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A SUBMISSION TO THE INQUIRY BY THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE ON THE SEX DISCRIMINATION AMENDMENT (SEXUAL ORIENTATION, GENDER IDENTITY AND INTERSEX STATUS) BILL 2013

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I make this submission for GLBTIQ Australians past, present and future.

Table of Contents

Table of Contents 3
Glossary and Abbreviations 4
About the Author 6
Foreword 7
Executive Summary 8
1. Introduction – Advancing Beyond the Proposal Stage 10
1.1 Safeguarding Sexual Orientation, Gender Identity, Intersex Status and Relationship Status 10
1.2 A Commitment to Moving Forward 12
1.3 Overview of Submission 13
2. Endorsement for the Definitions Used 14
2.1 Providing for Gender Expression Directly 14
2.2 Providing for Intersex Status Directly 15
2.3 Providing for Sexual Orientation and Relationship Status Directly 16
3. Exemptions – Default vs. Opt-in Models 17
3.1 Specific Problems for Australian GLBTIQ Youth in Religious Schools 19
3.2 Outcry over Controversies in Australian Religious Schools 21
3.3 Default vs. Opt-in Exemptions 22
4. Recommendations – Changing the Amendment Bill 24
4.1 Numbered Recommendations List 24
4.2 Conclusion 26
References 27

Glossary and Abbreviations[1]

Androgynous: Can mean having both masculine and feminine characteristics, or having neither specifically masculine nor feminine characteristics. Some people who are androgynous may identify as genderqueer, trans or androgynous.

Bisexual or Bi: Refers to people whose sexual and romantic feelings are for both men and women, and who identify with these feelings. Many people may engage in bisexual behaviours but not identify as bisexual. See also: pansexual or omnisexual.

Cisgendered: Refers to people whose sense of gender and/or sex matches the sex they were assigned at birth. Cisgender is the antonym of transgender and is used to label those whose gender is not trans.

Gay: People whose sexual and romantic feelings are primarily for the same sex and who identify primarily with those feelings. In Australia, both men and women identify as gay, however it often refers mainly to homosexual men.

Gender Identity: the gender-related identity, appearance or mannerisms or other gender-related characteristics of an individual (whether by way of medical intervention or not, socialisation or alternative expression), with or without regard to the individual's designated sex at birth, and includes transsexualism and transgenderism.

GenderQueer: Can be used as an umbrella term similar to Transgender but commonly refers to people who are not transsexual, but do not comply with their traditional gender expectations through their dress, hair, mannerisms, appearance and values.

GLBTIQ: gay, lesbian, bisexual, transgender, intersex and otherwise questioning (people)**.**

Homophobia: An individual's or society's misunderstanding, fear, ignorance of, or prejudice against gay, lesbian and/or bisexual people. In this document, 'Homophobia' is also used as an umbrella term to include transphobia, biphobia and heterosexism.

Homosexual: People whose sexual and romantic feelings are primarily for the same sex and who identify primarily with those feelings. People who feel this way often identify as gay or lesbian.

[1] To assist readers I repeat this glossary from a previous submission (Jones 2012a).

Intersex status: The status of having physical, hormonal or genetic features that are –
(a) neither wholly female nor wholly male; or
(b) a combination of female and male; or
(c) neither female nor male.

Lesbian: Women whose sexual and romantic feelings are primarily for other women and who identify with those feelings.

Pansexual or Omnisexual: Refers to people whose sexual and romantic feelings are for all genders; this rejects the gender binary of male/female and asserts that there are more than two genders or gender identities. These are inclusive terms that consider the gender diverse community.

Queer: Queer is an umbrella term used to refer to the LGBT community. Some people in the GLBTIQ community prefer not to use this term as the history of the word has negative connotations. These days, the term has been embraced and is more about Pride and inclusivity.

Sex: is the physiological make-up of a person. It is commonly expressed as a binary and used to divide people into males and females. However, in reality, sex is a "complex relationship of genetic, hormonal, morphological, biochemical, and anatomical differences that impact the physiology of the body and the sexual differentiation of the brain. Although everyone is assigned a sex at birth, approximately 2 percent of the population are intersexed and do not fit easily into a dimorphic division of two sexes that are 'opposite'".

