‘need to know basis’, ‘if you don’t need to know there is no way I’m telling’, ‘as stealth as possible’, ‘I just want to be a normal cis guy’ and so on. Some people going stealth just wanted to be received fully as their gender identity: ‘I don’t want to be known as a trans, I want to be known as a man. Nothing else, just a man’.
• Some felt they had to ‘take’ and ‘give back’ relatively transphobic language just to aid their career; such transphobic exchanges can negatively impacted participants’ confidence over time.

**People with Intersex Variations**

* I left my employment in (a country town) as being a government teacher I couldn’t get a transfer to the city to access medical treatment. When I left my boss wrote a two line shocking reference after finding out my reason for needing to move from the country town to the city. I was also attacked by a student with a knife in the school yard when I was living in a female gender role. There was no support from my employer to affirm a male identity in the workplace (Man with intersex conditions Ovotestes and PCOS/Hyperandrogenism, in Jones, Hart, et al., 2016, p. 145)

Most Australians with intersex variations (65%) were working (full-time, part-time or casually) in the Australian study (Jones et al., 2016). However, 12% were unemployed and looking for work – a higher portion than in the broader Australian population. The majority of participants (63%) earned an income under $41K per year. The study also showed:
• More than half the people with intersex variations surveyed had not told their employer/boss about their variation, and a similar portion had not told their co-workers about their variations.
• The responses to participants’ disclosures from both employers and co-workers were mostly neutral/mixed.
• When asked whether having a congenital sex variation had impacted their work experiences, 48% said yes and 24% were unsure.
• Impacts participants had experienced included obstacles to gaining or maintaining work, particular workplace discrimination issues, the complications of wellbeing issues, and reported effects on some participants’ comfort in engaging in particular working arrangements or industries.
Lesbian, Gay and Bisexual People (+)

I worked in Catholic schools for many years and didn’t realise how much it impacted on my own sexuality until I worked in a school that was much more accepting (Queer teacher in Jones, Gray, & Harris, 2014, p. 346).

Recent anecdotal Australian media coverage has suggested that some people might be remaining closeted at work regardless of any protections for their disclosures of LGBTIQ+ status. It questioned the potential of harmful mental health impacts that may stem from making – and also from not making – any LGBTIQ+ identity disclosures (Toscano, 2015). The education industry provides a clear picture of the problem:

- LGBTIQ+ teachers surveyed (42%) mostly do not know if their school had policy/ies protecting them against discrimination (showing how confused Australian schooling is when most contexts are indeed protected); 27% said their school did offer policy protection, 25% said it did not and 6% said they worked in schools which had a policy actively attempting to prevent people of diverse sexual orientation or gender diversity from working there (Jones et al., 2014).
- Australian religious schools at their most extreme make teachers sign documents stating they will uphold the ‘religious ethos’ or face dismissal (Gray, Harris, & Jones, 2016) – firing LGBTIQ+ teachers, heterosexuals in defacto relationships, divorcees without annulments and various everyday Australians.
- Because of these confusingly inconsistent conditions most teachers (56%) did not work at schools supporting/allowing staff to be ‘out’.
- Many said working in religious school environments made them feel shame, hide their identity at school and become more restrained in expressing their sexuality generally.
- Due to the homophobia and transphobia in school environments, 27% stopped participating in key aspects of work life or activities, 24% took extra sick days, 17% moved schools and several left the education field altogether. A further 17% engaged in activism; Australia needs to listen to them. Australian data on the value of policy protection is influential in global policy convenings, but not reflected in a portion of Australian religious schools: Australian Government leadership is needed.

