

# **ALL SCHOOLS, SAME RULES**



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## All schools, same rules

### Submission to the Senate Legal and Constitutional Affairs Committee inquiry into the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018

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21 January 2019

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# 1. Executive summary

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We provide this submission to the Senate Legal and Constitutional Affairs Legislation Committee (**Legislation Committee**) in its inquiry into the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (**the Bill**) and all circulated amendments to the Bill.

**Students at faith-based schools and universities are at risk of being expelled, or being forced to sit through classes where they are taught that they are sick, wrong or broken.**

All students should have a safe and nurturing learning environment. All schools and universities – public or private – should have the same rules to safeguard the rights of lesbian, gay, bisexual, transgender, queer and all gender and sexuality diverse (**LGBTQ+**) students and teachers. Children in schools should be focusing on classes, homework and building friendships, not living in fear of mistreatment because of who they or their families are.

**It shouldn't matter where your child goes to school – for equality, we need the same rules for all schools.**

A majority of Australians support removing discrimination against students and teachers. Essential Media conducted an online survey in December 2018 and the results are clear. **72% of Australians surveyed support students and teachers at faith-based schools being legally protected from exclusion on the basis of them being gay or transgender.** Equality Australia has also collected more than 3,000 signatures to our petition calling on the Legislation Committee to protect LGBTQ+ students and teachers from discriminatory exemptions at religious schools.

We support the Bill's intention to remove permanent legislative exemptions which allow faith-based educational institutions to discriminate in education. These exemptions are inherently unfair, discriminatory and out of step with modern community expectations. They act as a barrier to vulnerable people accessing employment, and contribute to worse health outcomes for marginalised communities which bear the brunt of this discrimination.

The simple and straightforward removal of existing legislative exemptions is the most effective way to remove discrimination against LGBTQ+ students. We oppose the circulated amendments from the Government which would allow unacceptable discrimination against LGBTQ+ students to continue in almost all areas of education unrelated to expulsion.

**Teachers at faith-based schools are at risk of being fired, despite being passionate and talented educators who are great at their jobs.**

The Bill should go further to prohibit discrimination against employees and contract workers under the SDA. Teachers should be assessed in relation to teaching standards and their ability to support students to learn, not because of who they are or who they love. Students can only feel safe where teachers who look like them, act like them, and are like them, are also free from discrimination.

## Recommendation

We recommend that the Senate Legal and Constitutional Affairs Legislation Committee recommend that the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 be amended to protect teachers and staff by removing existing religious exemptions which allow discrimination against employees and contract workers in religious educational institutions, and recommend that the amended Bill then be passed through the Australian Parliament as quickly as possible.

## 2. Methodology

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This submission comprises of three key sections:

- A summary of the outcomes of an **online survey** conducted by Essential Research of over 1,000 Australians regarding their opinions on discrimination against LGBTQ+ teachers and students in faith based schools (**Appendix A**);
- A **petition** signed by more than 3,000 people calling on federal Senators to protect LGBTQ+ students and teachers from discrimination in schools (**Appendix B**);<sup>1</sup> and
- A **policy submission** on the details of the Bill and circulated amendments which were not available at the time of the 2018 inquiry.

The Senate Legal and Constitutional Affairs References Committee (**References Committee**) conducted an inquiry into *Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff* in November 2018 (**2018 inquiry**) which considered very similar issues to the current Legislation Committee's inquiry.

Equality Australia was formed in December 2018 from the Equality Campaign with support from the Human Rights Law Centre. We **attach** to this submission:

- the Human Rights Law Centre's submission to the 2018 inquiry for an outline of relevant international human rights principles (**Appendix C**);<sup>2</sup> and
- the Equality Campaign's submission to the 2018 inquiry for examples of discrimination in faith-based educational institutions (**Appendix D**).<sup>3</sup>

To avoid duplication, this submission does not replicate the information contained in these submissions.

## 3. Public support for removing discrimination

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In November 2017, a majority of Australians expressed their overwhelming support for marriage equality in this country. Australian laws need to reflect modern community expectations, and Australians' demands for equality and fairness for all. There is no excuse for allowing state sanctioned discrimination against LGBTQ+ people to remain on our statute books.

