



**RESPONSE TO AUSTRALIAN LAW REFORM  
COMMISSION – RELIGIOUS EDUCATION  
INSTITUTIONS AND ANTI-DISCRIMINATION  
LAWS CONSULTATION PAPER**

24 February 2023

*Wear it Purple Incorporated (ABN 39 634 641 162)*

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Australian Law Reform Commission  
PO Box 12953  
George Street Post Shop  
BRISBANE QLD 4003

## ONLINE SUBMISSION ONLY

Dear Sir/Madam

### **Response to Australian Law Reform Commission Religious Education Institutions and Anti-Discrimination Laws Consultation Paper**

#### **1. INTRODUCTION**

Wear it Purple Incorporated (**WIP**) welcomes the opportunity to provide feedback on the Australian Law Reform Commission's (**ALRC**) consultation paper, '*Religious Education Institutions and Anti-Discrimination Laws*' (**Consultation Paper**).

WIP is a registered charity that advocates for and supports young LGBTIQ+ youth providing resources to schools, universities, gender and sexuality alliances and youth organisations to assist them in creating inclusive experiences. WIP advocates for the rights of LGBTIQ+ youth to be free from discrimination and to feel supported, safe and celebrated.

Last year we wrote on the *Religious Discrimination Bill 2022* (Cth) (**RDB**) and the impact it could have on LGBTIQ+ youth. We were deeply concerned with the RDB as it actively allowed the perpetuation of harm and worked against creating fair thinking schools.

We welcome the commitment of this inquiry to ensure communities and those with lived experience are heard on the importance of providing legal protection against discrimination against LGBTIQ+ youth and teachers.

#### **2. SUMMARY OF SUBMISSIONS**

WIP strongly supports the removal of outdated exemptions from Anti-Discrimination laws that allow religious schools to expel LGBTIQ+ students and dismiss LGBTIQ+ teachers on account of their identity when it does not fit within the doctrines of some faith groups. This amendment will align Australia's federal discrimination laws with the existing laws in the majority of the States and Territories.

The primary reason for Anti-Discrimination laws is to protect vulnerable communities against discrimination. WIP considers that religious educational facilities are not 'vulnerable' to discrimination on the basis of their religious beliefs, and certainly not so by LGBTIQ+ people. Rather, such religious education institutions have used their doctrines to promote beliefs that at times actively discriminate against LGBTIQ+ communities.

Religious educational institutions account for over 90% of the private schools in Australia and approximately 30% of non-private schools. That is a sizable portion of the education system that would be frequented by LGBTIQ+ students and teachers. WIP believes that these institutions are in prime position to educate their communities on fairness and equality and should actively work against using a narrow perception of faith to demean LGBTIQ+ communities.

### 3. LGTBIQ+ YOUNG PEOPLE

LGBTIQ+ young people often experience significant life challenges within environments that are meant to provide safe havens such as homes and local communities. This is why it is critical that educational institutions embed safe and supportive environments for school students who may be seeking reassurance and care.

LGBTIQ+ young people aged 16 to 17 are more likely to attempt suicide in comparison to the general population, specifically<sup>1</sup> they are almost five times more likely to have attempted suicide in their lifetime. They are also more likely to suffer from poor mental health, including suffering from depression (48.3%) and anxiety (63.8%). Any life challenge for them will be heightened and compounded if they are navigating environments of exclusion.

Discrimination against LGBTIQ+ students (and staff), will invariably lead to higher rates of poor mental health amongst identifying students. As raised by the Human Rights Law Centre in their 2018 submission:

*“Children in schools should be focusing on classes, homework and building friendships, not living in fear of mistreatment because of who they or their families are. Teachers should be assessed in relation to teaching standards and their ability to support students to learn, not because of who they are or who they love.”<sup>2</sup>*

WIP strongly supports the Human Rights Law Centre’s message and encourages this understanding of the purpose of schools to be the overriding frame of any future legislation.

### 4. CURRENT LAW

The Consultation Paper reviews the current exceptions contained in the *Sex Discrimination Act 1984* (Cth) (**SD Act**) and the *Fair Work Act 2009* (Cth) (**FW Act**), that apply to religious educational institutions (specifically, schools and universities).<sup>3</sup>

Currently, the SD Act and FW Act provide that a religious educational institution can discriminate against someone on the grounds of their sex, sexual orientation, gender identity, marital or relationship status or pregnancy if the discrimination was in ‘good faith’ in order to ‘avoid injury to the religious susceptibilities of adherents of that religion or creed.’<sup>4</sup> This means that a religious educational institution needs only establish that it was trying to uphold its religion’s object/doctrine when discriminating against someone.<sup>5</sup>

### 5. FEEDBACK ON THE CONSULTATION PAPER

The Consultation Paper sets out four general propositions supported by 14 technical proposals. WIP generally supports the proposals set out by the Consultation Paper and are heartened to see the intention to address the discrimination faced by LGBTIQ+ students in religious educational institutions.

