



Commissioner for Children and Young People  
Western Australia

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To the Senate Legal and Constitutional Affairs Committee

**Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff**

Thank you for the opportunity to make a submission to the inquiry on *Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff*. As Commissioner for Children and Young People in Western Australia, my role is to advocate for the best interests of all children and young people under the age of 18 in Western Australia, and to promote and monitor their wellbeing. In doing so, I must have regard for the United Nations Convention on the Rights of the Child, and give priority to Aboriginal children and young people, and children and young people who are vulnerable or disadvantaged for any reason.

All lesbian, gay, bisexual, trans and intersex (LGBTI) people, including children and young people have the right to be recognised for their gender identity, sexual orientation or intersex status, and to feel safe and respected where ever they are. This year, I established two Advisory Committees of young people to inform my office on the wellbeing needs of LGBTI children and young people. One of the key areas discussed by the Committees has been the issues facing LGBTI students in schools, including bullying, discrimination, a lack of understanding and awareness of their teachers, peers or school staff, and policies and processes that do not recognise or validate their diversity or identity. The Committees have discussed the importance of schools providing safe, inclusive and supportive environments, and the need to improve the ways that schools support, recognise, and validate the experiences and needs of LGBTI students. A range of comments from Committee members are included in this submission to highlight these lived experiences and perspectives.

*Removal of religious exemptions from the Sex Discrimination Act 1984 and relevant State and Territory legislation*

The Universal Declaration on Human Rights, and the principles of equality and non-discrimination apply equally to all people<sup>1</sup>, and no child or young person should be denied the right to receive education at the school of their choice, including faith-based or religious schools, simply because of their sexuality or gender identity. I have previously called on the removal of religious exemptions that allow for religious schools to discriminate against people on the basis of their sexuality and/or gender identity, through submissions to the Federal *Religious Freedom Review*,<sup>2</sup> (provided as a supplementary document to this submission) and at a State level in relation to the Western Australian *Equal Opportunity Act 1984*.

*"If this legislation [to remove religious exemptions] got through....it would back [young people] up and protect them."*(LGBTI young person)

*"Removing the exemptions would hold everyone accountable."*(LGBTI young person)

### Protections from discrimination for trans and gender diverse students

I am pleased that Prime Minister Scott Morrison recently made a verbal commitment to ensuring that no student at a religious or private schools can be expelled on the basis of their sexuality. This is incredibly important and should be actioned as a priority, however it is equally as important to ensure that these protections are afforded for trans and gender diverse students, to ensure that they are also not able to be expelled or discriminated against on the basis of their gender identity.

Many trans and gender diverse children and young people experience difficulties at school, often due to a lack of understanding about gender diversity, as well as school policies and processes which are not reflective or validating of a student's gender identity. Trans and gender diverse young people who experience issues with their schooling have a higher likelihood of experiencing poor mental health outcomes, suicidal thoughts, suicide attempts and self-harm than trans and gender diverse people who do not experience such issues.<sup>3</sup>

Removing the existing religious exemptions on the basis of gender identity, as well as sexuality, will not only safeguard and protect trans and gender diverse from discrimination in religious or faith-based schools, but also has the potential to be a protective factor for their mental health and wellbeing.

*"Having the religious exemptions in place gives a message that LGBT people are second class citizens. It makes people feel like a freak – it tells a kid they're an outsider and don't belong there."*(Trans young person)

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<sup>1</sup> UN Free and Equal n.d., *Fact Sheet: International Human Rights Law and Sexual Orientation and Gender Identity*, United Nations Human Rights Office. Retrieved from [https://www.unfe.org/system/unfe-6-UN\\_Fact\\_Sheets\\_v6\\_-\\_International\\_Human\\_Rights\\_Law\\_and\\_Sexual\\_Orientation\\_Gender\\_Identity.pdf](https://www.unfe.org/system/unfe-6-UN_Fact_Sheets_v6_-_International_Human_Rights_Law_and_Sexual_Orientation_Gender_Identity.pdf)

<sup>2</sup> Commissioner for Children and Young People, 2018, *Submission to Religious Freedom Review*, <https://www.cyp.wa.gov.au/media/2849/submission-to-expert-panel-on-religious-freedom-february-2018.pdf>

<sup>3</sup> Strauss P et al, 2017, *Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results*, Telethon Kids Institute, Perth, Australia.

