

## **Transgender Victoria Submission to the Australian Law Reform Commission Review of Religious Educational Institutions and Anti-Discrimination Laws**

### **Acknowledgement of Country**

Transgender Victoria operates across lands belonging to the Wurundjeri, Boonwurrung, Taungurong, Dja Deja Wurrung, and Wathaurung peoples of the Kulin Nation and indigenous peoples across Australia. Transgender Victoria and Transcend Australia pay their respects to Elders past, present, and emerging, and acknowledges that sovereignty has never been ceded.

### **About Transgender Victoria:**

Transgender Victoria (TGV) is Victoria's leading body for trans and gender diverse people (TGD). TGV aims to achieve better social, economic, health, wellbeing and mental health outcomes for TGV's communities. It is important to note that many TGD people are people of faith, identify with non-heteronormative sexualities, live with disabilities, or have other overlapping identities and points of marginalisation, which leads to multiple sources for discrimination against them (known as intersectionality).

### **Terms of Reference response**

Transgender Victoria is grateful for the opportunity to make this submission to the review religious educational institutions and anti-discrimination laws. TGV has been waiting for this review for some years following its submissions to the two previous senate inquiries in 2020 and 2022 into the draft exposure bills on religious discrimination legislation in which TGV referred to the important issues relating to staff and students in religious educational institutions and the exemptions in the anti-discrimination laws.

In TGV's submissions to those inquiries TGV stated that TGV maintained a consistent position that TGV supports a Bill which prevents discrimination against somebody on the basis of their religion, but that it must not create a license to discriminate against others on the basis of religious beliefs. This remains TGV's position today in relation to the current review and this principle should be applied to the exemptions relating to religious education institutions in anti-discrimination legislation. In particular where those institutions receive funds from the Australian taxpayer, any institution found to have discriminated against staff or students on the basis of protected attributes particularly sexual orientation or gender identity ought to be stripped of any further funding from the

not limited to grants and tax-exempt status. An inquiry set up by the Senate in 1996 on a proposed Sexuality Discrimination Bill came to a similar conclusion namely:

“That a body established for religious purposes may not exclude a person from the receipt of services which are funded directly or indirectly, in whole or in part, from Commonwealth funding, on the grounds of the person's sexuality or gender status.”<sup>1</sup>

TGV advocates for extending that position to include employment in providing those services and if any organization does exclude them then Commonwealth funding should be withdrawn.

In this document TGV proposes to address the terms of reference as detailed on page 3 of the ALRC consultation paper on this review. For clarity TGV reproduces these here. They are “an educational institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed:

- must not discriminate against a student on the basis of sexual orientation, gender identity, marital or relationship status or pregnancy;
- must not discriminate against a member of staff on the basis of sex, sexual orientation, gender identity, marital or relationship status or pregnancy;
- can continue to build a community of faith by giving preference, in good faith, to persons of the same religion as the educational institution in the selection of staff. “

TGV agrees that anti-discrimination legislation should be amended to ensure that no exemptions exist such that religious educational institutions may discriminate against a student or staff member on the grounds listed in the first two bullet points and that TGV will enlarge on TGV’s position in relation to the third bullet point later in the submission. In relation to the 5 principles listed on page 9 in the ALRC consultation paper (see Appendix A), TGV makes the following observations. TGV agrees with principles 1 to 4 and would modify principle 5 to state that staff and students are at the centre of this inquiry.

TGV’s remarks focus on the LGBTIQ+ community but note that the other grounds listed of sex marital or relationship status or pregnancy involve similar discussion points. TGV believes strongly that the balance of rights in relation to freedom to practice religion and the rights of people to have different sexual orientations or gender identities to the cis heteronormative community should sit in favour of the latter rather than the former. TGV would make the following observations in relation to this matter:

1. no religion to TGV’s knowledge totally excludes people because of their sexual orientation or gender identity. While some sections of some religions may exclude people because of their sexual orientation or gender identity, no religion or even denomination has any blanket prohibition on having non-normative sexual orientation or gender identity. This means that individual communities of faith who seek to exclude people on the grounds of sexual orientation or gender identity do not do so from a dogma held by all people of that religion or denomination but do so on the basis of a sectional belief and this may simply be an excuse to discriminate when homo and transphobia are the true motivating factors.
2. Discrimination should have no place in a diverse multicultural and multifaith society such as Australia. Any legislation should seek to promote inclusion rather than provide grounds for exclusion

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<sup>1</sup>Riseman, N “Religious freedom and the rights of LGBTI people: Lessons of recent history” ABC online 11 Sept 2018 <https://www.abc.net.au/religion/religious-freedom-and-the-rights-of-lgbti-people-lessons-of-rece/10214312>

3. Those communities of faith which do consider peoples' sexual orientation or gender identity to be not appropriate to practicing with them should not have any rights to exclude them from educational institutions run by that faith group in any role as a student or teacher with the sole exception where the main role is one which teaches faith dogma or principles.
4. Questions of law would arise when religious exemptions to anti-discrimination were invoked. There would be a need to answer the following questions:
  - a. Who is to decide whether someone's opposition to LGBTI rights is religiously motivated?
  - b. How does one separate religious influence from other moral or ethical judgements?
  - c. How can one say someone's religious beliefs let them provide educational services to LGBTIQA+ students or employ LGBTIQA+ staff if they have no problems providing services to or employing an adulterer, divorcee or others whose lifestyles conflict with religious teachings?

