

AUSTRALIAN GREENS ADDITIONAL COMMENTS

1.1 The Australian Greens believe that the committee report is an excellent articulation of issues of discrimination against LGBTIQ+ students and staff in faith based schools, and we support the pathway forward that is outlined to remove discrimination against LGBTIQ+ students.

1.2 However the Greens also recommend immediate action to remove discrimination against LGBTIQ+ teachers and other staff. We do not agree that further consideration is needed before acting, as recommended in the chair's report.

1.3 Further delay at achieving this reform is unacceptable, with multiple witnesses and submitters making the case that discrimination against LGBTIQ+ staff in faith-based education settings is unjustifiable and causes untenable harm.

1.4 The committee heard from Mr Jonathon Hunyor, Chief Executive Officer of the Public Interest Advocacy Centre, that a consistent approach in relation to students, teachers and staff is vital.¹ He advised that 'trying to draw some sort of line between how we treat people under 18 and how we treat people over 18 really doesn't make sense'.²

1.5 The Equality Campaign urged the committee to recommend the repeal of legislative exemptions for students, teachers and staff at faith-based schools. Included in their submission were personal stories illustrating the serious impact of the exemptions on teachers and staff:

I teach at a conservative Catholic Primary school. I am constantly afraid that someone will find out and that I will lose my job. I am the main income earner and my employment is incredibly important. I worry that I will lose my job. I worry that my employer won't give me a good reference if she finds out. This could affect my future employment opportunities. I feel like a criminal and I have done nothing wrong.³

1.6 Equal Voices urged the committee to recommend the repeal of legislative exemptions for students, teachers and staff of faith-based schools highlighting that staff are 'forced to lead double lives, placed under suspicion merely for supporting LGBTQ students and are left in un-tenable work situations, often suffering ill-health from related stresses and ultimately forcing them to resign'.⁴

1 Mr Jonathon Hunyor, Chief Executive Officer, Public Interest Advocacy Centre, *Committee Hansard*, 19 November 2018, p. 54.

2 Mr Jonathon Hunyor, Chief Executive Officer, Public Interest Advocacy Centre, *Committee Hansard*, 19 November 2018, p. 59; also see Ms Felicity Marlowe, Executive Director, Rainbow Families Victoria, *Committee Hansard*, 19 November 2018, p 11.

3 The Equality Campaign, *Submission 72*, p. 11.

4 Equal Voices, *Submission142*, p. 7.

1.7 The Australian Discrimination Law Experts Group also highlighted the impact of continuing discrimination against teachers and staff on students in faith-based schools:

Continuing to permit discrimination in employment by faith-based schools on the grounds of sexual orientation or gender identity perpetuates the negative messaging to LGBT students about their school's lack of acceptance of their sexual orientation or gender identity, even where the students themselves are not directly subjected to overtly discriminatory actions.⁵

1.8 The Public Interest Advocacy Centre informed the Committee that by making the necessary amendments to the Sex Discrimination Act it would be possible to 'ensure a clear and simple legal framework' that protects the rights of LGBTIQ+ students, teachers and staff 'while supporting the exercise of religious freedom'.⁶

Recommendation 1

1.9 The Australian Greens recommend that the entirety of section 38 of the *Sex Discrimination Act 1984* be repealed.

1.10 Evidence from both witnesses and submitters also made clear that reform to section 37 would be required to ensure that faith-based schools are not able to access the exemptions available to bodies established for religious purposes as a work around to the repeal of section 38.

1.11 The Australian Discrimination Law Experts Group advised the Committee that 'removing the existing exception in section 38(3) without also amending section 37(1)(d) may not remove the ability for faith-based schools to discriminate against LGBT students'.⁷ Furthermore, the Group highlighted that section 37(1)(d) 'offers a potentially wider exception than that offered by section 38'.⁸

1.12 The Public Interest Advocacy Centre recommended that section 37 be amended 'to clarify that the broad religious exception in s 37(1)(d) does not allow discrimination by religious educational institutions'.⁹

1.13 The Human Rights Law Centre supported this view, recommending that an exception be inserted 'to the broad religious exemption in subsection 37(1)(d) the *Sex Discrimination Act 1984* (Cth) prohibiting discrimination in relation to education and employment in education'.¹⁰

5 Australian Discrimination Law Experts Group, *Submission 101*, p. 2.

6 Public Interest Advocacy Centre, *Submission 108*, p. 1.

7 Australian Discrimination Law Experts Group, *Submission 101*, p. 3.

8 Australian Discrimination Law Experts Group, *Submission 101*, p. 3.

9 Public Interest Advocacy Centre, *Submission 108*, p. 4.

10 Human Rights Law Centre, *Submission 105*, p. 25.

Recommendation 2

1.14 The Australian Greens recommend that the *Sex Discrimination Act 1984* be amended to make clear that section 37(1)(d) does not apply in relation to the employment of staff or teachers by a faith-based school.

