

**RAINBOW FAMILIES
SUBMISSION TO THE ALRC
RELIGIOUS EDUCATIONAL
INSTITUTIONS AND ANTI-
DISCRIMINATION LAWS
INQUIRY**

www.rainbowfamilies.com.au

PO BOX 306
Erskineville 2043

About Rainbow Families

Rainbow Families was formed in 2015 as the peak body for lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ+) families. The mission of Rainbow Families is to build a community that fosters resiliency by connecting, supporting and empowering LGBTIQ+ families.

Rainbow Families has a growing membership and includes people from across Australia. Rainbow Families is an incorporated organisation, governed by a constitution which provides a structure for how the group operates. Rainbow Families is a registered charity and DGR status from the ATO.

What is a Rainbow Family?

A Rainbow Family is an LGBTIQ+ parented family. At Rainbow Families, we define a Rainbow Family as: any lesbian, gay, bisexual, transgender, queer or intersex person who has a child or children; or is planning on having a child or children by way of donor insemination (known or unknown), surrogacy (altruistic or commercial), foster care, foster to adoption, adoption (domestic or international), opposite sex relationship, coparenting or other means.

Rainbow families, like many modern families, come in all shapes and sizes and are formed in many different ways. But the thing we all have in common is that our families are created through love. Over thirty years of peer reviewed research into same-sex parented families shows that children from these families do as well as their peers from heterosexual-parented families.

For the community, by the community

Rainbow Families is a volunteer-led organisation, providing a network of support to children and families within the LGBTIQ+ community.

SUBMISSION TO THE ALRC RELIGIOUS EDUCATIONAL INSTITUTIONS AND ANTI-DISCRIMINATION LAWS INQUIRY

Rainbow Families NSW broadly supports proposed steps to narrow the exemptions accorded to religious educational institutions under existing anti-discrimination law. Our response focuses on the proposals as set out in the ALRC's consultation paper and draws on input from our community.

We applaud proposals that would prohibit discrimination against students and teachers on the grounds of sexual orientation, gender identity, marital or relationship status or pregnancy.

However, we also have concerns about other proposals that do not go far enough and may even encourage discriminatory conduct by religious educational institutions. In particular, we do not support proposals that would enable schools to terminate workers who 'undermine the ethos of the institution' or exempt curriculum content.

Discrimination against students in religious educational institutions

For many parents in our community, formal education brings the first experiences of discrimination, often in the form of enrolment practices that exclude children because of the sexual orientation or gender identity of the parents. Those who send or are considering sending their children to religious schools need to be confident that their children will be able to learn and thrive in an inclusive environment that accepts and supports them.

We are a same sex female couple with a daughter who just started school at a catholic primary school and I support legislation that will enforce our daughters right to be free to express her family situation and for us to be accepted within the school community.

The discrimination in educational institutions prohibited by the Sex Discrimination Act extends beyond enrolment to encompass a range of conduct that would limit students' access to any benefit or subject students to any detriment. The comment by this community member demonstrates the nature of school-based discrimination that permeates everyday life for LGBTQ+ families.

My daughter has been inadvertently discriminated against at her Anglican school, as her School is not inclusive of her non-traditional (same-sex) family. My daughter has also heard repeated use of the terms 'lesbian' and 'gay' as slurs. The school does not challenge homophobia. My daughter refuses to discuss her family in the school community.

We note that under the proposals, failure to address homophobic and transphobic bullying at school would be unlawful and that uniform requirements would need to accommodate trans and gender diverse students. Importantly, religious organisations would have a positive obligation to take steps to prevent and appropriately respond to bullying and harassment that targets a student's sexuality or gender identity or that of their parents.

We welcome the move to protect children from discrimination based on the protected attributes of important people in their lives. This would address the concerns in our community about children being excluded from enrolment or bullied at school because of their parents' relationship or gender identity. However, the category of persons with whom a student has a social relationship that could form the basis of discrimination is broader, particularly for older students and this should be reflected in wording broader than 'family member', for example, 'associate'.

Discrimination against teachers

There are parents within our community who are also teachers, have family members and friends who are teachers or simply feel strongly about supporting teachers in their role. Parents need to be confident that teachers are able to prioritise the needs of students. This comment from a community member demonstrates the pressures teachers in religious schools face.

I teach in a Catholic High School and I almost lost my job last year for reprimanding a student who was yelling out homophobic things in class. I had to get help from the union, write a formal letter and have an interview with the Principal to argue that I wasn't promoting ant Catholic Views.

The Sex Discrimination Act prohibits discrimination against teachers and other staff members on the basis of sex, sexual orientation, gender identity, marital or relationship status or pregnancy and extends to offering employment; conditions on any offer of employment; opportunities for promotion, transfer or training, or to any other benefits associated with employment; dismissing the employee; or subjecting the employee to any other detriment. Removing the exemption that currently allows religious institutions to discriminate on these grounds is essential.

Teachers and staff members in religious schools should be able to do their jobs free from discriminatory treatment based on their sexuality and gender identity. They should also be able to address discrimination against students (and other staff members) on these grounds without fear of disciplinary action or other negative consequences.