Sexual Orientation: The direction of one's sexual and romantic attractions and interests toward members of the same, opposite or both sexes, or all genders. Similar to 'Sexual Preference'.

Trans, Transexual or Transgender: A person who identifies as the sex opposite to the one assigned at birth and who may choose to undergo sex affirmation/ reassignment surgery. Describes a broad range of non-conforming gender identities and/or behaviours.

About the Author

Dr Tiffany Jones is a lecturer and researcher at the University of New England, NSW. She contributed to the *'Writing Themselves In 3'* project during her time at La Trobe in Victoria, where she completed her PhD on the impacts of education policy and provisions for gay, lesbian, bisexual, transgender, intersex and otherwise questioning students. A published author, Tiffany has liaised on policy and GLBTIQ issues with several Australian state government and non-government organisations, and international organisations such as UNESCO. She received the Griffith University Medal and methodological awards for her research and an Association for Women Educators' Award for her teaching. She sits on the editorial board of the peer-reviewed academic journal *LGBT Health*.

Foreword

I commend the Australian Government for the intention to amend the Sex Discrimination Act. I thank the Senate Legal and Constitutional Affairs Committee for the invitation to provide feedback on the proposed Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013, and affirm for the Committee that I am most pleased to be consulted on such issues.

I encourage the Committee to support this Bill, and to also support the extensions I suggest for the amendments it constitutes. I encourage both the Committee and the Australian Government to continue in this effort towards change – despite the toil and time investment this will certainly demand – and affirm the vital nature of the task of amending Australian legislation in this area.

I make this submission to you in my role as an academic expert in GLBTIQ issues and policy at the University of New England (UNE), with particular reference to my Australian studies in the field and my knowledge of human rights texts. However, this submission does not necessarily represent the views of UNE as an organisation or other UNE employees.

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Executive Summary

Introduction – Advancing Beyond the Proposal Stage

The United Nations have placed pressure on Australia and other countries to support greater recognition of discrimination on the basis of sexual orientation, gender identity and intersex status in direct federal legislative provisions. It is clear in the explanatory notes to the Amendment that the Australian Government is now aware that UN directives exist that should be reflected in Australian law. Whilst I officially note that a revised version of the Human Rights and Anti-Discrimination Bill 2012 (which would incorporate the Senate Committee's recommended changes) would *best* meet current international human rights legislation standards, I advise the Senate Legal and Constitutional Affairs Committee that the proposed Sex Discrimination Amendment would nevertheless greatly improve existing provisions. I recommend that the Committee strongly urge the Australian Government to *advance beyond the proposal stage* the 2012 Human Rights Bill or the 2013 Amendment Bill as soon as possible.

Endorsement for the Definitions Used

The Australian Government is congratulated for providing direct definitions of sexual orientation, gender identity, intersex status, and marital or relationship status in the 2013 Amendment Bill. I explain the ways in which the definitions provided are consistent with advice from international human rights bodies, GLBTIQ community organisations and academic experts. I recommend the Committee supports the definition of gender identity provided in the Amendment Bill in Part 1, 6 Subsection 4(1); supports the definition of intersex status provided in the Amendment Bill in Part 1, 7 Subsection 4(1); and also supports both the definition of sexual orientation provided in the Amendment Bill in Part 1, 12 Subsection 4(1) and the broad definition provided for marital or relationship status in Part 1, 9 Subsection 4(1).

Exemptions – Default Vs. Opt-in Models

The UN and UNESCO clarified that the right to freedom of religious expression ends where it impinges upon GLBTIQ people's rights to protection from discrimination on the basis of sexual orientation, gender identity and intersex attributes. Recent research has shown that Australian GLBTIQ youth forced to attend religious schools by their parents/ guardians and state-specific age-requirement schooling legislations suffer significantly increased discrimination, verbal abuse, violence and associated self-harm and suicide risk. The 2013 Amendment Bill affords religious educational institutions a *default model* of exemption around discrimination on the basis of sexual orientation and gender identity which hands them a legally-sanctioned right to discriminate against one of the most vulnerable youth groups in Australian schools today. This right is unnecessary and should not be made automatic. I recommend its withdrawal or replacement with an *opt-in model* of exemption within the Bill's Part 2, "Division 4—Exceptions", in section 38 Educational institutions established for religious purposes (3).