### **Online survey**

In December 2018, Essential Research conducted an online survey of over 1,000 Australians on their opinions on discrimination against LGBTQ+ teachers and students in faith based schools.

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<sup>1</sup> Equality Australia, *Protect LGBTQ+ students and teachers (petition)* (January 2018)

<http://equalityaustralia.org.au/protect-students-and-teachers/>.

<sup>2</sup> Human Rights Law Centre, *Freedom from discrimination in religious schools: Submission to the Senate Legal and Constitutional Affairs Committee on the inquiry into Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff* (November 2018)

<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5bf509de575d1f4d0be46409/1542785510371/HRLC+Submission+-+Freedom+from+discrimination+in+religious+schools.pdf>.

<sup>3</sup> Equality Campaign, *Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff* (November 2018)

<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5bf76d6b0e2e726025daa2e8/1542942060797/Equality+Campaign+-+Senate+Legal+and+Constitutional+Affairs+Committee.pdf>.



The results (see **Appendix A**) showed that the vast majority of Australians surveyed from across the political spectrum supported students and teachers at faith-based schools being legally protected from exclusion on the basis of them being gay or transgender.

This survey makes clear that the Australian public does not support any bill that enshrines state sanctioned discrimination against LGBTQ+ students and teachers.

### **Petition**

Between 19 and 21 January 2019, Equality Australia collected 3,050 signatures to our petition to protect LGBTQ+ students and teachers from discrimination in Australian religious schools (see **Appendix B**). Over one weekend, thousands of Australians added their name to this petition to call on federal politicians to pass protections for teachers and students and to ensure that no new laws wind back equality for LGBTQ+ people.

## 4. Sex Discrimination (Removing Discrimination Against Students) Bill 2018

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### ***Balancing competing human rights***

Every human being has the right to be free from discrimination and to equality under the law, including on the basis of sexual orientation or gender identity.<sup>4</sup>

At the same time, everyone has the right to freedom of thought, conscience and religion, including:

- an **absolute right** to hold a belief (religious or secular);
- a **limited right** to manifest their religion or belief in worship, observance, practice and teaching;<sup>5</sup> and
- a **limited right** for parents or legal guardians to “ensure the religious and moral education of their children in conformity with their own convictions.”<sup>6</sup>

The ability to publicly manifest a religious belief in education can be limited where those limitations are “prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”<sup>7</sup>

When it comes to determining whether religious educational institutions should be able to lawfully discriminate against their LGBTQ+ students or staff, neither right automatically prevails. International law requires that any limitation on a human right must be reasonable, necessary and proportionate.<sup>8</sup>

Australian legal and constitutional practice similarly requires that any limitation must:

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<sup>4</sup> See, e.g. UN Economic and Social Council, *Report of the High Commissioner for Human Rights on implementation of economic, social and cultural rights*, UN Doc E/2009/90 (2009) [19].

<sup>5</sup> UN General Assembly, *International Covenant on Civil and Political Rights* UNTS 999/171 (16 December 1966) (ICCPR) art 18(3).

<sup>6</sup> ICCPR art 18(4).

<sup>7</sup> ICCPR art 18(3).

<sup>8</sup> UN Economic and Social Council, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc E/CN.4/1985/4, Annex (1985). See also, Australian Government Attorney-General's Department, *Permissible limitations*, <https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Permissiblelimitations.aspx>.

- be prescribed by law;
- pursue a legitimate objective;
- be rationally connected to its stated objective; and
- be a proportionate way to achieve that objective.<sup>9</sup>

Article 2 of the Convention on the Rights of the Child provides that governments must take all appropriate measures to ensure that children are protected against “all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.” In addition, article 3 requires that in all actions concerning children, “the best interests of the child shall be a primary consideration”.

A more detailed analysis of relevant international human rights principles is outlined in the Human Rights Law Centre’s submission to the 2018 inquiry (see **Appendix C**).

All schools – whether religious or non-religious – have a duty of care to their students to provide an environment that is safe and welcoming, including LGBTQ+ students attending a school in accordance with their parents’ wishes.