Preferencing staff based on religious belief or activity

www.rainbowfamilies.com.au

PO BOX 306
Erskineville 2043

We acknowledge that there is a legitimate basis for religious educational institutions to be exempt from anti-discrimination law in limited circumstances that are integral to their operation as religious bodies. We agree that the right to preference staff based on religious belief or activity should be linked to genuine occupational requirements and should not amount to discrimination on other grounds.

We note the ALRC's assurance that a religious educational institution could not refuse to consider a person as a 'practising' member of its religion because the person was LGBTQ+ or in a same-sex relationship, where the person adhered to other religious criteria that the institution reasonably applied.

It is important that the right to preference staff or prospective staff on the basis of religious belief or activity is strictly circumscribed to ensure that it doesn't act as a cover for other types of discrimination. In determining the extent to which the religious belief or activity is a genuine requirement of the role, there needs to be reference to a more objective standard than simply taking into account the religious ethos of the school.

Right to terminate for undermining ethos

We do not support an exemption that would enable religious educational institutions to terminate employment to prevent an employee from 'actively undermining' the ethos of the institution. The concept of 'religious ethos' is vague and potentially encompasses a very broad range of beliefs and practices that would impinge on other rights and have harmful consequences.

The experience of a community member described below demonstrates the way in which religious ethos can be used to justify discriminatory treatment against staff.

I taught at catholic high schools for 25 years. I was a year co coordinator for the last 13 years. When my partner and I decided after 18 years together to have a child I knew that I had to resign my position. I lived a professional life in the 'don't ask, don't tell.' it was made clear to me by a friend who worked for the CEO that I could not remain. It would get messy and I would never be able to acknowledge my daughter, access caregivers leave without maintaining an elaborate lie. No I was not removed, I resigned realising I could no longer maintain the double life and care for my family. I knew that even though a practising catholic, the upholding of catholic ethos in my contract would be held against me. I gave up my career to raise my beautiful daughter and now work as an art therapist. I suffered a great loss of identity in not being able to continue my career.

Another community member drew attention to the practice of imposing contractual terms requiring staff to agree to uphold the institution's religious ethos:

The contracts that staff members are asked to sign are exclusive, discriminatory in nature and induce fear in all staff members particularly that identify at LGBTQIA+

We note the ALRC's assurance that termination on the grounds of undermining the institution's religious ethos cannot amount to discrimination against sexuality and gender identity. For example, a staff member would not be undermining the school's ethos by entering into a same-sex marriage or supporting LGBTQ+ students. However, as the above examples demonstrate, by focusing on religious *belief*, institutions are able to frame discrimination on the grounds of sexuality and gender identity as a measure that applies equally to everyone. This is also problematic in that it impacts more broadly on all teachers who wish to create an inclusive school environment.

The tendency for religious institutions to prioritise their religious ethos above individual rights does not give us any confidence that they would use the right to terminate responsibly in order to avoid discriminating on the basis of sexuality and gender identity. This exemption should not be allowed.

In the alternative, if such a right is carried forward in legislative change, the concept of religious ethos must be subject to scrutiny and evaluation by reference to an objective standard. It cannot be assumed that the religious ethos of an individual school at any given point in time corresponds with the 'doctrines, teachings of a particular religion or creed' and the religious ethos of a particular institution.

Curriculum

We do not support proposals that would exempt the content of a school's curriculum from the application of the Sex Discrimination Act. As well as directly harming LGBTQ+ students, enabling the teaching of transphobic and homophobic content undermines the capacity of religious institutions to deliver education on sexuality and relationships in an inclusive way. Such teaching is necessary to create an accepting and supportive school environment as the comment below suggests.

I am a transgender parent and my children go in a religious school. Transphobia is seen everywhere at the school, from teachers to students. There is currently no education about it. A curriculum that addresses homophobia and transphobia I think should be part of teaching from year 1, all the way to year 12., I have to be very mindful what so I wear when I go to pick up the children so they don't discriminate against me.

We note the ALRC's assurance that a religious school could continue to teach its religious beliefs or doctrine on matters of sexuality and relationships subject to exercising its duty of care to students, and complying with state-based accreditation and curriculum requirements. However, the potentially harmful impact on students means that teachers

would be placed in a very difficult position in discharging their duty of care towards students.

It would also be concerning if such an exemption compromised the oversight of curriculum monitoring authorities by removing scrutiny in this area.

It is difficult to see how LGBTQ+ students and teachers could be adequately protected against material that attacks, questions and denies fundamental aspects of their identity but is endorsed by the religion. We are not convinced that allowing teachers to provide 'objective information' about alternative viewpoints would alleviate the harm from requiring teachers to deliver core content that is transphobic and homophobic. We also don't see how a distinction between the curriculum content and how it is delivered is helpful on a practical level.

Conclusion

While we enthusiastically support proposals to remove exemptions for discrimination against students and teachers, we urge caution against the introduction of other measures that would undermine this positive development. Measures seeking to maintain the right of religious educational institutions to discriminate in some circumstances must be strictly limited to what is essential to carry out their core functions as religious bodies. The framing of such measures must also be sufficiently clear for rights and responsibilities to be understood and to prevent them being circumvented.