

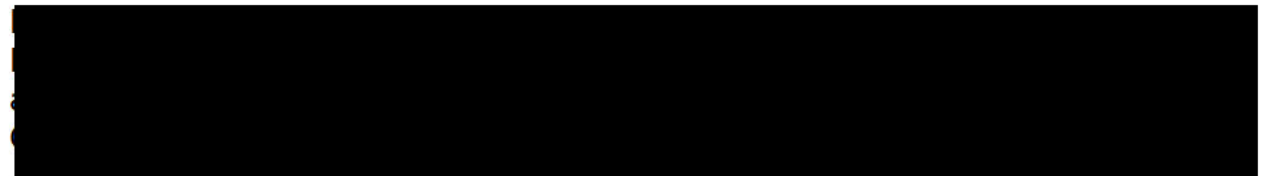


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Fiona Murphy
Secretary, Inquiry into Discrimination and Bullying in Tasmanian Schools
Government Administration Committee A
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Dear Secretary,



Best wishes,



Equality Tasmania

Equality Tasmania (formerly the Tasmanian Gay and Lesbian Rights Group) is Tasmania's leading advocacy group for LGBTIQ+ people and has been since it was formed thirty six years ago. In that time, we have advocated successfully for a range of reforms, including the decriminalisation of homosexuality, Tasmania's strong Anti-Discrimination Act, Tasmania's

ground-breaking relationship laws, Tasmania's world-class gender-recognition laws, improved policies in schools, health and policing, marriage equality and transgender inclusion. We regularly consult with the Tasmanian LGBTIQ+ community to determine our campaign priorities and to inform submissions like this one.

1. What is the legal situation in Tasmania?

Tasmanian Anti-Discrimination Act 1998

The Tasmanian Anti-Discrimination Act is regarded by experts in the field as the strongest in the nation. It prohibits discrimination, incitement to hatred, and conduct which offends, humiliates, intimidates, insults or ridicules. These prohibitions apply to attributes including sexual orientation, gender identity, sex characteristics, lawful sexual activity, relationship status and marital status. Discrimination on those grounds is not permitted in faith-based schools. This protection has been in place for 26 years. Tasmania was the first state to provide it, and remained the only state until relatively recently.

There are two exceptions for discrimination on the grounds of religious belief, affiliation or activity in faith-based schools. One permits discrimination against students upon first enrollment on the grounds of religious belief, affiliation or activity, but no other ground. The second permits discrimination in employment in faith-based educational institutions on the grounds of religious belief, affiliation or activity, but no other ground. Statements by governments legislating those exceptions made it very clear they were not to be used to justify discrimination on other grounds.

Tasmanian Education Act 2016 and Education Regulations 2017

All schools must adhere to the provisions of the Education Act. In particular, non-government schools* must meet the thirteen standards in the Education Regulations if they are to be registered and retain their registration (see attachment 1).

Standard 5 (Student Welfare) outlines a series of obligations in regard to student privacy, bullying of students, harassment of students and adoption of policies regarding bullying, harassment and discrimination.

Standard 13 (compliance with the law) outlines schools' obligations to "comply with all relevant laws".

According to a letter from then education minister, Hon Jeremy Rockliff MHA, (included as attachment 2) non-government school systems such as Catholic Education Tasmania are,

"...required to report annually on their schools and the NGSRB (Non-government Schools Registration Board) also conducts between three – five visits to schools selected randomly each year to confirm the results of the audits. The NGSRB can also conduct inspections of schools where it has reason to believe that Standards are not being met."

*In this submission our focus will be on faith-based non-government schools. In the past ten years we have received no reports of discrimination or bullying from non-religious, non-government schools. This is not to suggest it doesn't happen, only that it is much rarer.

2. Discrimination and bullying: prevalence, causes, impacts, mitigating factors and public opinion

Students

In 2021 the Tasmanian Government commissioned the University of Tasmania to conduct the largest survey thus far of the state's LGBTIQ+ community. The results were published in the Telling Us the Story report (included as attachment 3)¹.

