Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 Submission

December 2018

Alannah & Madeline Foundation

Keeping children safe from violence

Sex Discrimination (Removing Discrimination Against Students) Bill 2018

The U.S. Department of Education Office of Civil Rights:

> *'The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.'*[1]

And in the words of Nelson Mandela:

> *'Education is the most powerful weapon which you can use to change the world'.*

We are writing to support the exemption in the Sex Discrimination (Removing Discrimination Against Students Bill 2018 ('the Bill') that discriminates against school children and young people based on their sexual orientation and gender identity.

This submission outlines research on bullying and discrimination that LGBTIQ children and young people already face in the community without the overt discrimination in the law. Far from expressing cultural bias and structural inequality by excluding students who are different, schools must be encouraged and resourced to support gender diversity, intersex and sexual diversity so that LGBTIQA+ students feel, and are, safe, included and valued and enjoy respectful relationships with teachers and peers.[2]

The Alannah & Madeline Foundation (the Foundation) has long understood and responded to the fact that bullying is one of the most common forms of violence and discrimination experienced by children, forming the National Centre Against Bullying in 2002 and undertaking programmatic design aimed at reducing the prevalence of bullying in Australian Schools.[3] Its commitment to vulnerable children and youth is realised through the Children Ahead initiative, which provides intensive, therapeutic support to children and young people aged 0-18 years to assist their recovery from significant trauma or violence.

1.   The cost of bullying

Bullying is now recognised as a significant problem in Australian society and across the world. Its effects on individuals can result in poorer physical, educational, psychological, cognitive and social outcomes for many involved - targets, perpetrators and often bystanders - negative effects that can persist into later life.

The mental and physical, social and academic consequences of all forms of bullying and discrimination have an enormous impact on human and social capital. The costs of bullying burden our education, health care, social service and criminal justice systems, as well as work force productivity and innovation.[4]

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[1] https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf
[2] A very good resource is to be found at:
https://www.education.vic.gov.au/Documents/about/programs/health/safeschoolsguide.pdf
[3] eSmart Schools (https://www.esmart.org.au/)
[4] Kandersteg Declaration, www.kanderstegdeclaration.com

An analysis commissioned by the Foundation and undertaken by PricewaterhouseCoopers (PwC) of the Economic Costs of Bullying,[5] determined that almost 25 per cent of school students in Australia, or an estimated 910,000 children, experience bullying at some stage during their school life. Aggregated costs pf bullying total $2.4 billion, incurred while the children are in school and for 20 years after school completion, for each individual school year group.[6] The estimated costs are experienced by individuals, families and communities.

In the 20 years following school completion, the consequences of bullying continue to be felt and are estimated to cost $1.9 billion for each single cohort of students. This is driven by impacts to productivity, chronic health issues, and impacts on family and other members from family violence.[7]

Bullying happens for a number of reasons. Some young people bully others because they are too young to understand what they are doing is wrong – their moral development is not yet complete. Other young people use it as a means to get or keep social position or power within their group; to reinforce social norms; to enforce conformity to gender stereotypes; to endorse gender norms or to prevent the bullying happening to them.

They may also be modelling behaviour they have observed at home. In fact, many children try bullying at one time or another as they learn different ways of interacting socially. Some children who have been bullied go on to bully others, the bully / victim cycle making it more difficult to see bullying in black-and-white terms.

2. Bullying of LGBTIQ children and young people

Lesbian, gay, bisexual, transgender and intersex, queer, asexual (LGBTIQA+) young people make up a significant part of Australian society. Nationally, up to 11 per cent of individuals identify themselves as part of this group[8]. They tend to be disproportionately victimised relative to their heterosexual peers as a direct result of the ignorance, fear and prejudice that surrounds them.

There is still a culture of victim-blaming to be found in discussions about bullying – for example, 'you have been bullied because you deserve it'. Despite telling children and young people 'being bullied isn't your fault', this attitude persists despite robust research showing that bullying can happen to anyone, at any time.

The PwC report[9] indicated that risks of experiencing bullying are increased for those who identify as part of the LGBTIQA+ group and other research shows that these young people are particularly vulnerable to being bullied for who they are, what they have no control over and what they themselves frequently struggle to accept.

