



**Victorian Pride Lobby
Submission**

on the

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

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About the Victorian Pride Lobby

The mission of the Victorian Pride Lobby ('the Lobby') is to work toward equality and social justice for the Victorian lesbian, gay, bisexual, transgender, queer, and asexual ('LGBTIQA+') community. To do this, we work constructively, cooperatively, and respectfully with trans and gender diverse, intersex, asexual, and other organisations that support our mission and vision.

The vision of the Lobby is that LGBTIQA+ people no longer face discrimination in law or practice in Victoria, and that the diversity of Victoria's LGBTIQA+ communities is valued and celebrated.

Executive summary

We are grateful to the Australian Law Reform Commission ('ALRC') for its work on this referral, and its expedient preparation of this Consultation Paper. The Consultation Paper notes that there have been many reviews and inquiries on this and similar discrimination law issues over many decades and we commend the people involved in that work, especially the LGBTIQA+ community and other marginalised communities and their allies who have spearheaded many of those efforts for reform.

Generally, the Lobby views the Propositions and Proposals in the Consultation Paper positively, with limited exceptions. We strongly support the ALRC's proposal that section 38 of the *Sex Discrimination Act 1984* ('SDA') be repealed in its entirety (Proposals 1 and 2). We strongly support Proposals 3, 4 and 5 for ensuring other overlapping laws similarly do not contain this form of exception. We support Proposal 6, but believe it requires further consideration. We hold significant concerns over Proposal 7, which we do not believe to be necessary or proportionate. We confine this submission to Proposals 1-7 (Propositions A & B).

We briefly address the substantive propositions (A & B), and separately address the technical proposals (1-7) within the broader policy ambitions established in the propositions.

Substantive Proposition A

The Lobby welcomes the stated effect of Proposition A, namely that religious educational institutions can no longer treat students or prospective students less favourably because of their sexual orientation, gender identity or intersex status.

We also welcome the recognition that, in practice and to various extents, many state and territory laws already protect against discrimination for LGBTIQA+ people in religious education settings. This means that in Victoria specifically, much of the effect of the proposed amendments is to bring the SDA ostensibly into line with the existing protections in the *Equal Opportunity Act 2010* (Vic) ('EOA'). This has the effect of making legal protections for LGBTIQA+ people living in Victoria easier to understand. Simplifying legal frameworks like this can also have the effect of making them more accessible.

The suggestion in Proposition A.3 that “[r]eligious education institutions should be permitted to teach religious doctrines or beliefs on sex or sexual orientation in a way that accords with their duty of care to students and requirements of the curriculum” is deeply concerning to the Lobby because:

1. It makes the inference that it is possible for a religious education institution whose doctrine opposes LGBTIQ+ identities, lives or relationships to teach those beliefs in a way which accords with its duty of care to students, including LGBTIQ+ students. In Victoria (where the Lobby is based and predominantly works), the duty of care to students requires reasonable steps to be taken “to reduce the risk of reasonably foreseeable harm to students”. This includes implementing strategies to prevent reasonably foreseeable physical and psychological harm being done to students.¹ We do not believe that it is possible to teach religious doctrines that oppose LGBTIQ+ lives or relationships to any extent in a manner that complies with these duty of care requirements.
2. Given our view that it is not possible to teach a curriculum which opposes LGBTIQ+ identities, lives and relationships without abrogating appropriate duty of care requirements to students, we view this suggestion as providing a ‘sword’ to institutions to allow the teaching of content which is harmful to LGBTIQ+ people, rather than a ‘shield’ to teach appropriately calibrated religious beliefs without fear.
3. We can see little evidence that religious institutions teaching a curriculum informed by their religious doctrines would offend any provision of the SDA anyway. This is because:
 - (a) A curriculum is by nature taught to all students regardless of personal attributes, so direct discrimination concerns do not materialize.
 - (b) Indirect discrimination concerns are also unlikely to be made out, given the stipulation in paragraph 93 that the *Equality Act 2010* (UK) approach is adopted.

