

Sex Discrimination and Fair Work (Respect at Work) Amendment Bill 2021

Submission by Sex and Gender Education (SAGE (Australia))

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To Committee Secretary
Senate Education and Employment Committees
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Canberra ACT 260

Since 2001 SAGE has campaigned for the human and legal rights and dignity of people of sex and/or gender diverse groups who may be intersex, sex variant, sex non-specific, transexed, transsexual, transgendered, cross-dressers, androgynous, bigendered, gender fluid, without sex and/or gender identity, have atypical sex characteristics, and people with sex and gender culturally specific differences. Sex and/or gender diverse groups of people is an inclusive phrase and excludes no one who may be sex and/or gender diverse in any way.

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Background

Equality laws, discrimination protection in the workplace, education and society in general in Australia is not presently coordinated between the states. Of the six states they each have different discrimination laws to partly protect people from sex and/or gender diverse groups. Of these states New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia, none have a complete set of discrimination laws.

Western Australia for example does not presently have a suite of laws that fully protects people and children from sex and/or gender diverse groups in education, the workplace or in society in general (Western Australian Government, 1984).

The Australian Federal Sex Discrimination ACT (Sex Discrimination Act, 1984) protects SGD groups of people in life except from discrimination by religious people and institutions, which at times renders it an inadequate piece of legislation.

Discourse

People from publicly identified sex and/or gender diverse groups are a small part of the Australian population, generally recognised as totalling from 1-2 % (250,000 plus) of the population. However, many are not publicly identified as they live what is known as stealth, (not being publicly recognised as being from an SGD group) so the number is probably much higher.

What is observed, however, from various studies is that these groups experience high levels of discrimination, social, employment and education exclusion and rejection. This leads to high levels of anxiety, depression, post-traumatic stress disorder, poverty, lower quality of life, minority stress, mental health complications, high levels of suicidal thoughts and attempts.

In a number of studies this has been attributed to minority stress brought on by experiencing discrimination in many areas of their lives. Many do not have family or community support or legal documents matching their identities and can end up living as social outlaws due to a lack of legal protection.

In a self-reporting study of 272 Australian intersex people 19% had attempted suicide, 26% self-harmed, 42% had thoughts about self-harming and (60%) had thoughts about suicide directly relating to their sex variances (Jones, Hart, Carpenter, Ansari, Leonard and Lucke, 2016). Intersex people and people with a sex variance may have to live with lifelong medical conditions and continuous medical bills which pushes many into poverty.

The Health and Well-Being of Transgender Australians: A National Community Survey (Bretherton, Thrower, Zwickl, Wong, Chetcuti, Grossmann, Zajac, and Cheung, 2021) sought to report gender diverse and nonbinary (trans) people's experiences of significant health disparities. The self-reporting study of 928 participants relating trans people's experience, including parents and carers, noted the following: 19% unemployment rate, 33% reported discrimination in

employment due to being trans, 26% experienced discrimination in accessing health, 63% verbal abuse, 22% physical assault, 73% depression, 67% anxiety, 63% previous self-harm, 43% had attempted suicide, 15% Autism spectrum disorder and 11% attention-deficit/hyperactivity disorder.

An American comparative study of substance use matching trans against cisgendered individuals found that 16.6% trans people relied on used nicotine vs 5.4%, 2.6% vs 0.9 alcohol, 4.3% vs 1.25% drugs (Hughto, Quinn, Dunbar, Rose, Shireman and Jasuja, 2021). The study specifically found that the increase in substance use seemed to be directly related to discrimination that causes minority stress. What we know historically, however, when examining SGD community reports is substance use is far higher than the general population.

“I transitioned in 1990 when I was 18. Life was very difficult in those days especially for transgender people. There were many suicides within our community because there was no support or sense of community. Surviving was the main concern for us all in a world that rejected the very idea of the humanity of gender diverse people.

“Imagine being in a world where employment was refused to you, your family cuts ties with you, society rejected the essence of your identity, and mainstream spirituality condemned you to Hell because you were born. This life of isolation sent many gender diverse people to end their lives all too soon.”

(Katherine Wolfgramme, 2019)

Children from SGD groups also experience high levels of minority stress often being rejected by members of their family or within education institutions which leads to isolation and poor mental health.

