

Feedback on the proposed changes to religious exceptions under the Equal Opportunity Act 1984 (SA)

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Dear Attorney

Thank you for the opportunity to comment on the Draft Equal Opportunity (Religious Bodies) Amendment Bill 2020. It is concerning that it has come to your attention that some religious schools have attempted to rely on their status as a "body established for religious purposes" under section 50(c) of the *Equal Opportunity Act 1984 (SA)* to legally justify discrimination against students on the basis of sex or LGBTIQ identity.

I am supportive of the proposed changes to clarify that essential service providers, including religious preschool, primary and secondary schools, cannot rely on the exceptions for bodies "established for religious purposes". However, it is unclear how far the proposed changes will go in promoting inclusivity and non-discrimination, in all areas covered by this amendment.

This submission places the views and interests of children and young people front and centre in relation to the experiences they have in religious schools. Students are a significant group of "service recipients" whose education and lives may be shaped by this legislation, but whose voices are not usually heard.

To inform the submission my office asked children and young people whether and how they thought religious schools discriminated against LGBTIQ+ students, and what they believed would make these schools inclusive for LGBTIQ+ students.

Of course, the experiences that were detailed in the survey do not represent every religious school. There are noted examples of religious schools that actively practice inclusivity for all. Some of the LGBTIQ+ students who provided feedback reported positive experiences in these environments. Nevertheless, the feedback gathered overwhelmingly suggests that these schools appear to be the minority. Some of the reported behaviour in some of these schools should not be tolerated in any environment.

From the responses, it was clear that most students did not know what to do or where to go in respect to the alleged discriminatory treatment against them. As your letter identified, section 50(c) has not been tested in Court. This may be due partly to a lack of information for students (and their families) about ways to raise concerns, or fears of the potential repercussions of doing so.

Indeed, in most cases where students reported having voiced their concerns internally, students reported being dismissed, avoided or actively excluded by schools. Based on this, I recommend that part of this amendment should also include information and raising awareness on any options students and their families can to make a complaint, including to the Equal Opportunity Commission. As well as what they might expect during this process.

Children and young people have also made suggestions to promote inclusion in schools and address discrimination on the basis of gender or sexual identities. Their ideas may also be relevant to other service providers and sectors beyond education and I encourage you to consider how the amended legislation might incorporate their insights. These include:

- Changes to the curriculum and education to better reflect and normalise the diversity of society;
- School culture and leadership changes to prevent bullying, promote safety, staff training and facilitating access to appropriate support services; and
- Structural changes at schools, such as school uniforms, infrastructure, policies, as well as feedback and complaints mechanisms.

I would welcome the opportunity to discuss any of this in further detail at a time convenient to you.

Yours sincerely,

Helen Connolly
Commissioner for Children and Young People

Background

As South Australia's Commissioner for Children and Young People, it is my mandate under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* to promote and advocate for the rights, interests and wellbeing of all children and young people in South Australia. It is part of my role to ensure that the State, at all levels of government, satisfies its international obligations under the United Nations Convention on the Rights of the Child (CRC).

The *Children and Young People (Safety) Act 2017* provides children with other protections, including a set of promises to ensure all children are safe from harm, do well at all levels of learning, have skills for life and are active citizens who have a voice and influence.

The Safety Act also provides a legislative remit for all organisations working with children to be child safe. Child Safe Environments is more than just organisations ensuring that all employees, volunteers and others that are in contact with children have a Working with Children Check and Child Safe Environments Principles of Good Practice, it is *"about creating environments where children and young people can thrive: "where they feel respected, valued and encouraged to reach their full potential."*

Further, section 7(4) of the *Education and Children Services Act 2019* makes it clear that children and students should not be unlawfully discriminated against on the ground of their gender, mental or physical impairment, religion or race, nor that of their parents. A child's best interests is also the "paramount" consideration in the enforcement of this Act and it could be argued that it is not in the best interests of any child to be discriminated – either directly or indirectly – on the grounds of gender identity or sexual orientation.

What we did

Consistent with Article 12 of the CRC that gives children the right to be heard in decisions and matters that affect their lives, the Commissioner conducted a survey to hear the views of children and young people about their experiences in religious schools.

The survey asked children and young people whether religious schools discriminated against students that identified as LGBTIQ+, how they discriminated and what could be done to make these schools more inclusive. It also asked respondents to tell "one thing" to the Commissioner about discrimination on the basis of a person's sexual orientation, gender identity and intersex status.

A total of 86 South Australian children and young people aged 13 to 22 years old responded to the survey. Survey respondents represented a diverse sample of children and young people; of those 78% identified as coming from the LGBTIQ+ community, 10% identified as coming from culturally and linguistically diverse backgrounds and 17% identified as living with disability.