Recommendations – Changing the Amendment Bill

The report concludes with a series of numbered recommendations reiterating the recommended changes to the Amendment Bill arising out of research, consultations, and consideration of international human rights polity.

1. Introduction – Advancing Beyond the Proposal Stage

> *All people, irrespective of sex, sexual orientation or gender identity, are entitled to enjoy the protections provided for by international human rights law, including in respect of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful assembly* (United Nations, 2012, p. 10).

In 2012 the United Nations reminded all nations that they have legal obligations under international human rights law on the basis of the *Universal Declaration of Human Rights* and subsequently agreed international human rights treaties to "safeguard the human rights of LGBT and intersex people" (United Nations, 2012, p. 10). Such statements recalled the 2011 adoption of resolution 17/19 by the United Nations Human Rights Council. The United Nations has placed pressure on not just all countries, but Australia in particular, to support greater recognition of GLBTIQ rights in direct legislative provisions (UN Human Rights Council, 2011a; United Nations, 2012; United Nations High Commissioner for Human Rights, 2011). In attempting to formulate compliant legislative provisions in Australia, the Australian Government is to be congratulated and encouraged. The title of this submission plays on the national anthem in order to recall for the Committee considering the Australian Government's Amendment Bill 2013 that Australia should be first and foremost a progressive (advancing) nation rather than one stuck in out-dated traditions, and secondly that Australia should again become one of the "fairer" nations in the world (as it was once reputed to be). I remind the Committee that our national anthem itself has been revised over the years to better reflect changing times and social sensibilities; we need not be overly hesitant in also revising laws.

1.1 Safeguarding Sexual Orientation, Gender Identity, Intersex Status and Relationship Status

The Australian Government is to be congratulated and encouraged for extending protections against discrimination on the basis of marital status, to protections against discrimination on the basis of "sexual orientation, gender identity, intersex status, marital or relationship status" in the Amendment Bill 2013. I further encourage the Senate Legal and Constitutional Affairs Committee to hold firm in safeguarding these protections against any critique they may engender. These protections align with United Nations human rights instruments as they currently stand and are to be interpreted. There will be ill-informed critics who claim the Amendment Bill 2013 is an attempt to introduce protections for "new" or "special" human rights – particularly pertaining to sexual orientation, gender identity and intersex status. But I remind the Committee that it is the UN's position that protecting people on the basis of sexual orientation, gender identity and intersex status does not constitute "the creation of new rights or special rights" for GLBTIQ people, but simply requires enforcement of the "universally applicable guarantee of non-discrimination in the enjoyment of all rights" (United Nations, 2012, p. 10). I encourage the Committee to recognise attempts to discourage the official recognition of anti-discrimination protections on the basis of sexual orientation, gender identity and intersex status *as symptomatic of the institutionalised nature of bias against GLBTIQ people in Australia*. Some Australians have received not only no research-based education or information on GLBTIQ issues in their lives, they have been subject to homophobic campaigns which actively turn them against GLBTIQ people. As such submissions mobilising a homophobic anti-rights discourse only underline the urgent need for the Amendment Bill 2013. That there are those who "do not like" people of a different racial background to themselves does not erase the human right to non-discrimination on the basis of race; that there are those who "do not like" GLBTIQ people does not erase the human right to non-discrimination on the basis of sexual orientation, gender identity and intersex status.