Sixty one per cent of LGBTIQA+ young people report experiencing homophobic bullying, 18 per cent, report homophobic abuse, 69 per cent report other types of homophobia, including exclusion and rumours, and 80 per cent reported abuse at school.[10]

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[5] PricewaterhouseCoopers (2017) The Economic Costs of Bullying, PwC.
[6] School year group refers to all students in one school year, for example, all students in Year 3, over the course of their schooling career, typically from kindergarten to Year 12, a total of 13 years during school.
[7] PricewaterhouseCoopers (2017) The Economic Costs of Bullying, p i
[8] Department of Health and Ageing (2012), 'National Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTIQA+) Ageing and Aged Care Strategy', Commonwealth of Australia, 2012.
[9] PricewaterhouseCoopers (2017) The Economic Costs of Bullying, PwC.
[10] Hillier, L., Jones, T., Monagle, M., Overton, N., Gahan, L., Blackman, J. & Mitchell, A. (2010), 'Writing Themselves in 3', Australian Research Centre in Sex, Health and Society, La Trobe University, Monograph series no. 78, 2010.

3. Views in relation to this Bill

There are serious risks for schools who do not challenge negative societal attitudes toward LGBTIQA+ young people and thus face the possibility of legal action by failing to meet the provisions of anti-discrimination laws.

To exempt religious schools from these provisions by allowing them to 'directly discriminate against students based on their sexual orientation, gender identity or intersex status' [11] flies in the face of current community attitudes regarding the wellbeing of children and young people and the expressed views of many schools[12] (they will still be free to continue their religious teachings and there is nothing in the proposed legislation to restrain their right to do so).

To debate the right of schools to discriminate against young people for being who they are seems contrary to all the tenets of a civilised society. Where bullying is entrenched – when an organisation tacitly condones it by failing to put in place explicit preventative and responsive measures, a culture emerges where power over others is endorsed and which allows bullying and other forms of discrimination and persecution to flourish.

Australian data is validated by research from the US, which shows that bullying occurs more frequently among LGBTIQA+ youth in American schools than among students who identify as heterosexual.[13] For LGBTIQA+ young people (14 - 25 years old), 80 per cent of homophobic bullying occurs at school and has a significant impact on wellbeing and education.[14]

Approximately 61 per cent of same-sex attracted and gender-questioning young people said they experienced verbal abuse because of their sexuality, while 18 per cent reported experiencing physical abuse. A further 69 per cent reported other forms of homophobia, including exclusion and rumours.[15]

Many experience a range of associated poor health and life outcomes. The mental health of this group is among the poorest in Australia, manifesting as psychological distress, anxiety disorders and affective disorders.[16] LGBTIQA+ people have the highest suicide rates of any population group in Australia, with indigenous and older people being at particularly high risk.[17]

The risks are not due to a person's sexuality, sex or gender identity, but because of discrimination, exclusion, and other forms of persecution (stereotyping, ostracising, harassment, public insult, harassment and various forms of workplace bullying) experienced by members of this group.

Homophobic abuse affects young people both during schooling years and long after school completion. More than half of the participants in an LGBTIQA+ study[18] felt that homophobic abuse impacted on a range of aspects of schooling. LGBTIQA+ Australians are also three times more likely than their non-LGBTIQA+ counterparts to experience depression.[19] Moreover, for many LGBTIQA+ young people, homophobic abuse was associated with feeling unsafe,

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[11] Sex Discrimination Act 1984
[12] Commonwealth of Australia Senate, Hansard Thursday, 29 November 2018 p 101
[13] Birkett, Espelage, & Koenig, 2009; Espelage et al., 2008; Kosciw, Greytak, & Diaz, 2009; Robinson & Espelage, 2012, 2013)
[14] Department of Health and Ageing (2012), 'National Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTIQA+) Ageing and Aged Care Strategy', Commonwealth of Australia, 2012.
[15] Hillier, L., Jones, T., Monagle, M., Overton, N., Gahan, L., Blackman, J. & Mitchell, A. (2010), 'Writing Themselves in 3', Australian Research Centre in Sex, Health and Society, La Trobe University, Monograph series no. 78, 2010.
[16] Rosenstreich, G. (2013) LGBTI People Mental Health and Suicide. Revised 2nd Edition. National LGBTI Health Alliance. Sydney
[17] Rosenstreich, G. (2013) LGBTI People Mental Health and Suicide. Revised 2nd Edition. National LGBTI Health Alliance. Sydney, p3.
[18] Hillier, L., Jones, T., Monagle, M., Overton, N., Gahan, L., Blackman, J. & Mitchell, A. (2010), 'Writing Themselves in 3', Australian Research Centre in Sex, Health and Society, La Trobe University, Monograph series no. 78, 2010.
[19] Australian Human Rights Commission (2014), 'Face the facts: Lesbian, Gay, Bisexual, Trans and Intersex People'.

excessive drug use, self-harm and suicide.[20] LGBTIQA+ young people are nearly twice as likely to engage in self-injury, are also much more likely to attempt suicide in their lifetime compared to the general population, with respective rates of suicide attempt reported to be 16 per cent compared to 3.2 per cent.[21]

'There are several additional factors that suggest that witnessing the victimisation of other peers may uniquely account for elevated mental health risks, over and above direct involvement as the primary bully or victim. A study of victimisation among sexual minority youth (those who identify as gay, lesbian, or bisexual) suggested that those who observe another sexual minority youth being victimised may experience many of the emotional and psychological effects of direct victimisation, particularly if they were previously a victim.[22]

'Children and adolescents who are exposed to forms of violence often experience elevated psychological, and social concerns' and the factors (psychological re-victimisation, fear of subsequent direct victimisation, and cognitive dissonance) reflect unique psychological strains that can accompany witnessing the victimisation of peers, apart from those associated with direct involvement as one who engages in bullying or is victimised'.[23] In other words, schools where bullying is rife are unsafe for everyone.