### Application and impact of existing religious exemptions

Religious and faith-based schools differ greatly in how or whether they use the exemptions to discriminate against LGBTI students in their school. However, even the fact that a school can use these exemptions can be perceived negatively by LGBTI children and young people.

*"These type of exemptions and the possibility of this happening can still make us all feel unsafe or uncertain – we all feel the impact as a community."* (LGBTI young person)

The existing exemptions have the potential to adversely impact LGBTI children and young people's access to quality and consistent schooling. If a school is not supportive of LGBTI students, often the student and/or family are informed that they are free to choose to attend another school. However, there are a range of reasons why it is not reasonable or appropriate to expect that this should occur, including the availability of other schooling options in the area (particularly for regional and remote communities), continuity of the child's education, and the history of involvement with the school.

*"Where I live, the only school that offered ATAR subjects was the religious school, so you had to go there if you wanted to go on to university. This means if you were excluded there, you couldn't go on and continue your education and achieve your goals."* (Gender diverse young person)

*"What happens if they're in year 12 and expelled- what happens to their studies?"* (LGBTI young person)

*"There is a lack of consistency and this impacts on the student's experiences – and can reduce opportunities for a child or young person."* (LGBTI young person)

*"This also might mean that a whole family of siblings are attending the same school, but one individual sibling could potentially be denied entry or expelled simply because they are LGBT."* (Gender diverse young person)

For LGBTI young people who are religious or who have grown up in a faith community, there is also the potential that if they are expelled or unable to enrol in the school of their choice because they are LGBTI, that they will be denied the opportunity to be educated according to their faith, as well as access to their religious community.

*"There's that negative impact if you grow up in a faith community or religious school and then you come out and you lose that and don't have that anymore."* (LGBTI young person)

*"[Removing the exemptions] would let kids feel safe with their religion. Kids should be allowed to practice faith without feeling unsafe for who they are – they should be able to practice and be safe."* (LGBTI young person)

### Broader approaches to supporting LGBTI inclusion in schools

In addition to legislation change, schools should also be required to ensure that school policies, guidelines and practices are inclusive and supportive of LGBTI children and young people, and reflective of anti-discrimination laws. A key recommendation of my office is that all schools should embed a whole-school approach to LGBTI inclusion and diversity, to ensure that LGBTI students are supported and included regardless of the school that they attend.

Currently, there is a lack of consistency and accountability across schools in relation to how they support LGBTI inclusion, or embed strategies, policies or processes to reflect the needs of their students.

*"Individual schools can make their own call, and have "unofficial rules" – some schools are not supportive or accepting."* (LGBTI young person)

*"[Even if a school is supportive] any small changes in school leadership etc. can completely change how inclusive or supportive a school is. This kind of instability means kids are left hanging in the balance."* (LGBTI young person).

*"Schools are sometimes wanting to promote better inclusion and support for LGBTI students, but might not have the support of the Principal, school board, or parents."* (LGBTI young person)

My office has conducted a range of work this year identifying opportunities to strengthen the way that schools support LGBTI children and young people, and has included running seminars on LGBTI inclusion strategies for schools and educators, developing resources that schools and teachers can use to promote better understanding about LGBTI diversity. More information on the work of our office can be found by visiting [www.ccyp.wa.gov.au](http://www.ccyp.wa.gov.au), with specific information relating to LGBTI children and young people on the Advisory Committee and LGBTI resources pages.

#### *Summary*

I appreciate the chance to make a submission to this Inquiry, and the opportunity that it presents in better protecting the rights of LGBTI children and young people in their schooling and educational experiences. If you would like to discuss the content of this submission, please contact me on (08) 6213 2297, or Katherine Browne, Principal Policy Officer, on (08) 6213 2224 or at [katherine.browne@ccyp.wa.gov.au](mailto:katherine.browne@ccyp.wa.gov.au) should that be more convenient.

Yours sincerely,



COLIN PETTIT

Commissioner for Children and Young People WA

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