1.2 A Commitment to Moving Forward

The title of this submission is used to support several meanings, and one of them highlights the need to *advance* the Amendment from the proposal stage right through to legislation. The Australian Government has previously drafted the Human Rights and Anti-Discrimination Bill 2012, and yet has not fully advanced that Bill into law. The Draft Bill 2012 was the result of years of lobbying by the GLBTIQ community and their supporters, as well as international human rights bodies, and the lack of action to propel it forwards has been disappointing for representatives of organisations ranging from OII Australia, to the Gay and Lesbian Rights Lobby and others (ACON, 2013). I encourage the Committee to urge the Australian Government to *commit whole-heartedly to advancing* the 2013 Amendment Bill (or else the 2012 Draft Bill) this year; to put its full weight behind ensuring the opportunity to make Australian law more congruent with international human rights provisions is not wasted. I recognise that this requires diplomacy, advocacy and much personal effort on the part of all politicians involved. I ask the Committee to remind the Australian Government that institutionalised discrimination is not easily overcome and requires pro-active effort and personal commitment from everyone involved at all stages of the process. If the discrimination was not so institutionalised, it would be easy to pass the necessary anti-discrimination provisions into law… thus an anti-discrimination law or amendment that requires more effort to pass is often *one most urgently needed*. I ask the Committee to remind the Australian Government that this task is extremely important, that delays have real impacts for real people, and that their efforts in the short-term to advance protections from the proposal stage right through to legislation will not go unnoticed by GLBTIQ Australians and those who support them. These efforts will constitute a much celebrated and historic legacy in the long-term.

1.3 Overview of Submission

This general introduction (Section One) located the submission within the global push for human rights and anti-discrimination legislation around discrimination on the basis of sexual orientation, gender identity, intersex status, marital or relationship status. It pointed out the need to not only safeguard, but to urge the Australian Government to commit to the advancement of, the proposed Amendment Bill 2013. The rest of the submission deals with specific aspects of the Amendment Bill more directly. Section Two examines and endorses the definitions used in the Amendment Bill. Section Three argues for the withdrawal of default exemptions for religious educational institutions around discrimination on the basis of sexual orientation and gender identity, and suggests (if an alternative is required by the Committee) an opt-in model of exemptions. Section Four supplies a numbered list of recommendations for changes to the Human Rights and Anti-Discrimination Bill.

2. Endorsement for the Definitions Used

> *"We thank legislators for this significant move away from gender identity in law when considering intersex rights." said Gina Wilson, OII Australia President. "Protection in anti-discrimination law will achieve many things intersex rights advocates have been seeking for some years. Apart from providing us with an avenue for recourse in the event that we are discriminated against we think that this bill, if enacted, might also raise public awareness of the existence of intersex people, how we are discriminated against, and how changes in attitudes and perceptions can make our lives considerably happier."* (ACON, 2013).

The Australian Government is congratulated and thanked for including recognition of discrimination on the basis of both intersex status and gender identity that are now more congruent with expert and community advice in the 2013 Amendment Bill, along with protections of other kinds. These terms are framed in an appropriate manner and in ways consistent with previous feedback from and consultation with a range of GLBTIQ organisations, international human rights bodies and academic experts.

2.1 Providing for Gender Expression Directly

The Australian Government is to be congratulated and thanked for including recognition of discrimination on the basis of gender identity in the 2013 Amendment Bill. Previous submissions around the Draft Bill 2012 (including my own, Jones, 2012a) emphasised the need for protection for non-traditional expressions of gender which are not necessarily related to a so-called "opposite sex" (or transgender) gender identity, and provided examples of cases in which people had experienced discrimination on the basis of gender identity. The Amendment Bill includes the following definition of gender identity in Part 1, 6 Subsection 4(1):

> gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.

This wording acknowledges that discrimination against gender identity can relate not only to a transgender status but also to non-traditional gender expression (for people who are cisgendered, andorgynous or genderqueer for example), and also adequately reflects the Senate Committee's (2013, p. ix) previous guidance on defining gender identity. I recommend the Committee supports the definition of gender identity provided in the Amendment Bill in Part 1, 6 Subsection 4(1).

2.2 Providing for Intersex Status Directly

The Australian Government is congratulated and thanked for including recognition of discrimination on the basis of intersex status in the 2013 Amendment Bill. The UN outlined the need for legislative protections around intersex attributes in direct federal legislative provisions (United Nations, 2012, p. 10 and others), and Organisation Intersex International (Oii) Australia has previously submitted advice to the Committee around how best to word such protections informed by their significant knowledge of these issues in ways that separate protection around intersex status from protection around gender identity (OII Australia, 2012). Previous submissions around the Draft Bill 2012 (including my own, Jones, 2012a) further outlined the need for protection around intersex status and further underlined the practical application of a "best practise" approach to defining intersex status taken in the Tasmanian model (TAS Parliamentary Counsel, 2012), and provided examples of cases in which people had experienced discrimination on the basis of intersex status. The Amendment Bill includes the following definition of intersex status in Part 1, 7 Subsection 4(1):

> intersex status means the status of having physical, hormonal or genetic features that are:
> (a) neither wholly female nor wholly male; or
> (b) a combination of female and male; or
> (c) neither female nor male.