The report provides an insight into the prevalence of discrimination and bullying against LGBTIQ+ students and teachers in Tasmanian schools.

"While 20% of respondents did not report having negative experiences at school, the majority reported a range of abusive experiences (Table 14). The most common form of abuse was insults and hurtful comments which were indicated in 63% of cases and comprised one quarter of all responses. This was followed by threats of abuse or violence. Being left out of activities was reported in 30% of cases and 11% of responses. In addition, students or staff telling others was reported in 40% of cases which comprised 15% of responses. In 20% of cases, respondents reported having none of the negative consequences listed. Overwhelmingly, other students were responsible for any abuse, occurring in 89% of cases and 50% of responses. This was followed by teachers, principals, and administrative staff."

"Negative experiences noted by LGBTIQ+ students in schooling environments included 'social ostracism', gay straight alliance student clubs being 'outright denied when effort was made to create one'. They mentioned 'feeling unsafe in class due to use of slurs and other

¹ https://www.dpac.tas.gov.au/data/assets/pdf_file/0025/247147/LGBTIQ-Tasmanians-Telling-Us-the-Story-Survey-Report-May-2022.pdf

homophobic language' and experiencing 'non-direct discrimination only. That is, my non-cis partners were harassed for not being heterosexual while we were dating'."

Respondents to "Telling Us the Story" also pointed to the absence of LGBTIQ+ sex education and LGBTIQ+ elements in other curricula including history and literature, as examples of discrimination.

Discrimination and bullying against LGBTIQ+ students obviously have a negative impact on them. This can include an increase in mental health risk and a decrease in school attendance. This has been highlighted in the national survey of LGBTIQ+ young people aged 14 to 21, "Writing Themselves In 4",

"Over three-quarters of participants reported sometimes or frequently hearing negative remarks regarding sexuality in their educational setting in the past 12 months, while over three-fifths sometimes or frequently heard negative remarks relating to gender identity or gender expression. Over a third of participants at secondary school...reported missing day/s at their educational setting in the past 12 months because they felt unsafe or uncomfortable. This experience of missing days of education was more commonly reported by trans and gender diverse participants, compared to cisgender men and women."

We already know from recent research released by the The Australian Council for Educational Research (ACER) that bullying is worse in Tasmanian schools than in any other state or territory². So, it should be no surprise to discover that the mental health outcomes of young LGBTIQ+ Tasmanians, according to Writing Themselves In, are worse than the national average for LGBTIQ+ young people and much worse than young Australian's in general. For example, young LGBTIQ+ Tasmanians are 5.6 times more likely to think about suicide than other young Australians and 6.1 times more likely to attempt suicide (see attachment 4, table 2, Mental health outcomes LGBTQA+ young people aged 14-21 years living in Tasmania).

Staff

Bullying and discrimination also have a negative impact on LGBTIQ+ school staff.

"Telling Us the Story" found that,

² <https://www.sbs.com.au/news/article/australias-worst-state-for-schoolyard-bullying-and-how-we-compare-to-the-world/6dj396brd>

"Just under half of all teachers (45.7%) reported no negative experiences from being 'out', significantly more than students (Table 15). Of those who had, 30% of cases reported hiding their identity. Verbal abuse was reported in 21% of cases, while telling other people was reported in 22% of cases."

A more detailed insight into the experience of teachers in faith-based schools comes from University of Tasmania researchers who lead the nation in researching this area. We urge the Committee to seek evidence from the relevant researchers. For example, in a study of LGBTIQA+ teachers in Tasmanian and NSW faith-based schools Ezzy et al 2021 (see attachment 5) found that

"LGBT+ teachers often experience discrimination, despite being excellent educators and in many cases deeply religious."³

This discrimination took many forms including a glass ceiling above which LGBTIQA+ teachers could not be promoted. This discrimination resulted in high levels of anxiety and self-vigilance.