In sum, key issues for LGBTIQ+ people in employment include discrimination in employment access and maintenance, career progression and direct and indirect experiences of anti-LGBTIQ+ work cultures – all issues this draft package would certainly worsen if introduced. Employers cannot make assumptions about the sex/gender identity or history of their staff, their staff’s partners, or the impacts of anti-LGBTIQ+ attitudes on what might ‘look like’ their cisgender straight staff members… people often ‘go stealth’ at work when concerned about discrimination. Relying on LGBTIQ+ people to advocate for their own right to non-discrimination in the workplace, to ‘explain themselves’ or even declare themselves in any way when their financial livelihood is at stake and where the inherent duties of a role are nothing to do with their LGBTIQ+ identity 24-7 particularly in a religious school, is simply an unrealistic and unreasonable expectation to write into law. Also, not every person knows they are same-sex attracted, gender non-conforming or have an intersex variation throughout their whole life… some people will come to this realisation after taking a job that might fire them on this basis. It is also likely that accusations of being gay or transgender (which don’t always have evidence) could be used to get rid of an otherwise well performing worker who is, anyway, neither of those things. Similarly positions on the marriage equality or the LGBTIQ+ community may be used to fire people with LGBTIQ+ family members. There seems to be too many grey areas in the draft package on this issue. Further it is unconstitutional for the Australian Commonwealth to allow a religious test for qualifying for working in Australia’s government-funded employment sectors including religious education sectors for LGBTIQ+ teachers and staff.
2.3 Education

Transgender and gender diverse people

‘... asked ‘Is this a safe place for the LGBTQ+ community’ they replied with ‘No’’ (FTM transgender teenager in Jones 2020).

Australian transgender students are significantly more likely to drop out of school early, to feel their sexuality and puberty education provisions are inadequate and to suffer bullying in contexts where gender diversity is not supported by teaching staff (Jones, 2015b, 2016b; Jones, Smith, et al., 2016; Smith et al., 2014). An anti-discrimination approach is key: using ‘mostly appropriate’ pronouns for transgender students makes it less likely they will drop marks (26% v. 54% when teachers use mostly inappropriate pronouns); and drop out (6% v. 22%) (Jones, Smith, et al., 2016). In the 2018 Voices of Experience (Jones, 2020) survey of 2,500 Australians aged 14+yrs, participants who were on the trans-spectrum (whether they were transgender, non-binary or had another gender identity) were around 10% more likely to report social abuse from teachers and other members of the school than cisgender people. They were:

- Twice as likely as cisgender participants to be exposed to (heterosexual) conversion messaging at school.
- Half as likely to say abuse had not affected them at all (22.2% vs 41% of cisgender participants).
- More likely to struggle to concentrate in class due to the abuse they experienced they were (54.5% vs. 41.5%).
- More likely to drop marks due to the abuse they experienced (40.4% vs. 26.7%).
- More likely to miss class (29.3% vs. 18.2%) or days (41.4% vs. 26.3%) due to the abuse they experienced.
- More likely to be unable to use bathrooms (19.2% vs. 5.5%) and change-rooms (22.2% vs. 7.1%) due to the abuse they experienced.
- More likely to drop out of extra-curricular activities including sports (29.3% vs. 10.4%); move schools (18.2% vs. 9.5%) or drop out completely (9.1% vs. 2.4%) due to the abuse they experienced.
- Twice as likely to get involved in activism to improve their treatment (22.2% vs. 9.6% of cisgender participants) if they experienced abuse (like in earlier studies, Jones & Hillier, 2013) – let’s listen to these kids.

Participants who attended schools which supported gender diversity and combatted gender stereotypes were less affected if they experienced abuse, less likely to drop marks, and less likely to avoid toilets or change-rooms (regardless of whether or not they were transgender).

People with Intersex Variations

I had to be enrolled as either male or female (Shannon, intersex person with ovo-testes, 17yrs, Jones et al., 2016, p.137).
People with intersex variations are significantly discriminated against in Australian education already, without adding new legal allowance for further transgressions against the groups’ rights. Most people with intersex variations had not told school staff about their variation, whilst just over half had told their classmates (Jones, Hart, et al., 2016). Whilst national legal protections exist for students with intersex variations, education policies and guidelines at the national and state level are mostly lacking. The discrimination faced by people with intersex variations in schooling manifested in various ways:

- In total 18% had only had a primary school education – a significantly larger portion of this group dropped out of school very young than for the general Australian population.
- Only 4% had reported that they told their principal about their variation and found they were supportive. Further, 11% told their principal and found they had a neutral/mixed response and 22% told their principal and found they were unsupportive – 63% did not tell their principal about their variation.
- The overwhelming majority of participants (92%) did not attend a school with inclusive puberty/sex education provisions.
- Most had not disclosed their variation to staff, although more than half had to their classmates.
- Appropriate school counselling services/referrals were widely lacking.
- Only a quarter of participants rated their overall education experiences positively and there were many reports of bullying based on physical or other aspects of having a variation.
- Participants suggested improvements to schools’ information provision and support features.

