



welcoming LGBTIQ people, same-sex couples and families,
in all areas of the Church's life, ministry and leadership
c/o PO Box 6173, North Ryde, NSW 2113

**AUSTRALIAN GOVERNMENT
AUSTRALIAN LAW REFORM COMMISSION
RELIGIOUS EDUCATIONAL INSTITUTIONS AND ANTI-DISCRIMINATION LAWS
SUBMISSION IN RESPONSE TO THE DISCUSSION PAPER – MARCH 2023**

SUMMARY OF KEY POINTS:

1. We are disappointed at the short period and timing of responses to this discussion paper given Word Pride/Sydney Mardi Gras.
2. Pre-Consultations around LGBTIQ+ communities, generally and particularly when related to the intersection of religious matters, should include many LGBTIQ+ communities of faith.
3. There is a need to ensure that these protections also include intersex people¹ (who have innate sex characteristics that don't fit medical and social norms for female or male bodies, and that create risks or experiences of stigma, discrimination and harm)
4. There should be clarity between national/state-authorized curricula and religious educational institutions teaching on sex, gender, sexual orientation etc. Such religious teaching should be optional and extra-curricular. The choice to attend being solely the students.
5. The teaching of the classes referenced in point 4 should be limited to ministers of religion (teacher-trained), members of a religious order (teacher-trained) and specialist religious education teachers.
6. We generally agree to Propositions A and B, but have a number of concerns.
7. We are concerned about Propositions C and D.
8. There is ambiguity in relation to religious educational institutions definition.
9. Our preferred model is a Bill of Human Rights.

For any inquiries, please feel free to contact Jason Masters at [REDACTED] or [REDACTED]

Yours sincerely
[REDACTED]

Jason Masters
Co-convenor

¹ Sourced <https://ihra.org.au/18106/what-is-intersex/>

Thank you for the opportunity to provide our submission to the Consultation Paper “Religious Educational Institutions and Anti-Discrimination Laws” of January 2023.

Uniting Network Australia is the LGBTIQ+ group within the Uniting Church in Australia, to, amongst other activities, advocate for LGBTIQ+ people of faith within our denomination and, more broadly, within society. The Uniting Church in Australia is Australia’s third largest denomination.

In approaching your document, as with other religious discrimination bills and reviews, we frame our response through the lens of Jesus, who:

- Stood with those who were usually outcasts of the society of his day;
- Intentionally walked with or told parables and challenged the religious leaders of his day about ending discrimination (the Good Samaritan, the Women at the Well, as two examples); and
- Challenged the dominant religious and political concepts of the day, in preference for supporting people with love and acceptance.

Further, the Uniting Church recognises all persons, irrespective of their skin colour, ethnicity, sexual orientation, gender identity etc.

As per our prior communication with the Commission, whilst we understand that the Government has set the timetable, we are disappointed at the relatively short period of time to respond to this significant paper, particularly as the consultation response period covered the period leading up to and including part of the time of World Pride and Mardi Gras.

It is important to recognise the violence that the LGBTIQ+ community suffers. During World Pride in Sydney, two of our LGBTIQ+ churches were attacked. One that was holding World Pride Amplified Events for LGBTIQ+ people of faith centred on Pitt Street Uniting Church. The other in the suburbs of Sydney (Roseville) simply had a message of support for World Pride on their notice board. We have some evidence, at least for Pitt Street Uniting, that the first attack was by conservative Christians, which has been provided to the NSW Police. The Moderator of the Uniting Church NSW/ACT issued a Press Release expressing concern on the “recent attacks of vandalism and verbal abuse against Congregation members at the Uniting Church in Pitt Street, Sydney”. The full statement is provided at the end of our submission.