This Office also received two case studies from young people who wanted to share their experiences in more detail and these are included.

What we heard

The vast majority of respondents (88%) stated that religious schools do discriminate against children on the grounds of their gender identity or sexual orientation. Ninety four per cent of respondents who identified as part of the LGBTIQ+ community believed that religious schools discriminate against this group of children.

During my investigation into the causes and impact of school exclusions and suspensions, a few young people raised concerns about certain schools excluding students from enrolment or full participation at the school on the basis of their gender identity or sexuality. However, none of the respondents in the present survey focused on their experience or barriers to enrolling in a religious school. This may in part be that it is the parents who decide where their children will enrol for school, and children have little say in this decision and most children and young people enter primary or secondary school at a stage of development where they may not be certain of their identity.

In any case, being excluded at enrolment does not appear to be a major barrier for children and young people, it is actually the treatment that they receive when at school. Both within classrooms as well as the broader school environment, by peers, teaching staff and leadership staff. The question then becomes: how will the current amendment in this Bill ensure that these discriminatory practices cease?

In what ways do religious schools discriminate against LGBTIQ+ students?

Children and young people who participated in the survey described their experiences and perceptions of direct and indirect discrimination against LGBTIQ+ students in religious schools.

Some described the actions of peers and staff as “active” bullying of LGBTIQ+ students.

“Teachers actively argue against/refuse to educate students about lgbtiq learning in health, science and religious education classes ... Teachers can and have outed lgbtiq students to their parents and risked their safety.”

“Outing students without consent, teachings that it’s a sin and immoral, forcibly breaking up LGBT couples, verbal abuse and social exclusion, misgendering and deadnaming, sometimes physical abuse.”

Others focused on the indirect ways in which schools “silenced” or “pushed out” LGBTIQ+ students, including a failure to intervene to protect students from bullying from other students.

Some talked about the fact that they were not allowed to express their status, this including being able to wear the school uniform or go to the toilet that matched their gender identity.

“Proper support services are not provided to lgbtiq students when they are struggling and/or being bullied ...”

“At my school trans-students were stopped from using the right bathroom, wearing the right uniform and were sent to the counsellors for expressing themselves. Gay students are treated unfairly by teachers and teachers look down upon them.”

Many respondents thought that what they were taught about relationships across key areas of the curriculum was discriminatory. It was common for schools to either remain silent on the subjects in relation to gender identity and sexual diversity or students were told that these relationships were “wrong”.

“In my own experience in religion class (where sex education was held), the LGBTQIA+ experience was completely ignored. There was an obscenely large focus on heteronormativity... I recall being prohibited from studying a homosexual couple for an assignment on “healthy relationships” because it wasn’t “How God sees a healthy relationship””

One respondent commented that even where the LGBTIQ+ community “is not actively hatefully targeted against, schools ignoring the existence of the community has a strong impact on the mindset of students” and “their emotional and physical wellbeing goes down immensely”. There was a sense that what schools don’t do can influence children’s wellbeing and healthy development just as much as what schools do:

“Mostly it is in the erasure. Forgetting to include sex education, life experiences, and stories from LGBT+ people. There is an assumption of cishet orientation.”

“By adopting a non-affirming stance (whether that be with actively non-affirming content, or with a more passive “ignore the whole topic” approach) religious schools are teaching their LGBTQ+ students that they are inherently lesser than their cis-het peers, and that there is a fundamental flaw in their identity that keeps them from God, which is simply not true. This often coincides with the time in which many students are most vulnerable with their developing identities, and schools have a responsibility to ensure that their messages are not actively harming a child’s personal and emotional development in this way.”

Respondents described what schools did that treated LGBTQI+ students “differently” or “less favourably” than others which may result in indirect discrimination under the EOC Act. This made LGBTQI+ students feel like they were not getting the same service and opportunities as their peers, and made them fear for their safety and their educational outcomes. One respondent noted that educators “tend to be a lot harsher to towards students that they know are LGBTQIA+”.

“Treating them differently to others and preferring the “straight” kids over the ones they know to be apart of the lgbt+”

“Some teachers actively did not seek out discussions with openly LGBTQ+ students. I was afraid to come out as trans (nobody else there was, to my knowledge) as I was afraid of being expelled altogether and losing my ATAR progress.”

It was common for respondents to mention their school’s refusal to discuss certain topics, provide support services or display support for events or initiatives perceived to be pro-LGBTIQ+. Some young people reported that their school allowed the existence of groups that supported gender equality, but only if it was not publicised. Many reported that their

schools would not acknowledge events or significant dates in the LGBTIQ+ calendar, such as Pride Month.