### ***Removal of specific religious exemption in education***

Item 2 of the Bill repeals s 38(3) of the SDA – the specific religious exemption which allows religious educational institutions to discriminate against students in education or training.

Religious schools in Australia make up a significant portion of educational service providers in Australia and receive substantial amounts of taxpayer funding. More than 1 in 3 school students in Australia attends a religious school.<sup>10</sup>

LGBTQ+ students should be able to learn in educational environments where they are supported and accepted for who they are. No students should be expelled or disciplined because of an inherent part of their identity. No child should have to live in fear of being mistreated and cast out of an educational institution where they have spent years learning and developing close personal friendships which promote positive mental health and wellbeing.

Subsections 37(1)(d) and 38(3) of the SDA allow religious schools to refuse admission, discipline, suspend, expel or cause any other detriment to a student on the basis of their sex, sexual orientation, gender identity, marital or relationship status or pregnancy, provided it is in accordance with religious doctrines, tenets, beliefs or teachings or the discrimination is in good faith to avoid injury to the religious susceptibilities of adherents of that religion.<sup>11</sup>

Discrimination against LGBTQ+ young people is harmful. As a result of discrimination, LGBTQ+ Australians continue to experience higher levels of disadvantage, including disproportionate rates of mental health issues, suicide and self-harm, lower educational outcomes, underemployment and unemployment.<sup>12</sup> A national Australian study has found that same-sex attracted and gender

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<sup>9</sup> Parliamentary Joint Committee, *Guide to Human Rights* (June 2015) [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Guidance\\_Notes\\_and\\_Resources](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources).

<sup>10</sup> Carolyn Evans and Beth Gaze, ‘Discrimination by Religious Schools: Views from the Coal Face’ (2010) 34 *Melbourne University Law Review* 392, 393.

<sup>11</sup> *Sex Discrimination Act 1984* (Cth) s 38.

<sup>12</sup> National LGBTI Health Alliance, *The Statistics at a Glance: The Mental Health of Lesbian, Gay, Bisexual, Transgender and Intersex People in Australia* (2016) <https://lgbtihealth.org.au/statistics/>.

questioning young Australians with a religious background were more likely than their non-religious peers to:

- report self-harm and suicidal ideation;
- feel negatively about their same sex attraction;
- have experienced social exclusion;
- have been subjected to homophobic language from friends;
- report homophobic abuse and feeling unsafe at home;
- be unsupported by their parents, siblings and teachers when disclosing their sexual orientation or gender identity; and
- attend schools with no policies or supports protecting them from bullying because of their sexual orientation or gender identity.<sup>13</sup>

The Equality Campaign submission to the 2018 inquiry provides a number of powerful stories from LGBTQ+ children and young who have faced unacceptable discrimination at school which has interfered with their learning and had a significant impact on their lives (see **Appendix D**).

It is reasonable, necessary and proportionate to prohibit faith-based educational institutions from discriminating against students on the basis of their sexual orientation or gender identity to protect the right to equality and the right to education for LGBTQ+ students.

### ***New education exception to broad religious exemption***

Item 1 of the Bill creates a new exception to the broad religious exemption in s 37(1)(d) of the *Sex Discrimination Act 1984* (Cth) (**SDA**) to prohibit a body established for religious purposes from engaging in discriminatory acts or practices connected with the provision of education, but not in relation to employment.

As the Explanatory Memorandum to the Bill states:

The effect of Item 1 will be to remove the capacity of bodies established for religious purposes that provide education to directly discriminate against students on the basis of their sexual orientation, gender identity or intersex status.<sup>14</sup>

The term ‘body established for religious purposes’ is not defined in the SDA, but is a broad term which covers a range of organisations including primary and secondary schools and universities. As faith-based educational institutions are covered by the exemptions in both s 37 and 38 of the SDA, item 1 is necessary to ensure that religious educational institutions cannot discriminate against students in education based on any of the protected attributes under the SDA.

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<sup>13</sup> Lynne Hillier et al, ‘Writing Themselves in 3: The Third National Study on the Sexual Health and Wellbeing of Same Sex Attracted and Gender Questioning Young People’, *Australian Research Centre in Sex, Health and Society* (La Trobe University: 2010)

<http://www.latrobe.edu.au/arcs/hs/downloads/arcs/hs-research-publications/WTi3.pdf> 91.