According to Dr Dorothy Espelage, there are strong links between bullying and sexual harassment[24] starting with homophobic name calling (e.g. 'gay', 'fag'), used to assert power over other students sets the stage for the development of sexual harassment. For example, when youth are labelled in this way they may start to sexually harass members of the opposite sex to demonstrate that the reverse is true.

While verbal victimisation is the most common behaviour, more troubling behaviour such as sexual assault is also present. Of concern is that schools which do not recognise the seriousness of these behaviours and fail to address them compounds the problem for the targets. The pervasiveness of anti-gay language in schools suggests that most school environments are hostile to LGBTIQA+ students and create negative environments for their heterosexual peers as well.[25]

4. Schools need to support students not exclude

According to Espelage[26], programs that aim to address these complex cross-overs fail because they:

- fail to recognise that bullying co-occurs with other types of aggression, including sexual violence, dating aggression, and homophobic banter.

- fail to address basic life and social skills that kids may need to effectively respond to bullying.

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[20] Hillier, L., Jones, T., Monagle, M., Overton, N., Gahan, L., Blackman, J. & Mitchell, A. (2010), 'Writing Themselves in 3', Australian Research Centre in Sex, Health and Society, La Trobe University, Monograph series no. 78, 2010.
[21] National LGBTIQA+ Health Alliance (2016), 'The statistics at a glance: the mental health of lesbian, gay, bisexual, transgender and intersex people in Australia'.
[22] Rivers, I., Poteat, V.P., Noret, N and Ashurst, N., (2009) Observing Bullying at School: The Mental Health Implications of Witness Status, School Psychology Quarterly, Vol. 24, No. 4, 211–223, p212, 213.
[23] Rivers, I., Poteat, V.P., Noret, N and Ashurst, N., (2009) Observing Bullying at School: The Mental Health Implications of Witness Status, School Psychology Quarterly, Vol. 24, No. 4, 211–223, p 220.
[24] Espelage, D., Low, S.K., Anderson, C., De La Ru, L., (2014) Bullying, Sexual, and Dating Violence Trajectories From Early to Late Adolescence
[25] Espelage & Poteat, (2012), School-based Prevention of Peer Relationship Problems, in The Oxford Handbook of Counseling Psychology (Edited by Elizabeth M. Altmaier and Jo-Ida C. Hansen) Oxford Handbooks online.
[26] Espelage, D.L., Peer-Group Predictors of Homophobic Harassment in Middle School Students https://osbha.org/files/Getting%20Serious%20About%20Preventing%20Bullying,%20Espelage.pdf. accessed online 10/12/2018

- do not direct prevention efforts at the key context that promotes and sustains bullying perpetration – the peer group.

- do not consider the impact of family and community violence on bullying prevalence.

- fail to address the extent to which demographic variables (such as gender and race) and implementation levels impact a program's effectiveness.

In addition, while most basic sex education is clear and effective in showing differences in biological characteristics of males and females and some programs cover socially or culturally defined ideas about masculinity and femininity and demonstrate that certain characteristics and behaviours can be perceived as 'masculine' or 'feminine', there is little or nothing in current education about gender identity.[27] But to ignore the fact that some individuals' sense of being male, female or something other is different to their biological gender or to their heteronormative peer group is to exclude, marginalise and make vulnerable this group of people.

It will be important for schools to understand that in order to prevent sexual harassment in secondary school, bullying initiatives at primary level need to discuss language that marginalises gender non-conforming and LGBTIQA+ youth, hostile homophobic actions as well as other bullying behaviours.

It has been noted by Espelage and others (Birkett & Espelage, 2015; Tucker, Ewing, Espelage et al., 2016) that adolescent peers play a significant role in the formation and maintenance of harmful and aggressive behaviours, particular homophobic behaviour; the influence of peers has therefore to be considered in developing and evaluating intervention and prevention initiatives.

