



VIC: RELIGIOUS EXCEPTIONS REFORMS

Everyone deserves to work, study and live with dignity and respect. The Victorian [Equal Opportunity \(Religious Exceptions\) Amendment Bill 2021](#) narrows outdated carve-outs that allow faith-based schools and organisations to discriminate against LGBTQ+ workers, students and people who rely on their support.

The Victorian Government has introduced a bill that narrows exemptions in the Victorian *Equal Opportunity Act 2010*. These exemptions currently allow faith-based schools and organisations to discriminate against LGBTQ+ people and many others. These reforms will prohibit faith-based schools and organisations from firing, expelling or treating unfairly employees, students and people who rely on their services, simply because of their sexual orientation or gender identity.

WHAT DOES THE BILL DO?

FOR STUDENTS

LGBTQ+ students will be better protected from discrimination at faith-based schools, colleges and universities. This means they cannot be expelled or treated unfairly simply because of their sexual orientation or gender identity.

The Bill also narrows the ability for faith-based educational institutions to discriminate against students on other grounds, such as sex, marital status and parental status. This means, for

example, they may not be able to discriminate against a 17-year-old student who falls pregnant.

The proposed laws will also prevent faith-based educational institutions from discriminating against enrolled students based on their religion, unless they do so reasonably and proportionately.¹ This means that faith-based educational institutions will need to be consistent, transparent and fair if they want to discriminate based on an enrolled student's religion.

However, faith-based schools will still be able to limit their schools to students of a particular religion or sex,² as well as set and enforce reasonable standards of dress, appearance and behaviour for their students.³ Schools will also still have the final say over the reasonableness of their standards, if they consider the views of their school community when they set them.⁴

FOR WORKERS

LGBTQ+ people who work at faith-based organisations, including educational institutions, will be better protected from discrimination. This means that people cannot be fired, refused work or treated unfairly simply because of their sexual orientation or gender identity. LGBTQ+ teachers and other workers may no longer have to hide who they are just to keep their jobs.

The Bill also narrows the ability for faith-based organisations to discriminate against employees on other grounds, such as sex, marital status and parental status. This means, for example, they cannot discriminate against an employee simply because they have divorced or had a child out of wedlock.

¹ *Equal Opportunity (Religious Exceptions) Amendment Bill 2021 (Bill)*, proposed s 83.

² *Equal Opportunity Act 2010* (Vic), s 39.

³ *Equal Opportunity Act 2010* (Vic), s 42(1).

⁴ *Equal Opportunity Act 2010* (Vic), s 42(2).



Faith-based organisations will also be able to employ people who have certain beliefs where religion is essential to the role, and it is *'reasonable and proportionate'* to do so.⁵ In practice, this means that teachers of religious education or who have religious pastoral care roles may be required to conform to the school's religious beliefs, but not necessarily other teachers or staff, such as maintenance workers.

However, faith-based organisations will still be able to set and enforce reasonable conditions and standards of conduct for their employees, even if these conditions and standards disadvantage people with a particular attribute.⁶

FOR PEOPLE NEEDING SUPPORT

LGBTQ+ people will be better protected from discrimination when accessing goods, services and accommodation provided by faith-based organisations, especially if these are funded by the Victorian Government.⁷ When goods, services and accommodation are not funded by the Victorian Government, faith-based providers will need to show that any discrimination based on sexual orientation or gender identity is *'reasonable and proportionate'*.⁸

Unfortunately, these proposed laws do make it difficult for a person to know which rules apply to them, given they may not know who funds the service in question. However, in practice, this proposed law means that in many cases faith-based providers will not be able to refuse services, goods or accommodation to a person, or treat them unfairly, simply because of their sexual orientation or gender identity. For

example, a faith-based agency cannot refuse to assess a same-sex couple as potential foster carers simply because they are a same-sex couple.

The Bill also narrows the ability of faith-based service providers to discriminate on other grounds, such as sex, marital status and parental status. This means, for example, they may not be able to turn away an unmarried parent simply because they have had a child out of wedlock.

Faith-based organisations will still be able to provide services, goods, accommodation and other support only to people with certain religious beliefs, provided it is reasonable and proportionate to do so.⁹ Faith-based organisations will also be able to establish exclusive services, benefits or facilities to meet the special needs of people of their faith.¹⁰

WHAT ABOUT OTHER EXCEPTIONS?

The Bill means that religious institutions and people will have to comply with many of the same rules as everyone else. They will also benefit from the same exceptions that apply to everyone else, such as the ability to:

- set and enforce conditions or standards of conduct that are reasonable, even if they disadvantage people with a particular attribute;¹¹
- establish exclusive services, benefits or facilities, or employ peer-based workers, to meet the special needs of people of faith;¹²

⁵ Bill, proposed ss 82A and 83A.

⁶ *Equal Opportunity Act 2010* (Vic), s 9.

⁷ Bill, proposed s 82B.

⁸ Bill, proposed s 82(2) (as amended).

⁹ Bill, proposed ss 82(2) (as amended) and 82B.

¹⁰ *Equal Opportunity Act 2010* (Vic), ss 28, 88.

¹¹ *Equal Opportunity Act 2010* (Vic), s 9.

¹² *Equal Opportunity Act 2010* (Vic), ss 28, 88.



