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Anti Discrimination Law  
Australian Law Reform Commission



Dear Australian Law Reform Commission

**Religious Educational Institutions and Anti-Discrimination Laws:  
Consultation Paper (2023)**

The LGBTI Legal Service Inc. (the **Service**) is a non-for-profit community legal centre in Brisbane that provides free legal services to the LGBTIQ+ community and engages in law reform work. The Service began operation on 7 July 2010 and officially launched on 1 December 2010 by former Justice of the High Court of Australia, the Hon Michael Kirby AC CMG.

The Service thanks the Australian Law Reform Commission (**ALRC**) for the consultation paper and for considering our submission.

**POSITION STATEMENT**

The Service supports the submissions provided by Equality Australia to the ALRC.

The Service strongly supports changes to the *Sex Discrimination Act 1984* (**Sex Discrimination Act**) to ensure that students and staff working in educational settings are protected from discrimination on the basis of their attributes, including being LGBTQA+<sup>1</sup>. We consider that these changes are long overdue, necessary and justifiable.

Schools and other educational institutions do not have the right to human rights protections under the *International Covenant on Civil and Political Rights*, but individuals within a faith

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<sup>1</sup> We note that the *Sex Discrimination Act* religious exemptions do not apply to intersex people, and so in this context we will not refer to LGBTQA+.

community have a qualified right to manifest their religious beliefs.<sup>2</sup> The right to manifest religious belief can be validly limited by parliament to prevent harm to marginalised communities, to ensure equal access to education and work opportunities, and to improve public health.<sup>3</sup>

The case studies in this submission demonstrate that limitations on the rights to manifest religion are *necessary* to prevent ongoing discrimination and to facilitate fair access to education and work for some of the most marginalised communities in Australia. There is a direct link between marginalisation and discrimination and poor mental health outcomes. The mental health of LGBTQA+ communities, and particularly our young people, is significantly worse when compared with the general population.<sup>4</sup>

We join the calls made by other submitters that, while outside the Terms of Reference of this review, individuals working for faith-based institutions other than schools equally need reforms to the *Sex Discrimination Act* to ensure that they are also protected from unfair discrimination at work.

## **CASE STUDIES**

### **Psychologist employed by a faith-based school**

A psychologist employed at a Christian school was instructed to breach her obligations as a psychologist regarding the treatment of LGBTQA+ students and encountered direct discrimination on the basis of her sexuality.

As school psychologist, the employee was instructed to engage in conversations with the LGBTQA+ students based on conversion therapy ideology.<sup>5</sup> This created a direct conflict with her professional duty of care to provide appropriate treatment. Her employer also instructed her to disclose information about the sexuality and sexual activity of students who had provided this information during confidential sessions with her.

Her employment contract required staff to present in gender conforming clothing and in a heteronormative fashion in the workplace. This impacted her language and clothing choices on a day-to-day basis. She was also required not to discuss details of her home life with

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<sup>2</sup> Article 18.

<sup>3</sup> Article 18(3) states that freedom to manifest religion may be subject to limitations that are *necessary* to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

<sup>4</sup> LGBTIQ Health Australia, Snapshot of Mental Health and Suicide Prevention Statistics for LGBTQA+ People, Web page <<https://www.lgbtiqhealth.org.au/statistics>>. For example, LGBTQA+ young people were 3 times more likely to have attempted suicide and 4 times as likely to have self-harmed.

<sup>5</sup> Conversion therapy ideology includes the false notion that sexually and gender diverse people are disordered and encourages a person to change or suppress their sexuality or gender identity. Conversion therapy by health practitioners is unlawful Queensland under the *Public Health Act 2005* (Qld) and is condemned by all professional bodies for psychologists and psychiatrists.

## **LGBTI Legal Service Inc.**

colleagues. During a staff meeting, she was also asked to disclose her sexuality in front of others in a context where she felt that this information would negatively impact her employment.

This employee ceased working at this school at the end of 2021 as a result of this treatment.

### **Enrolment contract discriminated against LGBTQA+ students**

A significant number of clients of the Service experienced discrimination at a Christian school. The school issued an enrolment contract to existing students in the school, requiring that all families sign the document. The contract called homosexuality immoral and required students to only be enrolled as their sex as assigned at birth.

### **School refused to acknowledge gender of student**

A transgender boy was told by his Christian school to find another school after he advised them that he had changed his name and pronouns in accordance with his gender identity. He had always been a respectful, polite and an academically dedicated student.

After leaving the school, he experienced poor mental health because he had to leave all of his close friendships behind. Despite how unsupportive his original school was, he eventually decided to re-enrol to be with his friends. On his return the school continued to refuse to acknowledge his name, pronouns or allow him to wear a uniform that aligned with his gender identity.

### **Employee discriminated against during same-sex marriage plebiscite**

While outside the scope of the Religious Educational Institutions and Anti-Discrimination Laws: Consultation Paper (2023), we include the details of an employee of a Christian organisation providing a range of community based services utilising government funding.

This employee faced discrimination in the workplace in the form of a companywide email sent by the CEO which was marked as highly important. The content of the email expressed strong negative opinions toward the LGBTQA+ community in a discussion about same-sex marriage. The CEO even went as far as to urge employees to vote no to legalising same sex-marriage in Australia. The use of the word 'society' in the email was in such a way which excluded the LGBTQA+ community made the employee feel hurt and humiliated personally and in their workplace.

We note that while this employer was not a religious educational institution, the same principles apply here to protect an employee in their workplace. Law reform is a mechanism to help safeguard every person while in their workplace where they have the right to feel safe and welcome.

**CONCLUSION**

While changing the law will not end all forms of discrimination against LGBTQ+ staff and students in religious schools, we consider that law reform will improve protections for individuals and contribute to the ongoing culture shift towards acceptance and inclusion at a systemic level in education settings.

Significantly, the LGBTI Legal Service Inc. supports the right to be free from religious discrimination and note that any right to manifest religious practices, where manifestation is a right that goes beyond practicing freedom of religious beliefs, should not be prioritised at the expense of other protected attributes. This is relevant not only to the LGBTIQA+ community, but also to members of various religious groups who seek to practice LGBTIQA+ inclusive faiths.

Thank you for considering our submissions for this consultation paper.

Kind regards



**Kathryn Cramp**  
President  
LGBTI Legal Service Inc.