

Australian Greens Dissenting Report

1.1 The Australian Greens acknowledge the extensive work of the Committee in this inquiry, and thank everyone who made a public submission.

1.2 The Greens support the committee view that the issues raised by the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (the bill) are of great concern to the Australian community, and agree with the determination that many sectors of the community believe students at faith-based schools should not be discriminated against on the basis of sexual orientation or gender identity

1.3 However the Greens believe that the committee recommendations are flawed in that they do not accurately reflect the overwhelming stance of the Australian public, or the views and recommendations of key human rights and legal experts and LGBTIQ+ organisations. Nor do they take into account the seriousness of the continued impact of discrimination on LGBTQ+ students, teachers and school staff in religious schools.

1.4 The Greens reject the committee view that the bill at the centre of this inquiry has been drafted in haste, is flawed and will lead to 'unintended, detrimental consequences' as is claimed in the Chair's report. We believe the bill is a pathway forward to removing legislative exemptions that permit discrimination against LGBTQ+ students in religious schools.

1.5 Submissions from multiple submitters and witnesses broadly support the bill as a rational and considered approach to removing discrimination on the basis of sexuality and gender identity.¹

1.6 Lee Carnie, Director of Legal Advocacy at Equality Australia, informed the committee that 'the bill's simple and straightforward removal of existing legislative exemptions is the most effective way to remove discrimination against LGBTQ+ students'.²

1.7 Repealing these religious exemptions to anti-discrimination law is also overwhelmingly supported by LGBTIQ+ communities. A survey conducted by just.equal found that 94.5 per cent of LGBTIQ+ communities supported removing religious exemptions in relation to discrimination against LGBTQ+ students, and 92.8 per cent supported removing religious exemptions in relation to discrimination against LGBTQ+ staff and teachers.³

1.8 The Greens also reject the committee view that the unamended bill undermines the ability of religious educational institutions to maintain their religious

1 Equality Australia, *Submission 282*; Public Interest Advocacy Centre, *Submission 173*; Law Council of Australia, *Submission 415*.

2 Lee Carnie, Director of Legal Advocacy, Equality Australia, *Proof Committee Hansard*, 7 February 2019, p. 78.

3 just.equal, *Submission 934*, p. 2.

ethos and teach in accordance with the doctrines, tenets, beliefs or teachings of their faith.

1.9 Stakeholders such as Equality Australia submitted evidence advising the committee that 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'.⁴

1.10 Jonathon Hunyor of the Public Interest Advocacy Centre clarified for the committee that:

There is nothing under the law, as it generally applies, to prevent religious educational institutions from engaging in reasonable activity based on the religious ethos of their school. We accept that. That is exactly what religious schools should expect to do. That's why they exist: to promote their religious ethos. We don't have a problem with that, but no changes to the bill before parliament are required to allow schools to act reasonably to uphold their values.⁵

1.11 There is no question as to the harm that is currently caused under the cover of religious doctrine and belief. A large number of submissions from parents, students and school staff spoke to their experience of exclusion, shame and anxiety.

1.12 The Greens believe that religious educational bodies should be free to conduct education in ways that accord with the doctrines of their faith, but not when this conduct conflicts with the right to live and work free from discrimination for LGBTQ+ students, teachers and school staff.

Recommendation 1

1.13 The Australian Greens recommend that the bill be passed

1.14 The Greens reject that the proposed amendments by the government are needed as they unnecessarily extend the scope for discrimination by religious institutions.

1.15 Equality Australia agreed with the bill's Explanatory Memorandum that the 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'.⁶

1.16 Multiple witnesses raised with the committee that the amendments circulated by the government are not only unnecessary but would create harmful discrimination

4 Equality Australia, *Submission 282*, p. 6.

5 Mr Jonathon Hunyor, Chief Executive Officer, Public Interest Advocacy Centre, *Proof Committee Hansard*, 7 February 2019, p. 81.

6 Equality Australia, *Submission 282*, p. 7.

loopholes, further entrenching discrimination of LGBTQ+ students in many areas of education in faith based schools.⁷

1.17 Lee Carnie from Equality Australia argued that four of the government amendments went so far as to potentially conflict with other international Conventions that Australia is party to, including the Convention on the Rights of the Child:

As a whole, these amendments place policies on a piece of paper ahead of the best interests of students—contrary to the Convention on the Rights of the Child, which requires consideration of the child's best interests as a primary consideration determined objectively, not to a school's subjective satisfaction.⁸

1.18 The Greens have particular concerns with amendment KQ149 which would substantially expand religious exemptions relating to 'teaching activities'. As drafted, the broadness of scope in this amendment could cover any kind of instruction of a student by a person employed or otherwise engaged by an educational institution.