We further note that from the Royal Commission into Institutional Child Sexual Abuse, the importance of the concept of Child Safe Standards² (recommendation 6.5 in Volume 6 of the final report). These proposed standards were focused on child sexual abuse protection, it is our view that these standards should be used in a wider principle to ensure children are safe from any form of abuse (sexual, physical, emotional etc). Such enhancements would be consistent with Article 19³ of the Convention of the Rights of the Child (CRC). We would suggest that many religious schools subject their LGBTIQ+ student to emotional abuse via a dogmatic theological interpretation of the so called “clobber passages⁴” used by conservative Christians to attack the human rights of LGBTIQ+ people. Further we would suggest that such anti-LGBTIQ+ activities in religious school’s breaches Article 24⁵ of the CRC (around the attainment of highest standards

² https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_6_making_institutions_child_safe.pdf

³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

⁴ John Squires is a long standing highly regarded Uniting Church Minister, theologian and teacher of Biblical Studies at a theological institution and leader. On his blog he argues the flaws in the clobber passages <https://johntsquires.com/2021/08/08/clobbering-the-clobber-passages/>

⁵ IBID

of health). Issues surrounding the health of LGBTIQ+ can be found in the Writing Themselves In 4 and various LGBTIQ+ Health Australia reports⁶.

The NSW LGBTIQ+ Health Strategy 2022 – 2027 (the first of its kind in NSW Health) commented on some of the risks of LGBTIQ+ people in schools being higher than elsewhere.⁷

**Younger people -
aged 12 to 24 years**

- High rates of psychological distress linked to bullying, social exclusion and family rejection.⁴⁶
- Higher rates of harassment or assault based on sexuality or gender in school settings, in comparison to university or workplace settings.⁴⁷
- Transgender and gender diverse young people disproportionately affected by depression and suicidality compared to their cisgender peers.⁴⁸
- Younger intersex people may face issues with disclosure of their diagnosis, medical interventions, and social stigma.
- Fear of disclosing one's sexuality, gender and/or intersex variations to health professionals, and a perception that mainstream services are unfamiliar with LGBTIQ+ health issues.⁴⁹
- Lack of a clear pathway of care for young people seeking gender affirming treatments and care, including puberty blockers, hormones and counselling.⁵⁰

The 'Writing Themselves In 4: National Report', in its summary, makes the following statement⁸:

"More than three-fifths (60.2%) of participants said that in the past 12 months they felt unsafe or uncomfortable at secondary school due to their sexuality or gender identity."

Unfortunately, their report does not break the data down between public and private schools.

It is important to know the unique risks of LGBTIQ+ people of faith who are sometimes rejected by the broader LGBTIQ+ community and their community of faith.

We also express our disappointment that, once again, there appears to have been consultation with conservative and anti-LGBTIQ+ communities of faith, but as has been the habit of the current and former governments, little to no discussions with LGBTIQ+ communities of faith. As members of Australia's third largest Christian denomination and their LGBTIQ+ group, we believe we can provide significant and substantial input and reflection into these matters.

Proposition A

We are generally supportive of this proposition. However, we note the following:

- For clarity, the characteristics should insert people with intersex characteristics⁹ into the list of characteristics that cannot be used as a basis for discrimination.
- For all points, the wording "Religious educational institutions", we believe, causes a level of ambiguity. The exemptions for discrimination should be removed for schools and universities (in the broad sense of university education). We agree that the discrimination may remain (although we don't believe there is justification to do so) for institutions providing theological training for ministers of religion (which should be carefully defined) and members of religious orders (which should be carefully defined). To that extent, when a religious university has a college/faculty dedicated to training

⁶ <https://www.lgbtiqhealth.org.au/advocacyreports>

⁷ Page 17 <https://www.health.nsw.gov.au/lgbtiq-health/Publications/lgbtiq-health-strategy.pdf>

⁸ Page 59 https://www.latrobe.edu.au/data/assets/pdf_file/0010/1198945/Writing-Themselves-In-4-National-report.pdf

⁹ "who have innate sex characteristics that don't fit medical and social norms for female or male bodies, and that create risks or experiences of stigma, discrimination and harm" sourced <https://ihra.org.au/18106/what-is-intersex/>

ministers or members of orders, the discrimination rights shall only apply to those courses within that college or faculty.

