

Introduction

YACSA is the peak body in South Australia representing the interests of young people, youth workers, organisations and networks throughout the non-government youth sector. Policy positions are independent and not aligned with any political party or movement. YACSA supports the fundamental right of all young people to participate in and contribute to all aspects of community life, particularly the decision-making processes that impact them.

YACSA is pleased to respond to the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 Inquiry. The leaking and belated release of the Ruddock Religious Freedom Review report sparked significant debate in the community regarding both the concept of “religious freedom” and the exemptions within the *Sexual Discrimination Act (Cth)* (SDA) that allow religious educational institutions to lawfully discriminate against LGBTIQ students and teachers.

YACSA is concerned that the impacts of discrimination and inequality amongst LGBTIQ young people, particularly when that discrimination is state sanctioned, is immense. The LGBTIQ youth population is more vulnerable to social isolation, discrimination, abuse and violence, mental health issues and suicidality. As such, we need to do all we can to ensure that LGBTIQ young people feel accepted, included, acknowledged, enjoy their right to be equal before the law and are free from discrimination.

The SDA and state-based anti-discrimination and equal rights legislation have a vitally important role in providing the legislative framework to protect fundamental human rights, equality and freedom from discrimination. This adherence to rights and the protection from discrimination should be without condition and should apply to all citizens. As such, YACSA supports amending the SDA but we believe that the Bill doesn't go far enough in complying with Australia's obligations as signatories to international human rights treaties, charters and covenants.

Key points

While YACSA strongly supports protections for LGBTIQ students within religious educational institutions and elsewhere, we don't believe this Bill goes far enough in providing protections for teachers and other school staff (who may also be young people) from discrimination based on their sexuality, gender identity, intersex status, or marital status. YACSA supports the following:

- repeal s 38 of the *Sex Discrimination Act (Cth)*, (SDA) in its entirety thereby ceasing the right of religious affiliated educational institutions lawfully discriminating against students, teachers and other educational staff based upon sexual and gender identity, intersex status, marital status or pregnancy.
- Amend s 37 of the SDA to ensure that educational bodies are excluded from the operation of this section.

These amendments will assist in preventing LGBTIQ young people from experiencing discrimination by religious educational institutions based upon their sexuality or gender identity.

However, the exemptions contained in the SDA will still apply to the current and future staff of religious educational institutions (and other religious organisations) who will potentially face lawful discrimination based upon their personal circumstances. YACSA opposes any exemption that provides for the lawful discrimination of any citizen based upon personal attributes. We believe this Bill is a starting point and more work is needed to ensure all citizens enjoy their fundamental rights and freedom from discrimination.

The impacts of discrimination

While relatively recent legislative changes in Australia, including the long-fought victory to achieve marriage equality, have significantly contributed towards overall equality for LGBTIQ people, there are still a range of obstacles to the full recognition of fundamental human rights for the LGBTIQ community¹. This includes the right to be free from discrimination and the right to be equal before the law.

Fear, vilification, social isolation and the experience of discrimination significantly impacts the mental health of LGBTIQ people, and young LGBTIQ people in particular, causing a range of health and psychological health issues, including an increased incidence of mental health issues and suicidality². The impacts of discrimination on LGBTIQ young people can be damaging and long lasting. When this discrimination is sanctioned by the state, such as with laws that allow discrimination to occur against citizens based upon certain personal attributes, it sends a clear message to the rest of society that the LGBTIQ community is unequal and deserving of discrimination. Further, it sends an even clearer message to young LGBTIQ people that they are unequal and don't share or deserve the same rights as their family, friends and the rest of society.

The Commonwealth Sex Discrimination Act

The SDA is an important piece of legislation that amongst other provisions, makes it unlawful to discriminate against an individual due to their gender, sexual identity or intersex status. However, the exemptions available to religious educational institutions to discriminate against LGBTIQ individuals who have attributes that aren't compatible with religious doctrine, runs contrary to the protections available to LGBTIQ individuals in other areas of the legislation. Of most concern, the current Act provides the legislative conditions in which LGBTIQ individuals may experience unequal treatment before the law.