Significantly, Ezzy et al found that teachers in NSW were more anxious and felt less secure than in Tasmania, something the respondents themselves put down to Tasmania's laws protecting LGBTIQA+ teachers in faith-based schools from discrimination (NSW has no such protections). This shows that strong discrimination protections can play a role in ensuring staff feel less anxious, more valued and more secure.

In a subsequent study, Fielder et al looked at the workplace experiences of LGBTIQA+ staff in faith-based schools and other faith-based services (see attachment 6). They found that state based anti-discrimination legislation played an important role, but was not the sole determinant of the experience of LGBTIQA+ teachers and other staff.

"Denomination heavily influenced (their) experience, but religious teachings were not the driver: conservative interpretations of denominational ideas by organizational leadership drove (their) experiences. Social service and educational workplaces affiliated with the Uniting Church were the most accepting of LGBTQ+ people. The Catholic sector was most diverse, varying from explicitly homophobic to acceptance of LGBTQ+ staff (provided they were discreet about their sexuality and gender identity), clearly showing the influence of conservative interpretations of religious teachings amongst organizational leadership. Christian schools were the most difficult to negotiate and

³ D Ezzy, B Fielder, A Dwyer and L Richardson-Self, "LGBT+ equality, religious freedom and government funded faith-based religiously affiliated educational workplaces", Australian Social Policy Association, 2021

many extremely respected educators had their employment terminated or were forced to resign if their LGBTQ+ identity was disclosed.”⁴

A little-acknowledged aspect of discrimination against LGBTIQ+ school staff is that it sends a message to LGBTIQ+ students that there is no place for them in the school community. It also sends a message to their bullies that their actions are sanctioned by the school.

School policies

Further insight into discrimination in faith-based schools comes from a survey conducted by Equality Australia that was released in March this year. It is attachment 7. According to the survey report titled, “Dismissed, Denied and Demeaned: A national report on LGBTQ+ discrimination in faith-based schools and organisations”:

“9 in 10 of the Catholic educational authorities we reviewed, who together educate 70% of all students in Australian Catholic schools, publish so little information about their position on LGBTQ+ inclusion that prospective parents, students or employees are not able to know from publicly available information whether they will be welcomed or included as LGBTQ+ people.

“That’s also the case for nearly 1 in 3 independent schools. At worst, these silences suggest a systemic suppression of positive and public expressions of LGBTQ+ identities and lives in religious schools across Australia.

“Independent schools are more likely to be discriminatory rather than affirming places for LGBTQ+ people. Nearly 4 in 10 independent schools show evidence of LGBTQ+ discriminatory practices, compared with 3 in 10 schools that do not.

Public opinion

Public opinion is consistently in favour of laws prohibiting discrimination and bullying, including in faith-based schools.

For example, in 2018, a poll by YouGov Galaxy, commissioned by Just.Equal Australia, found that 82% of Australians oppose the existing exemptions that allow expulsion of gay and lesbian students and 79% opposed the schools’ ability to fire teachers if they married a person of the same sex.

⁴ B Fielder, A Dwyer and D Ezzy, “Summary of fundings: LGBTQ+ employees of religiously affiliated schools and welfare organisations”, Utas

The poll also found 78% of respondents opposed religious schools' ability to fire transgender staff or expel transgender students.

The same proportion said religious schools should not be entitled to taxpayer funds if they discriminated against staff or students.

To summarise this section, national and local research confirms that discrimination and bullying are common experiences for LGBTIQ+ teachers and students, including in faith-based schools. It shows that this discrimination and bullying has a range of very negative impacts, including on mental health, educational outcomes and work satisfaction, and that it can be alleviated by strong discrimination provisions and inclusive leadership from church authorities. Research shows faith-based schools are more likely than not to discriminate while opinion polls show a majority of Australians want the law to prohibit discrimination and bullying against LGBTIQ+ staff and students in faith-based schools and oppose public funding for schools that allow this mistreatment.

3. What are our sources of information?

Equality Tasmania has a number of sources of information for this submission.

The Group has had a representative on the Department of Education Children and Young People LGBTIQ+ reference group since that group was formed in 1997.