“Despite being a functioning club at my school the GSA (Gender Sexuality alliance) was not allowed ever to advertise and when holding events, even when lgbtq+ centric were not allowed to be explicit about lgbtq people having to use alternate phrases like “rainbow people” or generalised statements like “people regardless of gender, sexuality, race or religion””

“Do not allow them to celebrate Pride Month, Purple Day, etc. in any way with excuses that it would reveal people’s identity and cause bullying, although most students support those in the LGBTQ+ community.”

Case study one – A student leader’s experience

When I was at school I was a student leader, we were responsible for organising events on special days from Pancake Day to R U OK? day to NAIDOC week but it was curious that during the time I wanted to recognise the end of pride month with a fundraising event with a screening a popular movie (at the time). My emails were never returned. Meetings were regularly double booked with staff meetings so that the principle couldn't attend and during meetings where he was present I was told to email him.

I approached his PA to book a meeting with him as if I was a member of the Public and by time we got a meeting Pride month had passed. At the meeting we discussed other issues. I am not sure if this is coincidence or whether it was just a case of the school leadership attempting to ignore student leadership.

Whether respondents described discrimination against LGBTIQ+ students as indirect or direct, many reported witnessing or experiencing the damaging impacts of discrimination. There was a sense that the impacts on a child’s development and mental and physical wellbeing were not only immediate, but lasted into adulthood, significantly affecting a student’s prospects for the future.

“Being told that I, a lesbian, should have been aborted if they could identify a “gay gene” when discussing the ethics of abortion and “designer babies” not only taught me and my classmates that discriminating is okay, but also told me at an impressionable age that because of the people I love, I was not worth being alive. This was only one example of many, but that moment will be permanently ingrained in my memory.”

What do young people say would make schools more inclusive?

Most young people who participated in the survey identified several things they believed would make religious schools more inclusive for LGBTIQ+ young people. They made recommendations for action both within the school environment and at a broader policy

level. It was clear young people care about these issues and that they had spent a significant amount of time reflecting on how they might be addressed.

They shared their ideas for change across three key areas:

- 1. To the curriculum and education to better reflect and normalise the diversity of society.**
- 2. School culture and leadership, to prevent bullying, promote safety, staff training and facilitate access to appropriate support services.**
- 3. At a structural level, including policies in relation to school uniforms, infrastructure, policies and feedback and complaints mechanisms.**

Curriculum and education

One of the most common suggestions was to improve the breadth of the curriculum. Many respondents would like to see diversity openly discussed and normalised across key areas of the curriculum, including history, relationships and sexual health education, science, health, social studies and religion. They saw the inclusion of LGBTIQ+ histories and identities in education as strengthening rather than undermining religious tolerance.

“Making sure that we all know religion should not be used against each other and it should be used to spread love and acceptance instead”

“acknowledging LGBT people’s identities are valid in environments such as health classes could make school environments more inclusive”

There was a real sense that validating histories and identities in this way is important to young people’s wellbeing, not only in the short term but beyond the classroom and well into adulthood.

“There are gay kids who don’t even know other gay people exist, and feel that they are broken. Education is super important so that kids don’t think that they are broken.”

“Having teaching about queer people as part of the curriculum regardless of school type as teaching at a younger age prevents bullying and ‘otherness’ in later years”

School culture and leadership

Many survey respondents thought that changes to formal curriculum content would be most effective when accompanied by changes to school culture and leadership. Young people offered various suggestions for how schools could be encouraged to listen to students and ultimately to treat LGBTIQ+ students “as people and not sinners”.

“If religious institutions acknowledged that regardless of their standpoints, their schools are going to cater for non-religious students too, so they must be inclusive of all people.”

Some respondents commented that schools should be a safe place for children, which also aligns to Child Safe Environments Principles of Best Practice.

"I think they need to make it clear that their school is 100% a safe place for these people and acknowledge that YES, a lot of religious communities can be homophobic/transphobic, & that despite this they are not that way."

Many respondents thought training for teachers and other staff, including school leadership, could effectively raise awareness about diversity, homophobia and transphobia and promote sensitivity and inclusion, while also being in line with religious precepts. This education and training also came up in the context of the need for more proactive bullying prevention.

"If teachers accepted them, didn't punish them for who they are, and stepped in to stop homophobic and transphobic bullying from students and other parents."

"Teachers undergoing further training in how to teach these classes well or bringing in experts to teach specific classes. Work with student body to promote a culture of acceptance within a school. Allow trans students to use the bathrooms of the gender they identify with."

Several young people made specific suggestions about the use of inclusive language, with including encouraging teachers to use student's preferred pronouns. Others wanted teachers and school staff to be willing to engage in conversations rather than ignoring or shutting down discussion related to LGBTIQ+ lives, experiences and identities.