Presumably these would be decided in a court but it would be difficult to distinguish between religious beliefs and bigotry especially considering point 1 above.

5. In relation to so called single sex religious schools, TGD people do present particular challenges. TGD advocates for the following position to be made in anti-discrimination laws:
  - a. Where a staff member or student of a religious educational institution transitions from one binary gender to another then at the discretion of the individual concerned, they may remain in the single sex educational institution until their education is complete
  - b. Where a staff member or student of a religious educational institution transitions from one binary gender they must not be discriminated against if they chose to move to another single sex religious school aligned with their gender
  - c. Where a staff member or a student of a religious single sex educational institution transitions from one binary gender to a non-binary gender including but not limited to non-binary, gender queer or other descriptor outside of the gender binary then that individual may remain in the single sex educational institution or move to a new single sex educational institution without experiencing discrimination on the basis of the gender they were assigned at birth.
6. TGD people of faith particularly minority faiths experience compounded negative effects of the intersection of their gender identity and their faith identity. TGD people in the broad community suffer from extremely high rates of mental ill health including anxiety, depression, self-harm and suicide attempts which is well documented<sup>2</sup> due to the effects of marginalisation and discrimination on the basis of their gender identity. People from particularly minority faiths also suffer from marginalisation and discrimination on the basis of their faith which can often impact on their mental health. When TGD people of faith experience discrimination in their faith community it has a profound impact on their mental health because both their gender identity and faith are important components of their identity as people and the effect of discrimination is often multiplicative rather than

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<sup>2</sup> Cheung A and Zwikel, S "Why have nearly half of transgender Australians attempted suicide? Pursuit 23<sup>rd</sup> March 2021 <https://pursuit.unimelb.edu.au/articles/why-have-nearly-half-of-transgender-australians-attempted-suicide>

additive<sup>3</sup>. This effect reinforces TGV's position that discrimination on the basis of sexuality or gender identity ought not be permitted in Australia except under the extremely limited circumstances noted in point 3 above.

TGV thanks the ALRC for the opportunity to comment on this review and is available to talk with the commission on its submission or respond to any further queries either orally or in writing. TGV grants the ALRC the right to make this submission public. For enquiries relating to this submission please contact Michelle McNamara by email [michelle@tgv.org.au](mailto:michelle@tgv.org.au) or phone 0407713768

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<sup>3</sup> Surch L and De George G "An Interview on Intersectionality" Deloitte's Blog Diversity 28 Aug 2019

<https://www2.deloitte.com/au/en/blog/diversity-inclusion-blog/2019/interview-on-intersectionality.html>



Appendix A: Five principles from the ALRC consultation paper  
RELIGIOUS EDUCATIONAL INSTITUTIONS AND ANTI-DISCRIMINATION LAWS

- Principle 1:** **Human dignity is central to the expression and protection of all human rights.**
- The recognition and protection of human dignity underlies and holds unconditional status in the international human rights framework. All of the human rights at issue in this Inquiry are important to human dignity. Although people may hold differing views about how difficult issues should be resolved, the methods used to resolve them should promote respect.
- Principle 2:** **All human rights engaged by this Inquiry are fundamentally important.**
- All human rights are universal, inalienable, indivisible, interdependent, and interrelated. This Inquiry engages with a broad range of human rights. Respect for, and the protection and fulfilment of, each of these rights is fundamentally important.
- Principle 3:** **Human rights should be considered holistically. In managing intersections between human rights, the substance of the rights at issue should be preserved to the maximum degree possible.**
- The broad range of rights relevant to education within religious educational institutions must be considered holistically. International human rights law provides a framework for managing the intersection of these rights. In situations where human rights appear to be in tension, 'pragmatic elasticity' is required to produce 'practical concordance' of all human rights involved, to the maximum degree possible.<sup>14</sup> Application of a competing or hierarchical lens, or engaging in a balancing act that produces 'trade-offs' should be avoided.
- Principle 4:** **Education performs a key role in maintaining a pluralist and socially cohesive society.**
- Australian society is diverse, with many different ethnic, racial,

religious and social groups all living together. The *Alice Springs (Mparntwe) Education Declaration*, agreed on by all Australian Education Ministers in 2019 commits Australian governments to ensuring 'education promotes and contributes to a socially cohesive society that values, respects and appreciates different points of view and cultural, social, linguistic and religious diversity'.

**Principle 5:**

**Students are at the centre of this Inquiry.**

Students are the direct beneficiaries of education and are owed a duty of care by all institutions that deliver that education. The design of policy that impacts students must place at its heart the best of interests of those students. Parents, carers, and religious educational institutions and their staff, including teachers, perform an important role in supporting the educational and spiritual development, and wellbeing, of students. Staff also deserve safe workplaces and fair conditions of employment.