<sup>14</sup> Senator Penny Wong, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth), *Explanatory Memorandum* (November 2018)

[https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1162\\_ems\\_e7bebed7-4deb-4dfd-b4f8-5136ea91c5fc/upload\\_pdf/18259em.pdf;fileType=application/pdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1162_ems_e7bebed7-4deb-4dfd-b4f8-5136ea91c5fc/upload_pdf/18259em.pdf;fileType=application/pdf).

The drafting of item 1 replicates a similar exception in s 37(2) of the SDA, which prohibits discrimination in the provision of Commonwealth-funded aged care, but not in connection with employment.<sup>15</sup>

Any concerns about a religious institution potentially falling within the definition of ‘educational institution’ in s 4 of the SDA could be dealt with by clarifying that the broad religious exemption in s 37(1)(d) of the SDA applies to religious instruction provided by a religious institution (e.g. a Sunday school at a church, temple or mosque) but not for education in faith-based educational institutions (e.g. classes taught in religious schools) or other bodies established for religious purposes (e.g. trainings provided by faith-based service delivery organisations).

We support cl 3(a) of item 1 of the Bill, and recommend that cl 3(b) of item 1 of the Bill be removed along with s 38(1) and 38(2) of the SDA to prohibit discrimination against employees and contract workers at religious educational institutions.

## 5. Circulated amendments

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### ***Government amendments***

The Government circulated amendments undermine the purpose of the Bill and create loopholes that enable discrimination against LGBTQ students to continue in religious schools.

The Bill proposes to remove exemptions that allow faith based schools to discriminate against students and would continue to allow schools to make and impose reasonable rules that uphold their religious ethos. The Government amendments undermine this intention and would continue to allow discrimination against students based on religious doctrine.

Reasonable conditions imposed on students – such as conditions to uphold the ethos and values of a school – are not prohibited under the law as it stands. The existing test of reasonableness is already an inclusive one that applies to all schools equally, and would allow a religious school to argue that a condition, requirement or practice is reasonable where undertaken in good faith and to avoid injury to religious susceptibilities. Introducing specific examples into the broad test of reasonableness is unorthodox, unnecessary and tampers with its operation.

As the Explanatory Memorandum to the Bill makes clear: “This Bill would not affect the operation of the indirect discrimination provisions in the SDA, which will continue to operate in a manner that allows faith-based education institutions to impose reasonable conditions, requirements or practices on students in accordance with the doctrines, tenets, beliefs or teachings of their particular religion or creed.”<sup>16</sup> These amendments were not recommended by the majority report of the References Committee as part of the 2018 inquiry.<sup>17</sup>

### *Amendment to remove new exception to broad religious exemption*

The Government amendment sheet KQ147 removes the proposed exception to the broad religious exemption under s 37(1)(d) of the SDA. In practice, this will mean that bodies established for religious purposes (which includes faith-based schools or universities) could

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<sup>15</sup> *Sex Discrimination Act 1984* (Cth) s 37(2).

<sup>16</sup> Above n 15.

<sup>17</sup> The Senate Legal and Constitutional Affairs References Committee, *Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff* (November 2018)

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Schooldiscrimination/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Schooldiscrimination/Report).



continue to lawfully discriminate against LGBTQ+ students, provided the act or practice conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

The supplementary explanatory memorandum relating to sheet KQ147 states that:

The existence of the more specific exemption for educational institutions conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed in section 38 of the SDA indicates that a 'body established for religious purposes' under paragraph 37(1)(d) does not include a religious educational institution...

In our view, the existence of a specific exemption for religious educational does not exclude an educational institution also being a 'body established for religious purposes' within the meaning of the SDA. Subsection 37(1)(d) is a broad religious exemption which would, on its face, appear to allow religious schools to continue to suspend or expel students based on their sexual orientation or gender identity.

The supplementary explanatory memorandum also raises concerns about the impact of item 1 on churches, mosques, synagogues or theological colleges. These religious bodies already have access to the exemptions under s 37(1)(a) to (c) of the SDA, including for training or education of members of a religious order or the selection or appointment of people to perform duties or functions in connection with any religious observance or practice.