We acknowledge that religious education institutions which seek to teach doctrines that denounce protected attributes appear to be in the minority. Many religious education institutions seek to embrace the LGBTIQ+ community and teach a curriculum which accords with that position. We support institutions teaching religious doctrines which do not denounce the LGBTQIA+ community.

However, as articulated, we do not believe that it is necessary. Institutions which seek to teach lawful views about people with protected attributes are entirely permitted to do so without any amendment needed to be made to the law.

¹ Victorian Government Department of Education, Duty of Care Policy, <<https://www2.education.vic.gov.au/pal/duty-of-care/policy>>.

Substantive Proposition B

The Lobby welcomes the stated effect of Proposition B in paragraph 52 of the consultation paper.

As with Proposition A, we welcome the opportunity this provides for the SDA to be brought further into line with the EOA which already provides similar protections to staff in Victoria.

The Lobby holds concerns about the effect of Proposition B.3, specifically that “a school could require a LGBTQ+ staff member involved in the teaching of religious doctrine or beliefs to teach the school’s position on those religious doctrines or beliefs, as long as they were able to provide objective information about alternative viewpoints if they wished”. We do acknowledge, however, that it is appropriate for institutions to employ as teachers of religious doctrine individuals who adhere to that specific religious doctrine.

Proposals

Proposal 1 – Remove exception in SDA in relation to students

The Lobby **supports** the repeal of subsection 38(3) of the SDA.

Proposal 2 – Remove exceptions in SDA in relation to staff

The Lobby **supports** the repeal of subsections 38(1) and (2) of the SDA.

Proposal 3 – Narrow the general religious bodies exceptions to specify that they do not apply in the context of educational institutions

The Lobby **supports** the proposed amendment specifying that section 37(1)(d) of the SDA does not apply to educational institutions.

Paragraph 81 identifies an inconsistency in anti-discrimination requirements between religious education institutions and other religious institutions as a result of this amendment. The process of addressing these inconsistencies should acknowledge the considered and appropriate balance that is struck by Proposal 3, and should recommend comparable amendments where inconsistencies arise.

Proposal 4 – Narrow the general religious bodies exceptions to specify that they do not apply in the context of educational institutions

The Lobby **supports** the proposed amendment specifying that section 23(3)(b) of the SDA does not apply to accommodation provided by educational institutions.

Our view on the inconsistencies raised in paragraph 84 are the same as on paragraph 81.

Proposal 5 – Narrow the general religious bodies exceptions to specify that they do not apply in the context of educational institutions

The Lobby **supports** the proposed amendment specifying that sections 153(2)(b), 195(2)(b), 351(2)(c) and 772(1)(f) of the SDA do not apply to educational institutions except as provided.

Proposal 6 – Ensure protection in relation to family members

The Lobby **supports the proposal with recommended further amendments**.

It is right that the protections would extend to students on the basis of family members and carers with protected attributes. However, we believe that:

1. **Students should be protected from discrimination on the basis that any associate of theirs has a protected attribute, rather than only family members and carers.** The definition of ‘associate’ adopted in section 4 of the *Disability Discrimination Act 1992* (Cth) ought to be applied, to both ensure more consistent application of anti-discrimination laws in Australia, and to ensure that students are protected from discrimination against a more appropriate range of acquaintances. Discriminating against a student on the basis that their family friend, housemate or a member of their sports team identifies as an LGBTIQ+ person should not be acceptable.
2. It is arbitrary to extend this protection to students but not also to staff. **Proposal 6 should be amended to include the associates of staff.**

Proposal 7 - Clarify a school’s ability to teach religious doctrine

The Lobby **opposes** the proposal, and **recommends its deletion**.

Our concerns on this proposal are articulated in the discussion on Proposition A above.

^[1] Victorian Government Department of Education, Duty of Care Policy, <<https://www2.education.vic.gov.au/pal/duty-of-care/policy>>.