1.15 The Australian Greens believe that consequential changes are also needed to the Fair Work Act to fully protect the employment rights of LGBTIQ+ teachers and staff at faith-based schools.

1.16 The Public Interest Advocacy Centre indicated a need for sections 153(2), 195(2), 351(2) and 772(2) of the Fair Work Act to be amended to 'ensure that religious educational institutions are only allowed to discriminate on the basis of religious belief in employment, and not on the basis of other protected attributes like sexual orientation and gender identity'.¹¹

1.17 Similarly, Human Rights Law Centre recommended that the 'Federal Government should repeal subsections 153(2)(b), 195(2)(b), 351(2)(c) and 772(2)(b) of the *Fair Work Act 2009* (Cth) in relation to all protected attributes except religion'.¹²

Recommendation 3

1.18 The Australian Greens recommend that subsections 153(2)(b), 195(2)(b), 351(2)(c) and 772(2)(b) of the *Fair Work Act 2009* be amended to remove employment related exemptions for all protected attributes except religion in faith-based educational institutions.

1.19 Australia is the only western democracy that does not protect the basic rights and freedoms of its people in either legislation or the Constitution. So many of our freedoms have been hard won, and others are still being fought for.

1.20 As noted by the chair's report, multiple submissions made the argument that a Charter of Rights would be the best mechanism to enshrine everyone's rights in law and balance conflicting rights such as the right to live free from discrimination with the right to hold a religious belief.¹³

1.21 Human Rights Law Centre acknowledged that ideally:

...the removal of these exemptions would come as part of a comprehensive modernisation and consolidation of antidiscrimination laws and, we would also say, as part of the introduction of a federal human rights act that

11 Public Interest Advocacy Centre, *Submission 108*, p. 4.

12 Human Rights Law Centre, *Submission 105*, p. 4.

13 Mr Jonathon Hunyor, Chief Executive Officer, Public Interest Advocacy Centre, *Committee Hansard*, 19 November 2018, p. 61; Northern Territory Anti-Discrimination Commission, *Submission 126*, p. 2.

protects freedom of religion and belief from government overreach within a robust framework that protects all human rights.¹⁴

1.22 Ms Robin Banks, Tasmania's former Anti-Discrimination Commissioner, supported a Charter of Rights as the best way to meet our international obligations:

...[T]he best way to deal with any of the freedoms that exist in our international human rights regime is to implement a charter of rights that recognises and protects all of them at once. Then the balancing work can be done in the way that it is intended to be done under international law.¹⁵

1.23 However, given the evidence of the ongoing harm of discrimination against LGBTIQ+ teachers, staff and students and the outrage of the community at the continuation of this discrimination; removing this discrimination cannot wait until political support for a Charter of Rights is achieved. We must not squander the opportunity we have now to enshrine anti-discrimination protections for teachers and staff at faith-based schools at the same time as students.

1.24 It is clear that the broader LGBTIQ+ community are also demanding this change as a matter of urgency. Mr Rodney Croome, spokesperson for just.equal, told the committee that just.equal's survey of the LGBTI community found that when 'asked whether teachers and other staff should be included within the legislation so that discrimination against them is prevented ... almost 93 per cent agreed'.¹⁶

1.25 Given this, it is logical, appropriate and important that reforms to prevent discrimination against teachers and other staff are made at the same time as changes to the law to prevent discrimination against students in faith-based schools.

Recommendation 4

1.26 The Australian Greens recommend that the Parliament conduct an inquiry into the appropriate form and scope of an Australian Charter of Rights.

Recommendation 5

1.27 The Australian Greens recommend that any Bill before the 45th Parliament relating to discrimination in faith-based schools include protections for teachers and staff in addition to students.

14 Ms Anna Brown, Director of Legal Advocacy, Human Rights Law Centre, *Committee Hansard*, 19 November 2018, p. 52 also see Ms Anna Brown, Director of Legal Advocacy, and Lee Carnie, Senior Lawyer, Human Rights Law Centre, *Committee Hansard*, 19 November 2018, p. 56.

15 Ms Robin Banks, Private capacity, *Committee Hansard*, 19 November 2018, p. 58.

16 Mr Rodney Croome, Spokesperson, just.equal and Spokesperson, Equality Tasmania, *Committee Hansard*, 19 November 2018, p. 2.

Senator Janet Rice
Australian Greens LGBTIQ+ Spokesperson