



National Secular Lobby

Advancing Australia's Secular Agenda

National Secular Lobby
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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

To whom it may concern,

The **National Secular Lobby** (NSL)⁽¹⁾ is a secular, non-profit organisation, supported by pro-secular groups across Australia. The NSL, underpinned by Section 116 of the Constitution, aims to promote social and political discussion and actions pertinent to the protection of the separation of Church and State in Australia.

The NSL welcomes this opportunity to submit its views to the inquiry into the *Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018*, which seeks to amend the Sex Discrimination Act 1984 s.38(3) to remove the capacity of bodies established for religious purposes that provide education to directly discriminate against students on the basis of their sexual orientation, gender identity or intersex status.

Sincerely,

The board of directors
National Secular Lobby

¹ The National Secular Lobby: <https://www.nationalsecularlobby.org/>

Introduction

As a secular organisation, the NSL recognises and supports the general right for religious organisations to operate in accordance with their beliefs.

Some religious groups mischaracterise the removal of the specific right of religious schools to discriminate against students on the basis of sexual orientation, gender identity or intersex status as “an attack on religion”, “a denial of religious freedom”, “an attack on democracy”, or “an act of oppression”.

The inference from some quarters seems to be that religious organisations should be granted the legal freedom to operate however they wish, provided that such operations are in line with their accepted beliefs, which vary from religion to religion. Given the archaic origins and conflicting nature of these belief sets, this is neither desirable nor practical in Australian society.

We maintain that the protection of the rights of LGBTI children in schools – some of our society’s most vulnerable members, at one of the most difficult times of their lives – must be prioritised over any “right” that religious schools seek to discriminate against them.

As a secular society, we must ensure that *all citizens – regardless of gender, race, age, lifestyle or belief* – uniformly receive as a matter of birthright this *most basic set of guaranteed protections*. We believe that just as the religious deserve protection from persecution for their lifestyle choices, so do LGBTI students also deserve this same protection.

Protection of an “ethos” vs preventing public practices which are morally wrong and illegal under Australian law

Australia has a significant amount of legislation outlawing discrimination and protecting human rights. This legislation includes the Australian Human Rights Commission Act 1986, as well as separate Discrimination Acts covering areas such as Age, Disability, Race and Sex.

This legislation exists because Australia recognises that discrimination is morally wrong, a breach of human rights, and that the right of people not to be discriminated against should be protected.

In granting religious organisations exemptions from any of these Acts, we are allowing such organisations to engage in behaviour which we have *already agreed is wrong and should be illegal*.

The question is whether the protection of the supposed “right” of religious organisations to engage in behaviour that is morally wrong should take precedence over the basic right of people to be protected from discrimination.

We hold that it is not.

Religious freedom under the International Covenant on Civil and Political Rights (ICCPR)

The ICCPR Article 18 (1) and (3)⁽²⁾ state that while everyone shall have the right to “manifest” (put into practice) their religious belief, the “freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect ... the fundamental rights and freedoms of others.”

We hold that the right not to be subjected to discrimination on the basis of typically innate attributes such as race, gender, age and sexual orientation are fundamental, and as such should take precedence over the right to manifest a religious belief.

It is clear from the spirit and wording of the ICCPR that denying this right to discriminate is not a failure to grant a freedom of religion, but rather a *necessary and reasonable limiting of the freedom of religion in order to maintain more fundamental protections*.

Religious-based education should ultimately be shaped by the best interests of the child

The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)⁽³⁾, which Australia upholds, states in Article 5 that “Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents ... and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.”

While this certainly lays down the rights of parents to educate their children in accordance with their beliefs, it also states that the ultimate priority should be safeguarding the best interests of children.

We do not believe it is in the best interests of children that they be taught there is a subset of the population who are only worthy of an alternate, lesser set of legal rights.

² Australian Human Rights Commission: <https://www.humanrights.gov.au/freedom-thought-conscience-and-religion-or-belief>

³ The United Nations: <http://www.un.org/documents/ga/res/36/a36r055.htm>

We do not believe it is in the best interests of children to be segregated from those who have different beliefs and lifestyles; that they be shown, through example by their teachers and education institutions, that LGBTI children should properly be openly discriminated against.

We do not believe it is in the best interests of children that they be prepared for life by being taught values that go against those broadly held by modern Australian society, namely that LGBTI people should have the same rights, protections and freedoms as everyone else.

And we do not believe it is proper that the teaching of such divisive attitudes be sponsored and supported by the government – and by extension the public, including the very segment of the populace being discriminated against – through the funding of private religious schools.

We argue that it is ultimately harmful to children to be raised with these ideals and to then be expected to integrate into a society that does not hold them.

A right to provide religion-based education vs a right to actively discriminate

Some religious organisations maintain that they do not actively discriminate against (deny enrolment to, or expel) LGBTI students, but that they need the protection offered by s.38(3)⁽⁴⁾ in order to avoid discrimination lawsuits from activists that might threaten their ability to teach in accordance with their beliefs.

But the protections offered by s.38(3) refers to subjecting LGBTI students (as well as any person on the basis of their relationship status or pregnancy) to any detriment “...in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.”

The discriminatory scenarios listed in the Sex Discrimination Act 1984 s.21(1)⁽⁴⁾ and s.21(2)⁽⁴⁾, and which are covered by the s38(3) exemptions, only result from specific actions taken against LGBTI students and do not obviously cover statements or beliefs expressed as part of religious education that may appear to be discriminatory in nature.

While it would probably be true to say that elucidation of the legal nuances would be required – for example, whether a religious school teaching that gay people go to Hell would constitute subjecting LGBTI students to a detriment – it would seem that there is no legal protection being lost unless religious schools are actively denying enrolment to or expelling LGBTI students, or in other ways limiting their schooling experience compared to their non-LGBTI counterparts.

⁴ Federal Register of Legislation: <https://www.legislation.gov.au/Details/C2014C00002>

Conclusion

The National Secular Lobby wholeheartedly endorses the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018.

While we agree with the general right of religious schools to provide an education in accordance with their belief system, we do not agree that they should be allowed to operate under a separate, superior set of discriminations laws.

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