We note that the scope of the exemption relates to the protection from discrimination in education set out in s 21 of the SDA, which makes it unlawful for an "educational authority" to discriminate on the basis of protected attributes. Educational authority is defined in s 4 of the SDA as a body or person administering an "educational institution", which is defined as "a school, college, university or other institution at which education or training is provided".

Both items in the bill are necessary to ensure that LGBTQ+ students cannot be expelled from a religious school on the basis of their sexual orientation or gender identity. Even if s 38(3) of the SDA is removed, s 37(1)(d) would continue to apply. In effect, this amendment would allow discrimination against LGBTQ students to continue under the broad religious exemption in the SDA.

#### *Amendments to allow discriminatory school policies and indirect discrimination amendments*

The Government circulated amendment sheet KQ148 introduces a new permanent exemption under the indirect discrimination reasonableness test in the SDA. Any condition, requirement or practice imposed by a religious educational institution on a student would be reasonable provided that:

- it is 'in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed' (**good faith requirement**);
- it is consistent with a written, publicly available policy outlining adherence to its doctrines, tenets, beliefs or teaching (and which complies with regulations); and
- for children under 18, the educational institution has regard to the best interests of the child (**best interests consideration requirement**).

The Government circulated amendment sheets KQ150 and KQ151 have a similar intention and should be viewed as alternative amendments to each other. These circulated amendments introduce new matters to be taken into account in determining reasonableness under indirect discrimination in the SDA. If the condition, requirement or practice is proposed or imposed in relation to a student by a faith-based educational institution under amendment sheet KQ150, or a

religious primary or secondary school under amendment sheet KQ151, the good faith requirement and best interests consideration requirements will be considered.

In addition to the reasons outlined above, the addition of further factors to the test of reasonableness adds unnecessary complexity to the reasonableness test for indirect discrimination. The amendments are untested by courts, and may fail to adequately protect LGBTQ+ students from discrimination.

These amendments unacceptably broaden the scope of the existing specific religious educational institutions exemption. Currently, s 38(3) of the SDA only allows faith-based educational institutions to discriminate on the basis of a person's sexual orientation, gender identity, marital or relationship status or pregnancy, but the proposed amendment would be broader, introducing a religious consideration in respect of all attributes (i.e. sex, intersex status and potential pregnancy).

While we support the best interests of the child being considered as a primary consideration, the circulated amendments fall short of protecting children's rights. The amendments only require that schools have regard to the child's best interests. They do not require the school to act compatibly with the child best interests – and would continue to allow discrimination where this undermines the best interests of a child. Australia has ratified the Convention on the Rights of the Child, which requires the Australian Government to ensure the best interests of the child are a primary consideration in all actions concerning children.<sup>18</sup>

In addition, the current test for reasonableness in the SDA requires consideration of objective criteria. The proposed amendment inserts subjective criteria; undermining the objective inquiry required by the definition and the emphasis it places on proportionality.

The Government amendment sheet KQ151 seeks to only apply to students in primary or secondary schools. All people who attend education or training should be protected from discrimination on the basis of their sexual orientation or gender identity. Australian discrimination protections should apply to the thousands of students at faith-based tertiary educational institutions, and the millions of Australians who are required to attend education or training to qualify for a job, or as part of their job. Allowing any education or training providers to treat a participant less favourably because of their sexual orientation or gender identity is unacceptable.

#### *Teaching activity amendments*

The Government circulated amendment sheet KQ149 introduces a new exemption in the SDA which allows religious schools to engage in teaching activity without this constituting direct or indirect discrimination, provided the good faith requirement is met. 'Teaching activity' is defined broadly to mean 'any kind of instruction of a student by a person employed or otherwise engaged by an educational institution'.

There is no requirement that schools take into account the best interests of the child in these amendments, or to avoid potential harm to children caused by giving discriminatory instructions or delivering discriminatory content.