We can see that a 15-year-old trans boy, registered as female at birth, committed suicide in Western Australia in 2021. After his death his family ended up in court because they could not agree on what name to bury him under. Eventually, the court had to make arrangements so there were two funerals in order to satisfy each parent (Daoud, 2021)

Justice Connect (2021) writes about trans children rights in Western Australia which also applies to other SGD groups:

“You have rights.

“As a trans and gender diverse student in Australia, you have the same rights and protections under the law which are afforded to all students. The Sex Discrimination Act 1984 (Cth) prohibits discrimination in public life on the basis of gender identity. The Equal Opportunity Act 1984 (WA) offers protections on the basis of sexual orientation and ‘gender history’ (where someone has had their gender reassigned) but not gender identity.

“Schools have a legal duty of care to protect students from risks of harm (that the school should be able to anticipate) and to do what is reasonable to ensure you are safe at school, so that you feel safe and protected when you are attending school.

“Despite these obligations, it can still be daunting to navigate the different gendered facilities and activities at school. For example, wearing a gendered school uniform, using gendered bathrooms, going on school camps and participating in school sports teams.

“Further, many trans and gender diverse students have found their schools to be unsupportive of their gender status, and therefore fail to make the student feel safe at school.”

The Australian Trans Pathway study on adolescent mental health of trans and gender diverse youth, a self-reporting study, including reporting from parents and careers, showed that 74% of sex and or gender diverse people experienced bullying, 68% discrimination, 74.6% depression, 72.2% anxiety, 82.4% suicidal thoughts with 48.1% attempting suicide. (Strauss, Cook, Winter, Watson, Wright Toussaint and Lin, 2020).

It is clear that the current laws in Australia are not protecting children and youth in education and not in society in general when certain sectors of society are able to discriminate against them with impunity.

The United Nations Charter of Human Rights (UN, 2021) of which Australia is a signatory, having been a founding member of the UN in 1945, took an oath to abide by the charter. Indeed In 1948, Dr HV Evatt, the Australia delegate, was elected the President of the UN General Assembly and oversaw the formation of the charter which states:

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

Article 5 states:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Article 7 states:

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”

Article 23 - 1 states:

“Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”

Article 27- 2 states:

“Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.”

Discussion

Australia is a secular society that has not and never has had a legally recognised official religion. Therefore, it is an unearned privilege to exonerate religious people or institutions from common antidiscrimination laws like the Sex Discrimination Act simply because of their esoteric beliefs. It is in fact the “God told me to do it” defence which cannot hold or maintain justice in a secular, egalitarian or democratic society, where all citizens should be treated equally.

While religious people have a right to hold their beliefs and not be persecuted for those beliefs, it is a basic tenet of law that any religious group that lives within a society should abide by the laws of those countries, including antidiscrimination

laws. Federal law must always trump religious laws for a civilised democracy but that federal law, as well as the state laws, must be guided by the UN Charter of Human rights.

What the data shows us is the extremely high levels of vulnerability in adults, children and youth from SGD populations not only in education or the workplace but also in society in general.

Continual exposure to discrimination, ostracisation and exclusion leads to high levels of minority stress both in children and adults. In SGD groups this clearly results in high levels of anxiety, depression, addiction and the highest level of suicidal thoughts and attempts of any population in Australia.

We can see from long-term reporting in the community that the less legal protection, the greater the minority stress and the greater the risk of addiction, mental illness and suicide. Many of these long-term minority stressed individuals in SGD communities can end up living permanently on a state pension and may never work again, costing the state millions of dollars during their lifetime and disadvantaging them.

Logically, economically, social responsibly-wise and from a humane perspective it makes common sense to change all state laws to fully protect people from SGD groups from discrimination, without exception.

Recommendations

1. All states need to comply with the UN Charter of Human Rights.
2. The Sex Discrimination and Fair work (Respect at Work) Amendment Bill 2021 needs to provide full protection for all SGD groups of people in educational situations, both adults and children, without exception.
3. The changes in the law need to provide full protection for all SGD groups of people in work situations, without exception.
4. There should be no legal exemptions from discriminatory behaviour or actions toward SGD groups of people simply because someone or an institution holds a religious belief. This is Australia and everyone deserves a

“fair go”.

5. All state Australian laws need to express the same protection against discrimination for all people from sex and/or gender diverse groups.

Government officials, politicians, media outlets and others wishing to respond to this paper or discuss the issues can contact Dr Tracie O’Keefe DCH at the Australian Health & Education Centre (02 8021 6429) or by email at sageaustraliateam@gmail.com

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