**Lesbian, Gay and Bisexual people (+)**

*I think gay sex was mentioned once in 6 years (if that), and lesbian sex never. In the end I had to ask my doctor for information on lesbian safe-sex* (Lesbian teenager in Hillier et al., 2010, p.88).

Aggregated reviews of research from academics around the world have repeatedly shown that LGBTIQ+ students experience significantly disproportionate violence and discrimination in education contexts compared to other students (UNESCO, 2015, 2016b). The violence against LGBTIQ+ students occurs in school environments such as classrooms, playgrounds, toilets, changing rooms, around schools, on the way to and from school, and online (UNESCO, 2016b). LGBTIQ+ students who experience violence are more likely to:

- Feel unsafe at school;
- Achieve lower grades;
- Miss participation, classes or school days;
- Drop out of school;
- Have decreased employment and/or housing prospects;
- Feel depressed;
- Adopt risky health behaviours; and
- Think about or attempt suicide.

Communicating local policy protections to students is helpful – in Australia when protective policies are known LGBTIQ+ students are:

- significantly more likely to feel safe (75% v. 45%);
- significantly less likely to experience physical abuse (23% v. 47%)
- significantly less likely to attempt suicide (13% v. 22%) (Jones, 2015).
The 2018 *Voices of Experience* survey participants emphasised that body and gender differences and sexual orientation were targeted in bullying more than any other issue; by comparison religious beliefs were reported as targeted around half as much. Gay was the most popular insult used in Australian schools, faggot and other related words were also dominant (Jones, 2020). This was regardless of participants’ actual sexuality. Homophobic bullying IS the type of bullying most frequently experienced by students, including and especially in religious schools. Participants were asked what sexuality education messages their school taught students. Students at conservative schools taking a conservative approach on certain social issues (gender, social class, race, media, culture, technology) were *most likely* to either not provide sexuality education; or teach sex before marriage was wrong and that gay people should become straight. The schools teaching gay conversion to heterosexuality were overwhelmingly Catholic and Christian schools. Participants exposed to the message ‘That gay people should become straight’ were *most likely to experience every type of negative impact from abuse at school* (harms to concentration, grades, facility use and attendance) and least likely to say abuse did not affect them. Those exposed to conversion messages were *considerably more likely* to think about self-harm (81.8%); self-harm (61.8%); think about suicide (83.6%) and attempt suicide (29.1%). *Only 14.5% of these participants – regardless of their sexual orientation – had not engaged in any of these behaviours.* Participants denied sex education also had increased suicide attempts (28.2%). It is also significant that participants exposed to conversion or censorship sexuality approaches were most likely to have responded to abuse with activism; some participants felt they had to fight back. When 83.6% of people exposed to gay conversion messaging at school consider suicide, *preventative action around furthering any allowance for such discrimination must urgently be taken by authorities.*