The definition of teaching activity is very broad. It applies to 'any kind of instruction' to a student (inside or outside the classroom, including directions from a person to a student, including about behaviour, disciplinary actions, dress codes, etc). For example, it could include an instruction

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<sup>18</sup> UN General Assembly, Convention on the Rights of the Child (20 November 1989) UNTS 1577/3, article 3(1); Australian Human Rights Commission, *Human Rights Brief No. 1: The Best Interests of the Child*, 1999 <https://www.humanrights.gov.au/publications/human-rights-brief-no-1> )

from a teacher that students should not speak to a child in the class because their parents are in a same-sex marriage. It could also include directions from the school to a transgender child that they cannot wear the uniform that aligns with their gender expression or require them to change their hair to conform with social conventions associated with the sex they were assigned at birth, in a way that could cause significant psychological distress to a child.

The amendments apply to any person, not just teachers. It would allow untrained people in a school context without teaching qualifications who engage in 'teaching activity' in schools to give discriminatory instructions to children in religious schools. This amendment would allow external conversion therapy providers to visit a school to deliver conversion practices telling children that they are 'sick' or 'broken', or which attempt to 'cure' their sexuality, which have proven to be harmful.<sup>19</sup>

In addition to the reasons outlined above, this amendment would allow discrimination – including direct discrimination against a student because of their sexual orientation or gender identity – by teachers in classrooms at religious schools. This is exceptionally broad. For example, it would appear to allow a teacher at a religious school to refuse to teach an LGBTQ+ student, or refuse to allow them to participate in a classroom activity, if the teacher is acting in good faith and this is in accordance with the beliefs of that religion.

In advice on the circulated amendments, Mark Gibian SC reportedly advised:

For example, a teacher or school could provide inferior instruction to a student on the basis of the student's sex, sexual orientation, gender identity or intersex status or, indeed, exclude that student from instruction entirely ... A teacher or school could, similarly, impose different or draconian instructional requirements on particular students for discriminatory reasons.<sup>20</sup>

Discrimination laws primarily protect people against actions which cause disadvantage or mistreatment. These amendments relate to curriculum and the content of what is taught in schools. Guidelines about curriculum and teaching content require input by education departments and teaching professionals. There is a need to balance the rights of people of faith to teach in accordance with their religious beliefs, but also to ensure that curriculum taught in government funded schools do not promote discriminatory or harmful behaviour. Inserting rushed and uncertain amendments to the SDA is not the appropriate avenue for determining these policy positions.

The amendments introduce a blanket exemption for religious teachings – regardless of the content of these teachings. The government is responsible for ensuring that children in schools are not subjected to unacceptable discrimination, particularly in schools which receive government funding.

As above, this amendment would also apply to a broader category of students than the current specific religious educational institutions exemption, on the basis of sex, intersex status or potential pregnancy.

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<sup>19</sup> See e.g., Timothy Jones et al, 'Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia' (Gay & Lesbian Health Victoria, La Trobe University & the Human Rights Law Centre 2018) <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5bd78764eef1a1ba57990efe/1540851637658/LGBT+conversion+therapy+in+Australia+v2.pdf>.

<sup>20</sup> SBS Australia, 'Labor won't allow conscience vote on LGBTQI+ students protection bill' (5 December 2018) <https://www.sbs.com.au/news/labor-won-t-allow-conscience-vote-on-lgbtqi-students-protection-bill>.

This amendment is both unnecessary and one-sided. The Bill ensures that schools will be able to teach in accordance with their religious beliefs in the years and decades to come. It also safeguards against engaging in harmful discrimination against LGBTQ+ students. The amendments only seek to protect teaching activity relating to religious beliefs – but would not for secular or non-religious beliefs.

The Bill proposes amendments to the SDA which are simple and straightforward. This amendment creates confusion and seeks to remove legislative exemptions that allow religious schools to expel or suspend LGBTQ+ students.

### ***Centre Alliance amendments***

#### ***Amending 'body' to 'educational institution'***

The Centre Alliance amendment sheet 8614 replaces the term 'body' in item 1 of the Bill with 'educational institution'. The intention of the amendments appear to be to limit the new exception to religious educational institutions, and not broader categories of bodies established for religious purposes. However, it does not appear that the amendment significantly alters the effect of the Bill.

