

SUMMARY

Pride in Protest generally welcome the recommendations from the Australian Law Reform Commission (ALRC) on ending exceptions to anti-discrimination law in religious educational institutions, but believe we must also take this opportunity to go further as outlined in our response below as anything less than equality for queer people entrenches us as second class citizens. We also commend and hope to draw your attention to the submission by the National Union of Students (NUS).

BACKGROUND

On the 22nd of November 2017, then Prime Minister Malcolm Turnbull set up the Religious Freedom Review Expert Panel in the context of the debate around marriage equality at the urging of [Scott Morrison](#), John Howard, Matt Canavan, Concetta Fierevanti-Wells, and other Liberal party members who believed religion was under attack by the campaign for marriage equality and a win would see opponents to gay rights subjected to supposedly vexatious [anti-discrimination claims](#).

This [Panel](#), which was led by Liberal party elder and former Attorney General Philip Ruddock finally concluded that religious freedom was not under threat in Australia, that they did not believe there were significant issues with the current anti-discrimination framework for people of faith, and recommended against a stand alone Religious Freedoms act as this would be out of step with guaranteeing the rights of other marginalised groups. The Panel further found that it was not necessary to implement a Religious Freedoms Commissioner, and also that there had been no rise in religious persecution with the implementation of marriage equality. Shamefully, the Panel *did* recommend that educational institutions be permitted to discriminate against staff and students on the basis of 'sex, gender identity, and sexual orientation'.

Subsequently the Scott Morrison government prepared multiple drafts of a Religious Freedoms bill against the advice of its own Panel, and these were generally met with scorn from stakeholders, skepticism from state governments [with the potential for high court challenges](#), and [opposition from crossbench MPs](#). It also received minimal support from voters, [with an Essential Poll indicating only 38% of voters would support a religious freedoms bill](#), meanwhile a [YouGov poll commissioned by just.equal](#) found that even fewer would support school teachers and students being discriminated against for their sexual orientation or gender identity. The third draft of the bill also failed parliament as the Morrison government was unable to convince its own MPs to support the bill.

Since that time there has been moves in almost every single state jurisdiction to review anti-discrimination legislation on this topic. Tasmania has long had robust anti-vilification laws, and prohibits faith based discrimination against LGBTIQ+ teachers and students. It has been joined by Victoria, ACT, NT, and there is movement toward further reform in WA, and Queensland. A return of the previous bill's proposals would severely undermine this progress.

RESPONSE TO ALRC PROPOSALS

We broadly welcome **Proposals 1 - 6**, and **11**, which remove the rights of management in religious educational institutions to discriminate against workers and students both at the stage of hiring/enrolment, and termination/expulsion. It must be non-negotiable that discrimination at both stages of this process be redressed.

We believe **Proposal 7** which allows a school to teach religious doctrine without being subject to restrictions from the Sex Discrimination Act to be insufficient. The majority of the proposals provide a form of negative freedom from discrimination for LGBTIQ+ workers and students, but freedom from discrimination can only be realised in the positive. A school of faith should be free to discuss its religious doctrine within the confines of the SDA, but duty of care to children can only be realised if we restore programs like Safe Schools to be implemented across education providers. Further we should fund ethics programs rather than Chaplaincy programs that are biased toward specific religions.

Proposal 8, which seeks to provide preferential hiring for roles with specific religious responsibilities is supportable in the abstract, but may create loopholes for unjust discrimination. It is quite common for most secondary school teachers to take 'home room' shifts, and a requirement of leading prayer in home room or other settings could create a creep in responsibilities that open staff up to discrimination. It is important that this exception only apply to staff for whom the *majority* of their role is in the teaching, observance, and practice of religion which is largely provided for in Section 37 of the SDA.

We also wish to highlight the existing limitations of Section 32 of the SDA and single sex services as regards to schools. Generally single-sex schooling has failed to achieve positive academic outcomes for students, but has allowed for significant trauma to transgender students and has also fostered negative behaviours amongst boys in school in particular. It is recommended that these schools be phased out, but as a first step it would be reasonable to provide an exception that allowed transgender and/or non-binary students the right to enrol in a single-sex school of their choice.

We would also further propose that the Sex Discrimination Act and Fair Work Act be amended to include sex workers and those with sex worker history as a protected attribute. Sex workers experience a wide range of discrimination that sees them terminated from jobs without recourse, discriminated against by banks, and denied accommodation. As many trans people are excluded from the formal economy due to workplace discrimination, there is also a significant overlap between sex workers and the trans community. That means without the addition of this provision there is a loophole for employers and service providers in circumventing anti-discrimination provisions concerning trans people.

Finally we believe that any legislative proposals arising from this process must be dealt with separately from the question of religious freedoms. The linkage of these proposals under the Morrison government resulted in a legislative package that was designed to send the message that LGBTIQ+ rights were something that people of faith must be protected against. We utterly reject this political argument, and believe that these issues of religious discrimination should be further reviewed in the creation of a Human Rights Act as alluded in **Proposal 14**. A holistic Human Rights Act should further entertain the idea of legislating the right to strike, so that the provisions within the Fair Work Act can actually be enforced in the positive.