Protective factors for LGBTIQA+ young people are at the individual level (e.g. sexual identity, self-esteem), the family level (e.g. social support at home), the peer level (e.g. positive friendships) and the school level (e.g. school policies against homophobic bullying, positive school climate).[28]

Schools concerned with the wellbeing of this group of young people should work towards developing an inclusive sense of community and belonging with meaningful relationships between students and teachers. Some of the special programmatic factors decreasing the rates of victimisation were associated by Espelage with:

- parent training/meetings

- improved playground supervision

- non-punitive disciplinary methods

- classroom management & classroom rules

- teacher training

- whole-school anti-bullying policy

- cooperative group work

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[27] 'Safe Schools' is one program that aims to foster a safe environment supportive and inclusive of LGBTIQA+ students. It is not part of a standard curriculum or taught in classrooms, but rather an educative initiative for teachers with supportive resources and is implemented in line with the views of the school community.
[28] Espelage, D.L., (2018) Aggression and Violent Behavior, httls://doi.org/10.1016/j.avb.2018.07.003 Accessed online 11/12/2018

- greater number of elements and longer duration of program

- greater duration (sustainability) and intensity of the program's implementation.

Research into school effectiveness and the school reform agenda has identified practices that contribute to creating caring and supportive school communities where everyone feels safe and has a sense of belonging. A growing body of evidence is finding positive peer and adult relationships as one of the most influential factors in improving school culture and student learning outcomes.[29] Students' sense of interconnectedness appears to be critical to their acceptance of their responsibility for the wellbeing of others, and critical to the broader concept of community health and wellbeing.[30]

An important element of this effort is to introduce social-emotional learning (SEL) programs that have been shown to be successful in reducing bullying, homophobic name calling and sexual harassment in schools. Programs such as these use activities and the teaching of such skills as empathy, anger management, problem solving, and communication skills, helping young people develop self-awareness, management of their emotions social skills, friendship skills and the skills of resilience and perspective taking.

What we know about quality programs where SEL skills are explicitly taught and that are implemented with fidelity that student behaviour and also test scores were also improved.[31]

These initiatives need to sit with a whole-of-organisation approach, which ensure that there is a strong focus on partnerships with all members of the school community, that all members share responsibility for the work and consistent responses and management strategies are used. When approaches are the responsibility of the whole community and embedded in policy and practice, program sustainability and maintenance are buffered against the loss of key people from the school community.

5. Australian Student Wellbeing Framework - to protect LGBTIQ students

The new Australian Student Wellbeing Framework, released in November 2018 is the logical place for protections for LGBTIQA+ students. It provides a holistic structure in which schools can develop consistent understandings and approaches to underpin and support students' educational aspirations within a structure of safety and wellbeing; informed by the belief that the 'wellbeing and learning outcomes of young people are enhanced when they feel connected to others and experience safe, trusting relationships.'[32]

Schools are asked to audit their performance in each of the five Elements; e.g. 'Safety and wellbeing policies have been developed' and respond 'not true / partially true / mostly true / definitely true' but without explicit guidelines as to what this signifies in practice.

While many resources sit on the Wellbeing Hub, specific resources related to each of the Elements would help schools understand and fulfil requirements more effectively without time-consuming searches. Ideally, protection for LGBTIQA+ students would appear in Domain 2, *A Supportive and Connected School Culture*. While there is mention of the needs of specific groups that need to be recognised and addressed, this group of young people is not among

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29 Benard, 2004; Battisch, 2001; Solomon, D., Battistich, V., Watson, M., Schaps, R. & Lewis, C. (2000).
30 Noble, T., in Bullying Solutions, Pearson Education, 2006
31 Durlak, J.A., Weissberg, R.P., Dymnicki, A.B., Taylor, R.D., Schellinger, K.B. (2011), The Impact of Enhancing Students' Social and Emotional Learning: A Meta-Analysis of School-Based Universal Interventions, Child Development, Wiley.
32 Australian Student Wellbeing Framework, (2018), Education Services Australia for The Department of Education and Training, Australia, p 5.

them. This should be addressed when the Framework is updated, and resources provided for staff awareness and action.

Far from expressing cultural bias and structural inequality by excluding students who are different, schools must be encouraged and resourced to support gender diversity, intersex and sexual diversity so that LGBTIQA+ students feel and are safe, included and valued and enjoy respectful relationships with teachers and peers.[33]

Recommendations

- The Committee should support the amendments to abolish the existing exceptions for religious schools under Federal anti-discrimination laws. As they currently stand they can allow religious schools to discriminate against students.

- The Government's Australian Student Wellbeing Framework should explicitly support schools to create safe and inclusive environments to tackle bullying and harassment, prevent suicide and self-harm of LGBTIQ+ students. This would include having relevant questions in the new school audit tool.

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[33] A very good resource is to be found at
https://www.education.vic.gov.au/Documents/about/programs/health/safeschoolsguide.pdf