YACSA strongly opposes exemptions within the SDA for religious educational institutions and believes the significant infringement of the right for LGBTIQ people to be equal under the law or be free from

¹ L Zeeman, N Sherriff, K Browne, N McGlynn, M Mirandola, L Gios, R Davis, J Sanchez-Lambert, S Aujean, N Pinto, F Farinella, V Donisi, M Niedźwiedzka-Stadnik, M Rosińska, A Pierson, F Amaddeo, Health4LGBTI Network; A review of lesbian, gay, bisexual, trans and intersex (LGBTI) health and healthcare inequalities, European Journal of Public Health, , cky226, viewed 18 January 2019 <https://doi.org/10.1093/eurpub/cky226> <https://academic.oup.com/eurpub/advance-article/doi/10.1093/eurpub/cky226/5151209>

² G Rosenstreich, Discrimination, LGBTI mental health and suicide Discrimination, LGBTI mental health and suicide. Newparadigm, spring 2011 edition 'Around Australia', viewed, 19 January 2019 https://lgbtihealth.org.au/wp-content/uploads/2015/02/REFERENCED-Discrimination_LGBTI_Mental_Health_and_Suicide-Rosenstreich.pdf

discrimination is not justifiable nor necessary to protect the right of others to adopt or follow a religious doctrine.

While YACSA supports the protections for LGBTIQ students that the Labor Bill provides, the amended SDA – provided for by the Amendment Bill - would still allow religious educational institutions to discriminate against LGBTIQ teachers and other staff. When we continue to allow discrimination based on sexuality, gender identity or marital status, it sends a very clear message that LGBTIQ individuals have an unequal experience of the law and are liable to face state sanctioned discrimination both now and into the future.

Human rights and other protections

The right to be free from discrimination is a foundation principle of all major treaties, charters and covenants on human rights³. Australia, as a signatory to those treaties, covenants and charters, is compelled to ensure that all citizens have equal rights. For example, Article 2 of the United Nations Covenant on the Rights of the Child (UNCRC)⁴ states that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.” Article 7 of the United Nations Declaration of Human Rights (UDHR) compels the Australian government to ensure that all citizens are equal before the law and that all citizens, without discrimination, receive equal protection before the law⁵. Similarly, Article 14 of the International Covenant on Civil and Political Rights⁶ requires both federal and state governments to ensure that all citizens are equal before the courts and equal before the law.

While freedom of religious practice is also enshrined in international human rights instruments, these rights extend only to following the religious doctrine of your choice. This right does not and should not provide an individual or group the right to impinge upon the inherent rights of others to be equal before the law and to be free from discrimination. Article 18 of the International Covenant on Civil and Political Rights⁷ is clear that the right to adopt and observe a religious belief is subject to limitations and these limitations can be prescribed by law to protect the fundamental rights and freedoms of others. Article 14 of the UNCRC similarly states that the freedom to manifest one's religion is subject to limitations to “protect public safety, order, health or morals, or the fundamental rights and freedoms of others.”

Broadly, the UN treaties, charters and covenants recognise that basic rights and freedoms are inherent to all human beings regardless of country of residence, ethnic origin, gender identity, sexuality, religion or language. With the adoption of resolution 17/19 and 27/32 - Human rights, sexual orientation and gender identity and resolution 32/2 Protection against violence and discrimination

³ Donald, Alice and Howard, Erica (2015) The right to freedom of religion or belief and its intersection with other rights. Discussion Paper. ILGA-Europe, Brussels, Belgium.

⁴ The United Nations. 1989. “Convention on the Rights of the Child.” Treaty Series 1577 (November): 3.

⁵ Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd session, 183 plen mtg, UN Doc A/810 (10 December 1948), <http://www.un.org/en/documents/udhr/>, viewed 18 May 2015.

⁶ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), <http://www.austlii.edu.au/au/other/dfat/treaties/1980/23.html>, viewed 9 January 2019.

⁷ Ibid.

based on sexual orientation and gender identity in the UDHR – the United Nations has made clear the obligations of signatories to protect the rights of the LGBTIQ population.

Continuing to provide exemptions for religious educational institutions to lawfully discriminate against LGBTIQ students or staff is antithesis to our obligations as signatories to international human rights instruments.

Conclusion

YACSA strongly believes that any school, educational facility, organisation and business, regardless of the religious tenets they follow, is obliged to abide by international human rights instruments, Australian anti-discrimination laws and industrial laws. Government must also recognise Australia's human rights obligations when drafting or amending legislation that might unfairly discriminate against an already vulnerable group.

There can be contention when human rights intersect and compete, but Australia has international obligations to ensure that all citizens are equal before the law and free from discrimination, and this must be the paramount consideration when developing legislation and social policy. Strong laws that recognise the human rights of all citizens are needed to demonstrate Australia's compliance with human rights instruments and the recognition that all citizens are equal before the law.

While we strongly support protections for LGBTIQ students, we don't believe the Amendment Bill goes far enough to protect all LGBTIQ students, teachers and other educational staff from discrimination. YACSA calls on the government and the opposition to champion equality and the freedom from discrimination by removing all the regressive, discriminatory and damaging religious exemptions in the SDA.

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