We are also regularly asked to speak at IDAHOBIT events, Pride Groups and legal studies classes in state high schools, and have played a leading role in implementing anti-homophobia and anti-transphobia programs in those schools.

We regularly receive reports of discrimination and bullying in Tasmanian schools from teachers, students and parents. Those who contact us with reports say they do so because of the profile of Equality Tasmania and a lack of awareness about where else they can turn. This year alone we have received 19 reports of discrimination and/or bullying.

Some of these reports have been from the state school system and the Christian school system, but most are from the Catholic school system.

We acknowledge this may not reflect the actual prevalence of discrimination and bullying in these respective systems. It's quite possible the state system has robust reporting and resolution mechanisms that result in fewer contacts with external organisations like ours.

However, there certainly seems to be a particular problem in the Catholic system. Prior to 2016, we received hardly any reports from teachers, students or parents in that system, and notably more from within the state system. This would suggest the state system has become less discriminatory, while the conditions in Catholic schools have worsened.

This is corroborated by the findings of Telling Us the Story:

"Another focus in the discussions on education and schooling was these services being provided by religious educational institutions. There was a particular focus in the comments around Catholic education spaces, with these schooling spaces mentioned as facilitating real harm against LGBTIQ+ young people and failing to protect them from discrimination and harassment."

We discuss these matters further below.

A sample of individual reports

In attachment 8 we have included a summary of a small selection of the reports received by Equality Tasmania. Names have been changed to protect the identities of those involved. School names are not mentioned. The inquiry may have already received submissions directly from the people involved. Regardless, we ask that attachment 7 only be made available to members of the committee.

We have also attached two longer case studies, one from a transgender student at a Tasmanian Catholic College (attachment 9) and one from a gay teacher formerly at a Tasmanian Catholic College (attachment 10). Again, we ask for this also not to be made public. However, the author of the student case study is available to address the inquiry if required.

The reason we request confidentiality for the case studies, even when they are de-identified, is that the people concerned have decided not to take action about their experiences of discrimination and/or bullying, and do not wish for their experiences to be in the public eye.

This, in turn, is often because they fear the possibility of further discrimination and/or bullying at the school they currently attend or work at, or because they have moved to a new school and wish to put the mistreatment behind them.

4. What patterns can we glean from the reports we have received?

The reports we have summarised, and the many others we have received, do not describe a set of unfortunate but unrelated incidents. There are

clear patterns to the mistreatment reported to us, the causes of this mistreatment and the response of schools to this mistreatment. Here is our analysis of these patterns.

State schools

Since the decriminalisation of homosexuality in 1997 the Department of Education (later the Department of Education, Children and Young People), has engaged in LGBTIQA-inclusive policy development and program implementation chiefly through its LGBTIQA+ Issues-in-Education Working Group.

This has included several editions of the sexuality and gender guidelines, several editions of the inclusive language policy, the implementation of the classroom Pride and Prejudice program, the implementation of teacher training in LGBTIQA+ inclusion, the fostering of Pride Groups and better support for individual students.

DECYP funds organisations like Working It Out to implement the latter's Valuing Diversity Framework in support for LGBTIQA+ young people.

On a number of occasions, the Department has led the nation when it comes to LGBTIQA+ school inclusion policy development.

However, despite these positive developments there are still significant problems faced by LGBTIQA+ students and staff in the state school system.

Reports to us indicate that these patterns include:

- Patchy and inconsistent support for students and teachers within and between school communities
- Failure of some regional and rural schools to conduct any professional development for teachers or foster any support for students
- The assumption that "everything is fine now we have marriage equality", when this is clearly not the case
- The assumption that no out LGBTIQA+ students or staff means there are no LGBTIQA+ students or staff at all
- Action by school communities only when a problem arises
- The assumption that discrimination and bullying are the fault of the student for being too "loud", "overt" or "political".
- Inappropriate responses to anti-LGBTIQA+ mistreatment such as keeping the victim inside during breaks rather than tackle the attitudes of the victimisers
- Lack of professional development for principals and school counsellors in how to effectively challenge anti-LGBTIQA+ prejudice

In summary, while the state education system has very good policies, discrimination and bullying against LGBTIQ+ staff and students still occurs and the response to that mistreatment remains ad hoc. A more systematic approach to dealing with anti-LGBTIQ+ discrimination and bullying in state schools is required.