"Enforce teachers to use correct gender pronouns."

"Specific LGBT training for staff as well as mandatory classes for students."

Young people reported mixed positive and negative experiences with religious chaplaincy services. They thought schools would benefit from offering options to access non-religious support services in addition to religious-affiliated services.

"If counselling services were non-religious as opposed to the current religious chaplaincy service, and if religious schools were held to a set of secular standards that made their schools more inviting."

Many respondents talked about practical and symbolic strategies to promote inclusivity are particularly important given respondents highlighted that the subtle ways in which schools "silenced", "denied" or "ignored" LGBTIQ+ students can be just as harmful as overt displays of bullying.

They highlighted the benefits to their wellbeing when schools recognised clubs, and events or days like Wear it Purple day or Pride Month. Seeing flags, posters, and literature in the school library that reflects the diversity of students is validating and strengthens feelings of safety and sense of belonging. They also wanted schools to allow young people to bring a person of the same sex to the school formal.

"Having 'male' 'female' 'prefer not to say' 'other' etc. checkboxes in surveys ... Within sex ed, not keeping the teachings narrowed to male/female relationships and embracing events such as Pride Month"

Structural changes to policy, complaints processes, uniforms and infrastructure

Young people made recommendations for greater inclusivity in schools at a structural as well as cultural level. Several respondents highlighted the importance of gender-neutral bathrooms and uniforms.

“Talking about it in a more friendly manner... Supporting with restroom requirements of people that are not cis gendered.”

“LGBTIQ representation in conversations and education. Queer sex education. Inclusive language. Gender neutral uniforms.”

Others focused on a need for greater protection for students in school policies and legislation. Some believed that “if there are legal repercussions to discrimination, that would help”. This suggests that many students do not know where to go to voice concerns or make complaints. In many cases where issues were reportedly raised, it was common for students to report being “silenced” at school level.

“Legislation that bans the use of religion to discriminate against people. Moreover, forums for young people to anonymously report their schools for homophobia so that anti-discrimination bodies can intervene could also help.”

“Zero tolerance policies for homophobic slurs from students and teachers alike would be a step in the right direction.”

Respondents believed schools should provide students with clear information about feedback and complaints mechanisms, both internally within schools, but also making clear the existence and functions of external anti-discrimination bodies such as the Equal Opportunity Commission. They wanted pathways to anonymously and confidentially raise concerns and reassurance that institutions would be accountable to children and protect their privacy.

“a way for students to confidentially report homophobic and transphobic behaviour.”

“forums for young people to anonymously report their schools for homophobia so that anti-discrimination bodies can intervene.”

Where to from here?

Case study

"I got quite lucky with my experiences at a religious high school – the school chaplain was welcoming and accepting of students regardless of their sexuality or gender identity. We had old students come back to volunteer at the school and had their pronouns used correctly. Teachers made an effort to be clear that they accepted all students. I can't explain how much that meant to me as a young kid coming to grips with my identity, but knowing that those around me wouldn't judge me was truly meaningful.

However, my experience was pretty unique, even within my school. A prominent Religious Education teacher at the school at that time made it clear she thought gay people were going to hell, specifically referring to a student's aunt and disregarding the possibility there were gay students in her class at the time (there were two). At my sister's religious school a Pride Club was established, but due to parent complaints only high school students were allowed to join, and they were forbidden from advertising in case they 'converted' middle school students, which is patently absurd. I've heard of students forced into counselling there too because of who they are.

I was incredibly lucky to go to an accepting religious school – if I had gone to my sister's school I don't know what I would've done. So many queer youths struggle enough with mental health issues on account of discrimination from family and friends, and school should be a moment of freedom for them."

Several young people described their schools as "quite inclusive", having shown some level of commitment to some of the above suggestions. The following positive case study highlights the benefits of fostering inclusion and addressing discrimination: This young person highlighted that their positive story is currently not the norm. It is significant that some young people who responded to our survey saw "taking gay kids out of religious schools" as the only solution. These young people believed "children deserve better" than the treatment they may receive in some schools. This is concerning because the onus should be on those providing education services to create safe environments for all students to have their needs met, be themselves and reach their full potential.

Where this is not occurring, it should not be up to the students to be forced to leave or change schools. Rather, systems, services, policies and legislation – including the proposed Amendment Bill – should be ensuring all students, regardless of their sexual identities and gender, can safely access and participate in their right to an education without being discriminated against. This includes making the necessary cultural and structural changes to promote inclusion and protect these rights.

ⁱ Department for Human Services, South Australia. "Child safe environments – Principles of Good Practice". Updated 2019. Available at