In sum, key issues for LGBTIQ+ people are that education providers and professionals are allowed to discriminate against them by directly refusing their human right to education as though they are ‘different difference’, to be exceptionalised against all others. Some schools are also mistreating them in coercive and harmful conversional education provision – not mere ‘religious education’ – with outcomes likely to only be increased with the introduction of the draft package. Such harm should actually be prevented. No individual education professional’s religious freedom erases the education rights of, or justifies use of any conversion therapies for, LGBTIQ+ students. Equitable education for LGBTIQ+ people must be guaranteed. Since all students are legally required to remain at the school chosen for them by a guardian (not themselves) until of age, and it is their guardians (not they) choosing their school, the Australian Government must thus ensure equitable service is *supplied at all schools.* It is *unconstitutional* for the Australian Government to make any law for imposing any religious observance – including allowance for the exclusion of or discrimination against LGBTIQ+ students in religious schools as currently exists in the SDA’s exemptions. It is equally also *unconstitutional* (given our legal requirement that all young people be physically at school until of age) to enforce religious compliance tests for LGBTIQ+ students corralled into the religious schools not of their choosing by a combination of government and guardian. Our education system is there to first and foremost to ensure the right to education. Legislators should especially intervene to protect children from conversion therapies (Timothy Jones et al., 2018, p. 66) occurring in schools or education-related locations, and from religiously-driven discriminatory expulsions/punishments in education settings on the bases of LGBTIQ+ status. Failing to do this leaves the Australian Government vulnerable to lawsuits due to unconstitutionality of its writing religious coercion into law through these *Religious Freedom Bills,* and/or through the SDA’s exemptions. We must recall that Article 18 (4) of *The International Covenant on Civil and Political Rights* (United Nations, 1966) allows legal guardians to ensure the religious and moral education of their child in conformity with their own convictions only so much as 18 (2) limits education including ‘coercion which would impair his freedom to have or to adopt a religion or belief of his choice’. LGBTIQ+ students’ needs for safety as protected in 18 (3) should most sharply delineate the edge of schools’ and individuals’ religious freedom.
3. Conclusion & Recommendations

In conclusion, this submission has shown the need for stopping the progress of the Religious Freedom Bills package (Australian Government, 2019a) in its current form. In consideration of international and national legislative and constitutional provisions this submission has highlighted the protections for freedom of thought, conscience and religious/ non-religious viewpoints or beliefs. A bill protecting freedom of thought and belief could be acceptable, and an equitable universal bill of rights (covering non-discrimination for all recognized grounds including sex, gender identity and expression, sexual orientation and intersex status) could be a positive for all Australians. However, this submission has argued that some religious activity is more problematic – there can be activity which is coercive or prohibits the rights of others to free thought, healthcare, employment or education. Such activity must be more appropriately limited than this package allows, in lumping ‘religious belief or activity’ together consistently (including in even the subtitle of the Religious Discrimination Bill 2019 Draft and throughout), without adequately limiting the definition of the word ‘activity’. An individual just choosing to wear religious paraphernalia or worship is a non-issue for LGBTIQ+ people. However organisations’ and peoples’ coercive, evangelising or harmful activities can have impacts. Such activities are therefore quite distinct, and the term ‘activity’ needs far greater thought.

Australian provisions need to better follow how Article 18 (3) of The International Covenant on Civil and Political Rights (United Nations, 1966) limits the freedom of religion from preventing ‘public safety, order, health, or morals or the fundamental rights and freedoms of others’ as seen in the suffering of LGBTIQ+ survey participants and even cisgender heterosexuals who experienced anti-LGBTIQ+ discrimination instead of appropriate education or treatment. Our provisions also need to better follow how Article 18 (2) limits religious organisations and people from being coercive in ways which hinder freedom to adopt a belief of one’s choice. Any provisions need to reflect Australia’s constitution and share the logic behind why so many other pieces of legislation limit coercive promotion of religions. Multiple features of the new Religious Freedom Bills package (Australian Government, 2019a) enable forms of discrimination against women, LGBTIQs and even religious heterosexual males not fitting a ‘religious mold’ that are unnecessary to further protecting people of faith from discrimination. In particular, this submission has highlighted the problems, already seen for LGBTIQ+ citizens, which this package will exacerbate… especially allowances for discrimination in health, employment and education that may draw on religion in allowing the abandoning of their service needs through to coercive conversion or intervention activities in Commonwealth-funded service delivery. The Australian Government should err on the side of caution. It should consult more widely when considering any bills around religious issues. Indeed, there is urgent need for limitations on religiously-informed discrimination and coercion against LGBTIQ+ people in education settings already.

I encourage extensive consultation with appropriate bodies and individuals to help the Australian Government understand these issues, and others not covered here from the far-reaching package (sport and so forth). I recommend consulting with parties aware of the package’s adverse impacts, for example:

- Equality Australia,
- the Australian Law Reform Commission,
- the Australian Human Rights Commission,
- women’s advocacy groups,
- agnostic groups,
- atheist groups, and
- LGBTIQ+ research advocates,
- LGBTIQ+ community groups – including intersex-specific and transgender-specific representation.