- discriminate favourably to redress historical disadvantage against people of faith;¹³
- choose whomever they like to provide home-based personal services;¹⁴
- obtain other exemptions by applying to VCAT.¹⁵

Religious communities will remain completely free to:

- select and appoint whomever they wish to take part in any religious observance or practice;¹⁶
- choose, educate and train their own religious leaders and members as they wish.¹⁷

Religious bodies will also retain a special carve-out that allows them to discriminate, other than in employment, education and when delivering Victorian Government-funded services, on the basis of religion, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity. To use this exemption, they must show that the discrimination is reasonable and proportionate, and either conforms with their religion or is reasonably necessary to avoid injury to religious sensitivities.¹⁸

Several other laws also provide exceptions for people with particular beliefs, such as laws

allowing people to refuse to provide or participate in abortion care or assisted dying.¹⁹

HOW MANY PEOPLE ARE IMPACTED BY THESE REFORMS?

LGBTQ+ students

Nearly a quarter of Victoria's LGBTQ+ secondary students are estimated to attend religious schools,²⁰ and discrimination against LGBTQ+ students remain rife in all schools.

The *Writing Themselves In 4* (2020) report, which surveyed 1,859 Victorian LGBTQ+ young people aged between 14 and 21 years, found that:

- 59.7% of Victorian LGBTQ+ secondary school students frequently hear negative remarks regarding sexuality at their school;²¹
- in the last year, 62.1% of Victorian LGBTQ+ secondary school students felt unsafe or uncomfortable at school due to their sexuality or gender identity,²² with 38.3% having missed day/s from school because they felt unsafe or uncomfortable.²³

Faith-based charities

Based on Australian Charities and Not-for-profit Commission (ACNC) 2018 and 2019 data, 49 out of the 100 largest Australian faith-based charities have a presence in Victoria. \$10.4 billion, or

¹³ *Equal Opportunity Act 2010* (Vic), s 12.

¹⁴ *Equal Opportunity Act 2010* (Vic), s 24.

¹⁵ *Equal Opportunity Act 2010* (Vic), s 89.

¹⁶ *Equal Opportunity Act 2010* (Vic), s 82(1)(c).

¹⁷ *Equal Opportunity Act 2010* (Vic), s 82(1)(a)-(b).

¹⁸ *Equal Opportunity Act 2010* (Vic), s 82(2) (as amended).

¹⁹ *Abortion Law Reform Act 2008* (Vic), s 8; *Voluntary Assisted Dying Act 2017* (Vic), s 7.

²⁰ The largest Australian survey of LGBTQ+ young people found that 23.3% of Victorian LGBTQ+ secondary students attended religious private schools: Hill et al (2020) [Writing Themselves In 4, Victoria summary report](#), p. 23.

²¹ [Writing Themselves In 4, Victoria summary report](#), p. 32.

²² [Writing Themselves In 4, Victoria summary report](#), p. 29.

²³ [Writing Themselves In 4, Victoria summary report](#), p. 34.



approximately 50%, of their annual revenues are derived from government funding. Together they employ nearly 92,000 FTE employees.

PUBLIC SUPPORT FOR REFORM

In 2020, a [YouGov survey](#) found that 78% of Australians agree that trans people deserve the same rights and protections as other Australia, with 66% also agreeing that trans people should be protected from discrimination in religious schools. Majority support carries across gender and religiosity.

When it comes to firing or expelling LGBTQ+ teachers and students, support is even stronger. A [2018 Essential survey](#) found that 72% of Australians believe it should be illegal for faith-based schools to fire a teacher or expel a student between because they are gay or transgender.

HOW DOES THE BILL COMPARE TO OTHER AUSTRALIAN LAWS?

The Bill follows the lead of some other laws across Australia that have removed or narrowed religious exemptions in their anti-discrimination laws. These include laws in the ACT,²⁴ Queensland,²⁵ South Australia,²⁶ Tasmania,²⁷ and nationally in respect of Commonwealth-funded aged care.²⁸ If passed, the Bill would mean that Victoria would set the gold standard for discrimination protections in employment and government-funded services.

²⁴ Faith-based educational institutions cannot discriminate against LGBTQ+ students and staff: see *Discrimination Act 1991* (ACT), s 32(2).

²⁵ Faith-based educational institutions cannot discriminate against LGBTQ+ students and staff, subject to exceptions: see *Anti-Discrimination Act 1991* (Qld), ss 25(3), 109(2).

²⁶ Faith-based educational institutions must publish policies if they are intending to discriminate against LGBTQ+ employees: *Equal Opportunity Act 1984* (SA), s 34(3)(b)-(d).

WHAT ABOUT INTERSEX PEOPLE?

Intersex people are now protected from discrimination based on their sex characteristics. No religious exemptions apply specifically in respect of this ground.

COULD THE BILL BE IMPROVED?

The Bill narrows the ability for faith-based schools and organisations to discriminate, but it could be improved by:

- ensuring LGBTQ+ people cannot be discriminated against by faith-based service providers when they provide any service to the public (rather than only services funded by the Victorian Government);
- closing loopholes that allow schools to avoid scrutiny when their rules on student dress, appearance and behaviour discriminate against LGBTQ+ students.

TAKE ACTION

[Tell your MP](#) to support the Bill and ensure that it is amended to protect students from discrimination and apply the same rules to all organisations, no matter how they are funded.

²⁷ Faith-based organisations (including schools) cannot discriminate against LGBTQ+ people: *Anti-Discrimination Act 1998* (Tas), ss 51, 51A.

²⁸ Faith-based organisations cannot discriminate in Commonwealth-funded aged care against LGBTQ+ people: *Sex Discrimination Act 1984* (Cth), s 37(2).