This wording acknowledges that intersex status (and thus discrimination around this status) is practically to gender identity, and also adequately reflects the

Senate Committee's (2013, p. ix) previous guidance on defining intersex status. I recommend the Committee supports the definition of intersex status provided in the Amendment Bill in Part 1, 7 Subsection 4(1).

2.3 Providing for Sexual Orientation and Relationship Status Directly

The Australian Government is congratulated and thanked for including recognition of discrimination on the basis of marital or relationship status and sexual orientation in the 2013 Amendment Bill. The UN outlined the need for legislative protections around sexual orientation in direct federal legislative provisions (United Nations, 2012, p. 10 and others). Previous submissions around the Draft Bill 2012 (including my own, Jones, 2012a) further underscored the need for protection around sexual orientation, and provided examples of cases in which people had experienced discrimination on the basis of sexual orientation (I particularly focussed on research on discrimination, homophobic bullying and violence in schools). The Amendment Bill includes the following definition of sexual orientation in Part 1, 12 Subsection 4(1):

> sexual orientation means a person's sexual orientation towards:
> (a) persons of the same sex; or
> (b) persons of a different sex; or
> (c) persons of the same sex and persons of a different sex.

This wording, particularly the use of "same" and "different", acknowledges a range of sexual orientations (not limited to a binary or "opposite sexes" model, and particularly avoiding the reductionist use of "opposite"). Protection for people who may (or may not) engage in relationships expressing such sexual orientations (or not), or may (or may not) be married, is further supported by the broad definition provided for marital or relationship status in Part 1, 9 Subsection 4(1). I recommend the Committee supports the definition of sexual orientation provided in the Amendment Bill in Part 1, 12 Subsection 4(1), and the broad definition provided for marital or relationship status in Part 1, 9 Subsection 4(1).

3. Exemptions – Default vs. Opt-in Models

> *The balance between tradition and culture, on the one hand, and universal human rights, on the other, must be struck in favour of rights. That much is clear from the Vienna Declaration and Programme of Action, which states, and I quote: "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."* ***No personal opinion, no religious belief, no matter how deeply held or widely shared, can ever justify depriving another human being of his or her basic rights[2].*** *And that is what we are discussing here: depriving certain individuals of their human rights – taking away their right to life and security of person, their rights to privacy, to freedom from arbitrary detention, torture and* ***discrimination[3]*** (Pillay, 2012).

The Australian Government's Amendment Bill does not provide any kind of limitations on exemptions for religious schools' discrimination against students on the basis of their sexual orientation or gender identity in their provision of educational services. This is highly concerning, and goes against advice I have previously provided in my response to the Draft Bill 2012 (Jones, 2012a). This also represents a retrogressive stance in relation to the Senate Committee's history of recommendations on limiting exemptions for service provision by religious institutions (2013, pp. x, Recommendations 11 and 12). Further, the current exemptions model also does not adequately reflect international human rights provisions.

It is important at this juncture to repeat and expand upon arguments I have previously made around why Australian religious schools should not be granted a default exemption allowing them to discriminate against people on the basis of their sexual orientation or gender identity in service provision (Jones, 2012a, pp. 19-24). Leadership from the United Nations have clarified that the right to freedom of

[2] My emphasis.

[3] My emphasis.

religious expression should not impinge upon the right to protection from discrimination and violence on the basis of sexual orientation, gender identity and intersex attributes in schools or beyond them (Pillay, 2012; UN Human Rights Council, 2011b; UNESCO, 2009, 2011, 2012; United Nations, 2012). On December 8th in 2011, over 200 UN Member States attended the New York convention 'Stop Bullying – Ending Violence and Discrimination Based on Sexual Orientation and Gender Identity'. UN Secretary-General Ban Ki Moon contended:

> *Bullying of this kind is not restricted to a few countries but goes on in schools (…) in all parts of the world. This is a moral outrage, a grave violation to human rights and a public health crisis (UN Secretary-General, 2011)*.