WIP provides feedback on these proposals with a focus on young LGBTIQ+ people as follows:

#### 5.1 Repeal of religious exception to discrimination

WIP supports Proposals 1 and 2 in the Consultation Paper, specifically:

<sup>1</sup> Snapshot of Mental Health and Suicide Prevention Statistics for LGBTIQ+ People – 3 May 2021, LGBTIQ+ Health Australia [https://assets.nationbuilder.com/lgbtihealth/pages/549/attachments/original/1648014801/24.10.21\\_Snapshot\\_of\\_MHSP\\_Statistics\\_for\\_LGBTIQ\\_People\\_-\\_Revised.pdf?1648014801](https://assets.nationbuilder.com/lgbtihealth/pages/549/attachments/original/1648014801/24.10.21_Snapshot_of_MHSP_Statistics_for_LGBTIQ_People_-_Revised.pdf?1648014801)

<sup>2</sup> Human Rights Law Centre, submission to the Senate Legal and Constitutional Affairs Committee inquiring into Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff (2018)

<sup>3</sup> Pg 5

<sup>4</sup> S38(3); s351(2)(c)

<sup>5</sup> Kerry Anne Hozack v The Church of Jesus Christ of Latter-Day Saints [1997] FCA 1300 - [Kerry Anne Hozack v The Church of Jesus Christ of Latter-Day Saints \[1997\] FCA 1300](https://www.austlii.edu.au/au/other/auflii/cases/97/1300.html) (27 November 1997) (austlii.edu.au)

- (a) to repeal the religious exception contained in section 38(3) of the SD Act, and
- (b) to prevent religious educational institutions from discrimination against current or prospective students and teachers on the grounds of sexual orientation, gender identity, marital or relationship status, or pregnancy, or on the grounds that a family member or carer has one of those attributes.

WIP further supports Proposal 5 under the Consultation Paper to amend the FW Act to specify that the exceptions for religious bodies do not apply to educational institutes (aside from in the training of seminary staff).

Under the current exceptions, there is nothing which prevents an education institution from expelling or refusing to accept the enrolment of students who are (or, who are perceived to be) a member of the LGBTIQ+ community, or even a student who has family members/caregivers who are LGBTIQ+, under the guise of 'religious doctrine'. There have been multiple cases in recent years, where this 'religious doctrine' exception has been used by religious educational institutions to actively engage in direct discrimination against LGBTIQ+ teachers by dismissing them from their employment (an act which would be unlawful for any other business).<sup>6</sup>

Accordingly, LGBTIQ+ students disproportionately face adverse effects to their education if schools choose to uphold this exception.

## 5.2 Prohibiting discrimination of students whose family member or carer has a protected attribute

WIP supports Proposal 6 under the Consultation Paper to extend what is considered discrimination by an educational institute to include students' family members and carers.

Currently, under the SD Act, a religious educational institute can discriminate against a student whose family member or carer is LGBTIQ+. For example, a student could be expelled due to their carers being part of the LGTBIQ+ community. Accordingly, the SD Act should be amended to protect family members and carers.

## 5.3 Specification that curriculum is not subject to the SD Act

If the content of the curriculum provided by religious educational institutions is not subject to the SD Act there must be specific teaching guidelines. Teaching guidelines would work to ensure that this freedom is not abused and is not taught in a manner that could harm the LGBTIQ+ community or other minority groups (even if said groups are understood to be "sinful" under certain doctrines).

The Consultation Paper states that it adopts the model from the *Equality Act 2010* (UK) (**the Equality Act**). This model provides that religious content in the curriculum is excluded from the operation of Equality Act broadly, however there are separate guidelines provided to schools and educators on how the curriculum should be delivered in order avoid discrimination.

These guidelines provide that:

*'...If their beliefs are explained in an appropriate way in an educational context that takes into account existing guidance on the delivery of Sex and Relationships*

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<sup>6</sup> <https://www.abc.net.au/triplej/programs/hack/a-sydney-teacher-lost-her-job-because-she-came-out-as-gay/13496032>

*Education (SRE) and Religious Education (RE), then schools should not be acting unlawfully.'*

*'...However, if a school conveyed its belief in a way that involved haranguing, harassing or berating a particular pupil or group of pupils then this would be unacceptable in any circumstances and is likely to constitute unlawful discrimination.'*

WIP supports the adoption of the UK model but reinforces that the guidelines must provide specific examples of how unlawful discrimination could arise.

#### 5.4 Other comments

When compared to other countries Australia is significantly behind on Federal discrimination laws. We must approach equality and fairness in this country by creating law that actively works against privileging the rights of more powerful communities at the expense of others.

As noted in the Human Rights Law Centre's submission to the 2018 Senate inquiry, 'New Zealand, the UK, Ireland and Canada do not have explicit exemptions which allow schools to discriminate against students on the basis of their sexual orientation or gender identity.' This is clearly contrasted with Australia's laws. Therefore, we must work towards leveling our laws, ensuring fairness for all staff and students is afforded, as well as providing the opportunity to grow and learn in a safe and supportive environment.

All schools – whether religious or not – owe a duty of care to their students to provide an environment that is safe and welcoming. It is incumbent on legislators to ensure laws are developed to protect the base rights of LGBTIQ+ students in this country.

Young members of WIP's youth action council have graciously provided the following feedback on how the proposed changes will affect them:

<i>As a student at an all-girls catholic school, this reform is important for me and future students to feel safe and respected in educational settings as it is currently a system that facilitates behaviours that are hateful and harmful.</i>	Queer, 17
<i>I know wholeheartedly that this reform will be able to change people's lives, many young people feel scared to be themselves due to the current climate and discourse going around in the media. By stopping homophobia and transphobia more young adults will be able to feel safe in this ever-changing world.</i>	Trans, 19
<i>The current law allows hateful and harmful behaviour which has a negative impact on many. Making discrimination against queer people in schools and other religious education institutions unlawful is so important to working towards queer people being and feeling safe, accepted, respected and supported. This reform has the potential to positively impact many.</i>	Queer, 15

## 6. CONCLUSION

WIP welcomes this inquiry, and we look forward to witnessing the positive changes made to the Federal discrimination landscape in Australia.

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President and Director  
Wear It Purple