The amendment may be intended to cover any 'educational institution', but not an 'educational authority' (e.g. allowing a discrimination complaint to be brought against a religious school, but not against the religious institution which administers the school but does not directly provide the education).

As outlined at page 6 above, any concerns that a religious institution (e.g. a temple, church or mosque) may be prohibited from teaching religious instruction in places of worship could be addressed by clarifying the scope of s 38(2) of the Bill (e.g. in the Explanatory Memorandum).

We note that there are a number of religious organisations which deliver education and training – such as child care centres and religious service delivery organisations – which should not be permitted to discriminate against LGBTQ+ people. Government funded training and education should be provided in a non-discriminatory, inclusive way for all participants.

### ***Australian Greens amendments***

#### ***Removing exemptions in employment***

The Australian Greens' amendment sheet 8601 seeks to remove the broad and specific religious exemptions which allow religious educational institutions to discriminate against employees and contract workers from the Bill.

Approximately 1 in 3 schools in Australia are religious schools. Allowing government funded schools to discriminate against LGBTQ+ employees and contract workers significantly shrinks the employment opportunities available. Experiencing discrimination also has a significant impact on the mental health of LGBTQ+ people, who are disproportionately represented in statistics of mental health issues, self-harm and suicidal ideation, and employment opportunities.<sup>21</sup>

Allowing discrimination in employment sends a clear message to LGBTQ+ students that they are not welcome or accepted at school. It denies children the opportunity to be taught by exceptional LGBTQ+ teachers.

We support amendments to the Bill which remove discrimination against current and prospective employees and contract workers at religious educational institutions. As outlined in the Human

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<sup>21</sup> Above n 12, 13.

Rights Law Centre's submission to the 2018 inquiry at Appendix C, there are further amendments required to the *Fair Work Act 2009* (Cth) to provide adequate protection from discrimination in employment.

## 6. Conclusion

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**Our message is simple. When it comes to discrimination against children: all schools should have the same rules.**

Outdated legal exemptions that allow religious schools and universities to turn away LGBTQ+ students, teachers and staff need to be urgently removed. Following the release of recommendations from the Religious Freedom Review report in October 2018, there was mass public outrage against the fact that religious schools could expel LGBTQ+ students or fire LGBTQ+ teachers. These laws are at odds with modern community expectations, Australia's obligations under international law, and basic equality.

**Broad exemptions from our discrimination laws allow religious schools to expel LGBTQ+ children. No child should feel scared to walk through the school gates just because of who they are.**

LGBTQ+ children and young people who experience higher rates of mental health issues, suicide and self-harm because of the discrimination they experience every day have the right to an education without being treated as 'less than' because of who they are.

**It shouldn't matter where a child goes to school, they should not face discrimination or mistreatment when seeking an education.**

The Bill provides a clear way forward to remove discrimination against LGBTQ+ students in religious schools, but must be amended to put an end to discrimination against LGBTQ+ teachers and staff at these schools.

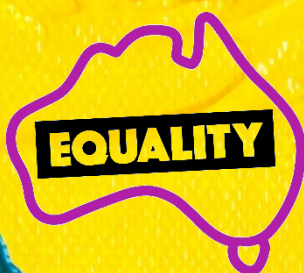
**Teachers should be able to do their job without having to hide who they are.** Allowing discrimination against teachers to continue sends a message to their students that flies in the face of the values of fairness and acceptance that a majority of Australians expect.

The bill provides the Australian Parliament with a pathway to allow schools to protect LGBTQ+ students and teachers from discrimination while allowing religious schools to maintain their religious ethos.

### Recommendation

We recommend that the Senate Legal and Constitutional Affairs Legislation Committee recommend that the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 be amended to protect teachers and staff by removing existing religious exemptions which allow discrimination against employees and contract workers in religious educational institutions, and recommend that the Bill then be passed through the Australian Parliament as quickly as possible.





**Equality Australia is a national LGBTIQ+ legal advocacy organisation.**

We work with LGBTIQ+ people to amplify the voices of our communities and achieve positive legal, policy and social change for LGBTIQ+ people and their families in Australia. Equality Australia is an independent, not-for-profit non-government and a registered charity.

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