That month, UNESCO held the 'First International Consultation on Homophobic Bullying' in Rio, Brazil. International leadership, research experts and education activists formulated education policy guidance. The *UNESCO Rio Statement on Homophobic Bullying and Education for All* (2011) was issued to call upon all governments to 'live up to their responsibility' to eliminate barriers to education created by homophobia, including the 'unacceptable and devastating prevalence' of anti-GLBTIQ bias and violence in schools. The last decade has seen more education policies developed at national, state, sector and school levels covering GLBTIQ issues in Australia (Boston, 1997; MCEETYA, 2008; VIC Government, 2007, 2008, 2009, 2010). The *Melbourne Declaration on Educational Goals for Young Australians* (MCEETYA, 2008) particularly outlines a commitment from all governments and education sectors to ensure an education service free from discrimination based on grounds including 'gender' and 'sexual orientation' (p.7). This reflects the increased recognition of problems around school provisions for GLBTIQ students. Yet this recognition, in combination with the UN's clear distinction between where religious freedom ends and discrimination against GLBTIQ people begins, is not adequately reflected in the Amendment Bill. This is due to the overly broad automatic exemptions the Bill currently offers religious schools around discrimination on the basis of sexual orientation and gender identity in service provision. Religious

schools are being set up to simply "get away" with not addressing problems for Australian GLBTQ[4] youth in religious schools.

3.1 Specific Problems for Australian GLBTIQ Youth in Religious Schools

Recent research has shown that contrary to what some education leaders may claim, Australian GLBTIQ youth are in every education system in Australia, including religious educational systems (Hillier et al., 2010; Jones, 2012b). In a national online survey of 3,134 Australian GLBTIQ students aged 14-21 from all Australian states and territories, 65% attended government schools, 18% attended Catholic schools and 12% attended 'other Christian' schools – figures consistent with broader demographics (Australian Bureau of Statistics, 2010). Others attended Jewish schools, Islamic schools, Scientology schools and other kinds of religious schools. Of the participants 57% were female, 40% were male and 3% were 'genderqueer', 'transgender F-M', 'transgender M-F', 'intersex' and so on. By orientation, 56% identified as gay/ lesbian/ homosexual, 28% as bisexual, 5% positioned as questioning, 4% as queer and 1% as heterosexual (yet somewhat same-sex attracted). Contrary to popular understanding, the situation in schools generally has worsened for GLBTIQ students since a decade ago: 61% of Australian GLBTIQ students reported having experienced verbal homophobic abuse, 18% had experienced physical homophobic abuse (23% of boys, 14% of girls, and 31% of gender questioning youth). The physical abuse ranged from having clothes ruined to severe bashings and rapes resulting in hospitalisation. Also, 26% reported other forms of homophobia including rumours, graffiti and cyber-bullying. These percentages have increased in comparison to versions of the national Australian study conducted in previous years. Of these abuse experiences, 80% of occurred at school.

[4] Exemptions for discrimination around intersex status are not provided in the Amendment Bill.

GLBTIQ students suffered significantly increased discrimination, verbal abuse and violence in religious educational institutions overall (Hillier, et al., 2010; Jones, 2012b; Jones & Hillier, 2012). Students described having their abuse complaints ignored by staff, being punished for reporting abuse or being asked to leave their schools as the problem was 'too difficult'. The majority of GLBTIQ students who attended religious schools rated them as homophobic spaces and many students in religious schools suffered attempts to be "converted to heterosexuality" (Jones, 2012b), despite the fact that conversion attempts are widely and strongly denounced in by leading psychology organisations (APA Task Force on Appropriate Therapeutic Responses to Sexual Orientation, 2009). Some systems were particularly notorious in this area. Over 30% of GLBTIQ students in NSW Christian schools (other than Catholic) were taught gays should convert to heterosexuality, for example, which was a significant increase in comparison to NSW Government schools. There were significantly fewer policy-based protections for GLBTIQ students against bullying in religious schools, which is highly problematic as policy protections are associated with decreased risks of experiencing homophobic violence and decreased risks of self-harm and suicide rates for GLBTIQ students (Jones & Hillier, 2012).