- Concerning point 3, we believe there needs to be some careful consideration to clarify this area further. We do not believe that a religious school should be permitted to intermingle national or state-based curriculum with their beliefs on sex, gender or sexual orientation etc. We are concerned that many of the PDHPE curriculums have been diminished by the pressure of religious organisations, thereby harming students¹⁰.
 - Our view is that PDHPE curriculums across Australia should be expanded to include age-appropriate material on non-heteronormative family structures, be sex-positive for all genders and sexual orientations, relationships should cover relationships beyond the heteronormative type, provide a broad range of sexual health inclusive of all genders and sexual orientation as examples.
 - It is our view that religious schools should provide their religious sex, relationship, and orientation discussions in a distinct and separate time from the approved curriculum, and ideally as an extra and optional curricular activity.
 - This would allow students who are not of the faith of that school, or who are of a gender or sexual orientation etc, that they know is not acceptable to that faith to be protected from attending those sessions, which may lead to their harm.
 - Finally, on this point, it should be solely the student's decision to attend or not attend these extra-curriculum activities and not that of the parents to respect the student's rights under the Convention of the Rights of the Child.¹¹
- We believe further consideration should be given concerning other areas, such as immunisation. A religious school must inform the child/student of the public health benefits of immunisation even if it is against their religious ethos and allow public health authorities to be available on religious educational institutions' grounds to provide immunisations. The student should have the right to elect an immunisation if they are considered Gillick competent¹² and over-ride their parent's views.
- We believe the Proposition does not go far enough in ensuring LGBTIQ+ assembly rights within religious educational institutions. As an example, if a group of students wish to create an LGBTIQ+ club as an extra-curricular activity using school resources, such as classrooms etc., there should be no limitation or discrimination compared to other student-led clubs or activities.¹³
- We believe there should be a positive statement that religious educational institutions should comply and actively support the requirements of parents and their medical advisors around the transition of a transgender or gender-diverse student.
 - When an LGBTIQ+ student discloses their identity or orientation and further disclosure of that information to their parents, carer or guardian may put the student at risk of physical or emotional harm, the institution should actively support that student in school, irrespective of their religious ideology around LGBTIQ+ students, and not disclose the information without the consent of the student (without any undue pressure).
- In the practical example. we have commented on bullet number 4 above.
 - In relation to the 8th bullet point, it is our view that a student should have the right not to attend religious ceremonies, prayers etc., and that the decision is the sole right of the child.

¹⁰ <https://www.ohchr.org/sites/default/files/2021-11/Summary-Comprehensive-Sexuality-Education.pdf>

¹¹ Articles 13 and 14 of the CRC <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹² <https://www1.racgp.org.au/newsgp/professional/what-is-too-young-children-and-consent-for-medical>

¹³ Article 15 of the CRC <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

- In the 14th and last bullet point, in principle, we agree but would seek some practical additions, such as the right use preference students from families of the same faith should be reduced when the school receives more government funding and if there are limited options for schools in the proximity for the child.

Proposition B

We are generally supportive of this proposition. However, we note the following:

- For clarity, the characteristics should include people with intersex characteristics¹⁴ into the list of characteristics that cannot be used as a basis for discrimination.
- For all points the wording “Religious educational institutions”, which we believe causes a level of ambiguity. The exemptions for discrimination should be removed for schools and universities (in the broad sense of university education).
- In relation to the second bullet point,
 - We agree that the discrimination may remain (although we don’t believe there is justification to do so) for institutions providing theological training for ministers of religion (which should be carefully defined) and members of religious orders (which should be carefully defined).
 - We do not believe religious institutions should be exempt from the provision of accommodation except where it applies to specified religious staff (such as a school chaplain or exclusive and specialist religious education teacher).
- In relation to the last bullet point, it is our view that the teaching of religious doctrine in relation to sex, gender and sexual orientation should not be taught concurrently with the relevant national or state-authorised curriculums and should be provided as an extra-curriculum activity.
 - Further, no teacher should be forced to teach such religious doctrine, and the teaching should be limited to a minister of religion, specialist religious education teachers or an appropriate member of a religious order, all of whom have appropriate teacher qualifications.
 - Those teaching these elements should still comply with working with children checks, be cognisant of the harm teaching such doctrine may cause to any student, and remove the possibility of harm to students.
 - Students who are not of the faith of that school, or who are gender diverse or have a ‘non-straight’ sexual orientation etc., know they are not acceptable to that faith to be protected from attending those sessions, which may lead to their harm, i.e., have an excuse not to attend those classes.
 - Finally, on this point, it should be solely the student's decision to attend or not attend these extra-curriculum activities and not that of the parents, to respect the students’ rights under the Convention of the Rights of the Child.
- In relation to the example, we note the following:
 - 3rd bullet point, teachers should not be forced to attend prayers, in accordance with their own conscience and beliefs (or lack thereof)
 - 5th bullet point, please see our discussion above.

Proposition C

We have general concerns in relation to this proposition, noting the following:

- The first dot point of proposition C1 is in our view very loose. Some schools are likely to state, for example, that ‘biblical understanding’ and teaching is required for every

¹⁴ “who have innate sex characteristics that don’t fit medical and social norms for female or male bodies, and that create risks or experiences of stigma, discrimination and harm”
sourced <https://ihra.org.au/18106/what-is-intersex/>

subject, such as mathematics, physics, biology etc. We believe this is not the case, as the school should be teaching to the national or state curriculum. Any religious overlay should be provided as an extra-curricular activity, with students having the right not to attend those activities.

- The third dot point of proposition C1 should include as a protected characteristic intersex people.
- Proposition C2 is not necessary, given C1.
- For all points, the wording “Religious educational institutions”, we believe, causes a level of ambiguity. The exemptions for discrimination should be removed for schools and universities (in the broad sense of university education). We agree that the discrimination may remain (although we don’t believe there is justification to do so) for institutions providing theological training for ministers of religion (which should be carefully defined) and members of religious orders (which should be carefully defined). To that extent, when a religious university has a college/faculty dedicated to training ministers or members of orders, the discrimination rights shall only apply to those courses within that college or faculty.
- The right use preference staff of the same faith should be reduced when the school receives more government funding or if there are limited teaching options/schools near the teacher.

Proposition D

We have general concerns in relation to this proposition, noting the following:

- For all points the wording “Religious educational institutions”, which we believe causes a level of ambiguity. The exemptions for discrimination should be removed for schools and universities (in the broad sense of university education).
- Dot point 1, we believe this needs to be carefully designed. A teacher could provide support for an LGBTIQ+ student, which the school may perceive to undermine the institution’s ethos. In this example, the right to discipline a teacher should be extremely limited. The primacy of the child/student’s needs must be above any religious ethos.
- Dot point 2, we believe, may provide religious educational institutions with various mechanisms to limit teachers’ rights severely. We would recommend that the stated education department’s code of conduct be used as the basis for religious schools. Any variations should be limited, with documented evidence of the required variation. To that end, this is another example of why there should be an LGBTIQ+ Commission in the Human Rights Commission, which could arbitrate where the variations are considered extreme or limiting teachers’ reasonable rights.
- Dot point 3, to include intersex as a characteristic.