Faith-based schools

Much less work has been done in Tasmanian faith-based schools to promote inclusion for LGBTIQ+ students and staff, and challenge prejudice against them.

Under Archbishop Adrian Doyle, the Pride and Prejudice program was implemented in a number of Tasmanian Catholic colleges. This program was intended for all schools, but it was first trialled in Catholic colleges in Victoria. Its trials were so successful it was taken up with enthusiasm in the Catholic and state education systems in Tasmania.

However, we are not aware of any other professionally designed and evaluated classroom programs dealing affirmingly with LGBTIQ+ issues that have been implemented in Tasmanian faith-based schools, including those from a Catholic perspective.

Reports to us indicate the following patterns:

- Failure of principals and school communities to respond to discrimination, bullying and physical violence against students or staff
- Victim blaming of LGBTIQ+ students and staff
- Refusal to allow students in same-sex relationships to attend school events
- Refusal to allow students to wear their gender affirming uniforms and failure to address students by their gender appropriate pronouns
- Monitoring of teachers and parents for sexual and gender conformity
- A proposed solution for discrimination and bullying being for LGBTIQ+ students and staff to move to other schools
- Refusal to allow staff to attend LGBTIQ+ inclusion professional development
- Overtly discriminatory policies, a ban on all pride groups and inclusion policies, and inappropriate “support” for gender diverse students*
- The distribution of materials that overtly discriminate against and denigrate LGBTIQ+ people**

- Advocacy by church and school authorities against discrimination protections for LGBTIQ+ staff and students***

In summary, the complaints we receive from students, parents and teachers in faith-based schools show that the Anti-Discrimination Act is frequently ignored and violated. This is a strong allegation, so we have included further information expanding on it.

**Discriminatory policies, bans on peer groups and inappropriate treatment of trans students*

Reports we have received from LGBTIQ+ teachers include references to a Catholic Education Tasmania policy not to employ LGBTIQ+ school staff in leadership positions. We have no direct, written evidence of this policy, only second-hand reports.

However, indirect evidence that it exists includes media reports of a Catholic school teacher being offered a Vice Principal's position at St Virgil's College and then having that offer withdrawn when it was discovered he was divorced and in an unmarried heterosexual relationship. In the letter of withdrawal the Acting Principal wrote,

*"In accordance with the mandates of CET, Canon law and Catholic Doctrines, the College is required to only employ staff in senior leadership positions if they have an active parish life, and if they have a regular relationship, as defined by the Catholic doctrines and Canon law."*⁵

It is reasonable to assume that "a regular relationship" would not include a same-sex relationship, married or otherwise, and to infer that the LGBTIQ+ staff cannot be employed "in senior leadership positions".

As made clear above, discrimination in employment, be it on the basis of relationship status or sexual orientation, is against Tasmanian law.

We have also received several reports that cite a Catholic Education Tasmania policy that bans all school LGBTIQ+ inclusion policies, and all pride groups and diversity groups. Instead, these groups must be called "mental health groups" and be open to all students.

Again, we have no direct evidence of this, only the second-hand testimony of a number of former staff and students. However, it is a serious enough allegation to warrant further investigation. We say "serious" because pride and diversity groups, along with school

⁵ <https://www.abc.net.au/news/2022-07-27/teacher-catholic-school-job-offer-vetoed/101270816>

LGBTIQA+ inclusion policies, have been shown to have a positive impact on the mental health and wellbeing of young LGBTIQA+ people⁶.

Reports we have received from trans and gender diverse students and their parents include references to a range of inappropriate policies and practices.