GLBTIQ students who knew their school had protective policies in place were more likely to feel safe (75% v. 45% at schools without policies) and more likely to report a support feature at their school (84 % v. 41%). They were less likely to self-harm (26% v. 39%) and less likely to attempt suicide (12% v. 22%). However, the risk as indicated here is only very conservatively represented; no surveys could be collected for students whose suicide attempts did end their lives. Whilst there are some religious schools that actively seek to provide policy protection and specific structural and social supports for their GLBTIQ students, it is unfortunately the case that Australian GLBTIQ youth generally face significantly increased dangers in religious educational institutions. Yet ***educational leaders can make a potentially dramatic difference to self-harm and suicide rates*** for one of the most vulnerable

youth groups in Australian society today through their policy approaches which support the human rights of these students and protect them from discrimination and bullying.

3.2 Outcry over Controversies in Australian Religious Schools

The Australian media has not been silent on these problems, nor have some of the students themselves. Same-sex partner bans at religious school formals have caused outrage and heated human rights campaigns online and in the newspapers (Cook, 2010; Ironside, 2008; Ryan, 2010), as have cases in which gay students have faced expulsion (Marr, 2011) and anti-gay/ conversion-themed teachings (AFP, 2011). There have similarly been community concerns and public protests over the ways in which religious schools can discriminate against (for example) lesbian and single mothers, GLBTIQ teachers and a host of other community members (Fyfe, 2011). Many in the community are uncomfortable with how religious schools accept the government's – and thereby, the public's – funding and yet are not being held to the same standards as the rest of the community at least in terms of respect for the most basic of human rights. There has also been much outcry by international, national and local organisations over the problem of bullying. Even Prime Minister Julia Gillard recently stated:

> The evil of bullying is it targets each person individually, perhaps aiming at their ethnicity, or their sexuality (…) the very things that make us who we are, and that we have no need to apologise for" (Gillard, 2012).

There is no sector or school type that can legitimately claim that their particular GLBTIQ students do not deserve to be safe. The increased risks these students face around violence, educational disruption and suicide are so significant that educational leadership of all beliefs should be united by a legal responsibility to protect them, if not an ethical one.

3.3 Default vs. Opt-in Exemptions

The 2013 Amendment Bill as it currently stands affords religious educational institutions a ***default model*** of exemption around discrimination on the basis of sexual orientation and gender identity (broader than many models currently used in several Australian states). This model hands religious educational institutions a ***legally-sanctioned right to discriminate against one of the most vulnerable youth groups – GLBTIQ youth – in Australian schools today***. This right is ***not necessary*** and ***should not be automatic***. Religious educational institutions minding our Australian GLBTIQ youth (including individual providers and professionals), and the parents/ guardians who choose to send children/ adolescents to such institutions, can express their religious beliefs and hold their particular spiritual opinions without forgoing a ***legal and professional responsibility*** to protect the GLBTIQ youth in their care from discrimination and violence. We must remember that GLBTIQ youth are legally ***forced*** to attend religious school by the combined force of their parents' choice and the state-specific age-related schooling attendance legislations; these youth do not simply have the option of leaving the spaces in which they can be subjected to such dangers to their wellbeing …nor should they have to forgo their access to education. No school should be handed the right to support active discrimination, verbal or physical abuse of the GLBTIQ students forced to attend it, or contexts which contribute to GLBTIQ self-harm and suicide. Institutional/ adult rights to religious expression do not trump the rights of GLBTIQ youth and are not more important than their wellbeing.

I recommend the Committee makes protection against discrimination on the basis of sexual orientation and gender identity ***the standard for Australian religious schools' service provision*** in this legislation, not the exception. I recommend recalling the Bill's integrity as ***a tool for preventing discrimination rather than actively encouraging and sanctioning it***. I recommend withdrawal of the default model of exemptions for religious schools. If the Committee feels it must provide