As broader comments, we would as that the Commission to consider the following general points:

- We believe that the laws in Tasmania and Victoria have not had a real or significant impact on the religious schools to continue providing their unique value propositions to parents as alternatives to the public education system. However, they have provided significant protection to teachers and students and are an excellent model for the Commission to consider.
- We are concerned that religious educational institutions could misuse any proportionality test and consider the proportionality against their religious ethos only. We believe that the proportionality tests should be very broad and incorporate the teacher’s human rights as well.
- We are concerned that the consultation paper does not cover the broader protection of LGBTIQ+ students and teachers. Whilst the proposal removes discrimination on gaining student entry or employment at a religious educational institution, there is a

need to go further to ensure that LGBTIQ+ students and teachers are *not harassed, bullied, or belittled, either physically or emotionally*. We believe religious education institutions should have specific obligations to protect LGBTIQ+ students and teachers from any such activities and take reasonable actions against any student or teacher undertaking those activities.

- We would like to see in the final document a brief discussion the definitions of LGBTIQ+ people.
- We would like the final document to include some research on LGBTIQ+ students' (and teachers') risks in society and education, particularly around self-harm and suicide, to provide a clear context for why the existing discrimination is inappropriate. LGBTIQ+ Health Australia¹⁵ has considerable data in this area.
- We would like to see a discussion on the age which LGBTIQ+ students may come out to provide an overview of the risks to the child's well-being, particularly when they have been placed in a religious educational institution before this developmental stage, and the increased risks to the child from being in that educational (and potentially family) environment.¹⁶¹⁷
- We believe that the final paper should consider the United Nations Human Rights Independent Expert on Sexual Orientation and Gender Identity, Mr Victor Madrigal-Borloz, and his unit's work¹⁸.
- We believe the Commission should also consider the obligations of religious institutions, including religious educational institutions, to be a 'Safe Church'¹⁹²⁰. Whilst this is focused on child sexual abuse (a response to the Royal Commission on Institutional Child Abuse), we are of the view the principles should apply for physical and emotional abuse in schools, particularly towards LGBTIQ+ students.
- Please note we are not legally minded people, do not have any external funding, so therefore are not in a position to comment on the details in section "Technical Consultation Proposals".
- Finally, we have held a long-standing position that these anti-discrimination acts should be replaced by a Bill of Human Rights.

***** END OF SUBMISSION *****

Copy of Moderators Press Release on the following page.

¹⁵ <https://www.lgbtiqhealth.org.au/>

¹⁶ https://newscenter.sdsu.edu/sdsu_newscenter/news_story.aspx?sid=77373

¹⁷

https://www.nctsn.org/sites/default/files/resources/sexual_development_and_behavior_in_children.pdf

¹⁸ <https://www.ohchr.org/en/special-procedures/ie-sexual-orientation-and-gender-identity>

¹⁹ Example of Safe Church resources from the Uniting Church <https://nswact.uca.org.au/safe-church-unit/safe-church-resources/>

²⁰ Example of Safe Church resources from the Baptist Church <https://creatingsafespaces.org.au/resources/>



Wednesday, 1 March, 2023

Church leader condemns attacks on Sydney church during WorldPride

Moderator of the Uniting Church in Australia, Synod of NSW and the ACT, Rev Simon Hansford has condemned the abhorrent attacks against LGBTIQ+ communities of faith and their place of worship during WorldPride.

The comments follow recent attacks of vandalism and verbal abuse against Congregation members at the Uniting Church in Pitt Street, Sydney, over the last week.

“Homophobic or transphobic attacks against any community member or individual is vehemently opposed by the Church,” Rev Hansford said.

“We equally deplore attacks against any community of faith.”

“We reach out in prayer and support to LGBTIQ+ faith community members and families who have been directly or indirectly affected by these events. We are thankful for the diversity of our Uniting Church community and all those who join with us, for celebration, healing or hope.

“As a Church we are proud of our long-standing commitment to promoting the rights of LGBTIQ+ communities and welcoming people of all backgrounds to our communities and places of worship,” Rev Hansford said.

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²¹ <https://nswact.uca.org.au/communications/newsroom/media-release-church-leader-condemns-attacks-on-sydney-church-during-worldpride/>