1.19 Again Lee Carnie from Equality Australia provides an example of how dangerous this amendment could be:

...it would appear to allow for inferior tuition, excluding a student from a classroom activity or program or so-called conversion therapy being delivered in schools despite every reputable medical association condemning this ineffective and discriminatory practice.⁹

1.20 It is clear that the amendments proposed by the Government are not only unnecessary but pose dire risk to the health and wellbeing of LGBTQ+ staff, students and teachers.

Recommendation 2

1.21 The Australian Greens recommend that the amendments circulated by the government not be passed.

1.22 Whilst the Greens believe that the bill is justified in its approach to removing discrimination against school students, we strongly recommend immediate action to remove discrimination against LGBTQ+ teachers and other staff.

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

7 Equality Australia, *Submission 282*; National LGBTI Health Alliance, *Submission 323*.

8 Lee Carnie, Director of Legal Advocacy, Equality Australia, *Proof Committee Hansard*, 7 February 2019, p. 79.

9 Lee Carnie, Director of Legal Advocacy, Equality Australia, *Proof Committee Hansard*, 7 February 2019, p. 79.

1.24 Mr. Rodney Croome from Equality Tasmania succinctly summarised the inconsistency in removing discrimination against students without also tackling discrimination against teachers and staff:

If we're looking at this issue through the prism of what's in the best interests of LGBTI students in faith based schools, it's not in their best interests for them to be protected from discrimination but their teachers not to be if their teachers are also in same-sex relationships or are transgender. That sends a terrible message to those students about their inclusion and their acceptance.¹⁰

1.25 The submission from the Public Interest Advocacy Centre made the case that simultaneously removing religious exemptions in relation to staff and teachers as being:

...essential to achieving an appropriate balance between religious freedom and the right to non-discrimination. Such a change would also be an important step towards national consistency in line with best practice as demonstrated by the legislative schemes in Tasmania and, more recently, the ACT.¹¹

1.26 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.

1.27 Removing discrimination against both students and staff is justifiable and still consistent with the ability of faith based schools to teach their religious ethos. This is demonstrated by the fact that anti-discrimination laws that prohibit discrimination on the grounds of sexuality and gender identity already exist in Tasmania and Queensland.

1.28 Mr Croome from Equality Tasmania noted:

Given that in Tasmanian law over the last 20 years there has been a clear prohibition on discrimination against LGBTI teachers and students in faith based schools, the next question, obviously, is: what consequences has that had? It's clear to me that the consequences have been entirely good.

The culture in Tasmanian faith based schools— particularly the ones that I'm familiar with in the Catholic system through friendship networks and through speaking at length with students and teachers in those schools—has improved immensely. It's far more inclusive and far safer than it once was. And no private schools in Tasmania—no faith based schools—have had any reason to complain about these particular provisions.

I know of no concerns about the provisions we have in Tasmania. I know of no prelates, no principals and no teachers who have any issues with these

10 Mr. Rodney Croome, Campaign Coordinator, Equality Tasmania, *Proof Committee Hansard*, 7 February 2019, p. 84.

11 Public Interest Advocacy Centre, *Submission 173*, p. 10.

particular laws. I've seen no public statements which say that they are in any way onerous.

I have, however, spoken to quite a few principals of faith based schools in Tasmania who have made the point that the law is a complement to their policies of inclusion, fairness and treating all teachers and students equally. They feel that the law is important to back up the ethos of their school. It doesn't violate their ethos; it in fact supports their ethos. So, given that these laws have been in place for 20 years, given that they seem to have had positive consequences—particularly for LGBTI people but also for whole school communities—and given that there have been no complaints about them as far as I can see and no-one seems to be bothered by them, the question becomes: why don't we adopt these standards nationally?¹²

1.29 Several witnesses who supported the Greens' amendments to the Bill also noted that some further amendments are required to the *Fair Work Act 2009* to provide adequate protection from discrimination in employment.¹³

1.30 The Greens agree that careful consideration is needed before changes to the Fair Work Act are enacted, however this is neither a barrier to nor an excuse from removing discrimination from the *Sex Discrimination Act 1984*.

Recommendation 3

1.31 The Australian Greens recommend that the amendments circulated by the Australian Greens be passed.

Recommendation 4

1.32 The Australian Greens recommend that the Government immediately begin a review of anti-discrimination provisions within the *Fair Work Act 2009*.

Senator Janet Rice
Australian Greens

12 Mr. Rodney Croome, Campaign Coordinator, Equality Tasmania, *Proof Committee Hansard*, 7 February 2019, p. 79.

13 Public Interest Advocacy Centre, *Submission 173*; Law Council of Australia, *Submission 415*.