religious schools with exemptions on this issue, I recommend it affords religious educational institutions an ***opt-in model*** of exemption. An opt-in model would not make exemptions automatic. Instead, this model would place the onus on the religious school to apply for an exemption in the first instance. It should then require a process in which the religious school would need to make a public and explicit policy-based justification of any "need" to discriminate against GLBTIQ students in a particular manner (for example), and in that manner (only). For example, if the school wishes to claim an exemption around outlining a particular teaching pertaining to sexual orientation, it is **not also necessary** to automatically allow the school the freedom to expel a student for having a bisexual parent, the freedom to allow the school to prevent a student from having both their lesbian mothers at their graduation ceremony, the freedom to allow the school principal to encourage a same sex attracted student into harmful ex-gay chemical castration therapies, the freedom to allow the school to ignore reports of physical homophobic abuse of a student or the freedom to allow the school to expel a student who complained about experiencing verbal transphobic abuse by a teacher who knew they were gender questioning etc. Such sanctioned discriminations would not be necessary to ensure the freedom to express the particular doctrinal religious belief in question. The model should require an assessment process for the validity of the individual religious school's arguments behind both the need and the manner for such discrimination, which would ensure transparency to the community it serves and is funded by. It should also require a process by which successful exemptions are held for a set period of time, but then audited in a cycle of periodic review or re-applied for (to allow a socially responsive flexibility as educational contexts shift and change). I recommend that this opt-in model be integrated into discussion of the exemptions within the Bill's Part 2, "Division 4—Exceptions", in section 38 Educational institutions established for religious purposes (3).

4. Recommendations – Changing the Amendment Bill

Australia's existing human rights protections at the federal level around GLBTIQ issues are currently not only not meeting international standards, they are also inferior to those of all Australian states and territories. This lack should be treated as the highest and most urgent priority for legislative reform. Safeguarding human rights, particularly GLBTIQ rights and particularly during this period of volatile shift in the treatment of GLBTIQ people, requires leadership at the federal legislative level. Our national Australian provisions should not in any way lower the standards achieved in Australia's states and territories, but should match or advance these provisions so there is a higher level of recourse for rights breaches in this country. We should strive to advance Australia and its standards for fairness. Recommendations for Australia's federal provisions are drawn from research, consultations and interpretation of international human rights provisions.

4.1 Numbered Recommendations List

1. Strongly urge the Australian Government to advance beyond the proposal stage the 2012 Human Rights Bill (incorporating the Senate Committee's recommended changes, 2013) or the 2013 Amendment Bill as soon as possible.

2. Protect and retain the enumerated protections against discrimination on the basis of sexual orientation, gender identity, intersex status, and marital or relationship status in the 2013 Amendment Bill, in order to honour obligations under international human rights treaties.

3. Protect and retain the precise wording of the enumerated definitions of sexual orientation, gender identity, intersex status, and marital or relationship status in the 2013 Amendment Bill, in order to keep the Bill consistent with advice from international human rights bodies, GLBTIQ community organisations and academic experts. Specifically, support the definition of gender identity provided in the Amendment Bill in Part 1, 6 Subsection 4(1); support the definition of intersex status provided in the Amendment Bill in Part 1, 7 Subsection 4(1); and also support both the definition of sexual orientation provided in the Amendment Bill in Part 1, 12 Subsection 4(1) and the broad definition provided for marital or relationship status in Part 1, 9 Subsection 4(1).

4. Withdraw the *default model* of exemption around discrimination on the basis of sexual orientation and gender identity for religious educational institutions in service provision within the Bill's Part 2, "Division 4—Exceptions", in section 38 Educational institutions established for religious purposes (3).

5. If the Committee insists on some form of replacement exemption for the *default model* of exemption around discrimination on the basis of sexual orientation and gender identity for religious educational institutions in service provision, offer an ***opt-in model*** of exemption within the Bill's Part 2, "Division 4—Exceptions", in section 38 Educational institutions established for religious purposes (3). Require religious educational institutions to publicly and explicitly make their case for exemptions through a monitored application process which details their claimed need for an exemption to be able to discriminate in a very particular area (only), and their claimed process or manner of discrimination for which they will be exempt (only).

4.2 Conclusion

Legislation protecting human rights in Australia, and particularly preventing discrimination against GLBTIQ people, has been decidedly backwards at the federal level until now. We should seize the opportunity to align it more fully with international human rights frames. We should seize the opportunity to show greater leadership in relation to state and territory provisions. We should respond to research-based findings on the outcomes for GLBTIQ kids in schools. I implore the Senate Committee to impel the Australian Government to seize the opportunity to advance Australian legislation, and make it fairer.

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