These include,

- Not allowing students to affirm their gender through appropriate uniforms, pronouns and/or use of toilets and change rooms, or allowing some forms of affirmation but not others.
- Erecting hurdles to affirmation such as requiring a student to amend their preferred name and pronouns on school records at the beginning of every new school year, or only allowing students to socially affirm their gender identity after a clinical assessment that lack of social affirmation would result in “severe mental health problems”.
- Referring students with gender incongruence to priests untrained in gender counselling.
- An instruction to all principals at a meeting in March 2021 that schools are not to provide support for students with gender incongruence and that students identifying as trans or gender

⁶ Fetner, T., & Elafros, A. (2015). The GSA Difference: LGBTQ and Ally Experiences in High Schools with and without Gay-Straight Alliances. *Soc. Sci.* 4(3), 563-581.

Leung, E., Kassel-Gomez, G., Sullivan, S. et al. (2022). Social support in schools and related outcomes for LGBTQ youth: a scoping review. *Discover Education* 1, 18.

Ioverno, S., Belser, A., Baiocco, R., Grossman, A., & Russell, S. (2016). The Protective Role of Gay-Straight Alliances for Lesbian, Gay, Bisexual, and Questioning Students: A Prospective Analysis. *Psychology of sexual orientation and gender diversity*, 3(4), 397–406.

Marx, R., & Kettrey, H. (2016). Gay-Straight Alliances are Associated with Lower Levels of School-Based Victimization of LGBTQ+ Youth: A Systematic Review and Meta-analysis. *Journal of Youth Adolescence* 45, 1269–1282 (2016).

Poteat, V., Sinclair, K., DiGiovanni, C., Koenig, B., Russell, S. (2012). Gay-Straight Alliances Are Associated with Student Health: A Multischool Comparison of LGBTQ and Heterosexual Youth. *Journal of Adolescent Youth*. 23 (2). 319-390.

This study illustrates the value of school LGBTIQA+ inclusion policies for LGBTIQA+ staff: Tania Ferfolja, Western Sydney University, and Efty Stavrou, Independent scholar, Workplace experiences of Australian lesbian and gay teachers: findings from a national survey, *Canadian Journal of Educational Administration and Policy*, Issue #173, November 9, 2015.

diverse from the time of the meeting must all be referred to Catholic Education Tasmania.

- At about the same time, the referral of students with gender incongruence to a psychologist who has views about gender incongruence and transgender people that are not shared by mainstream Australian medical or psychological organisations. The person in question believes trans and gender diverse identities are disorders that can be cured, whereas the the Royal Australian and New Zealand College of Psychiatrists (RANZCP) has explicitly said they are not disorders. There is more information about this issue in attachment 11. We ask that attachment 11 not be made public.

Again, we do not have direct evidence of this, simply personal testimony of trans and gender diverse students and their parents.

We urge the committee to ask Catholic Education Tasmania to produce any policies, memos and emails that have a bearing on a) limiting the employment or promotional opportunities of LGBTIQ+ staff, b) that oppose the adoption of LGBTIQ+ inclusion policies or the establishment of pride or diversity groups, and c) which limit the capacity of trans and gender diverse students to affirm their gender and might expose these students to conversion practices or any other "counselling" that is not clinically approved.

***Materials that overtly discriminate against and denigrate LGBTIQ+ people*

Some of the reports we have received contain concerns about a proposed Tasmanian Catholic school curriculum that actively discriminates against LGBTIQ+ students by asserting that intimacy, love and sex should only occur within 'sacramental marriage', which currently excludes LGBTIQ+ people. As quoted by the ABC in June last year,

"The proposed curriculum will give LGBTIQ+ students the impression there's something wrong with them and they have no place in the world because it positions 'sacramental marriage' as the cornerstone of family, moral values, spirituality and civilisation."

Even greater concern has been expressed about two publications circulated by the Archdiocese of Hobart to parents through Catholic schools. These are "Don't Mess with Marriage" and "We are Salt to the Earth".

⁷ <https://www.abc.net.au/news/2023-06-28/tas-catholic-religious-education-review/102524776>

Concerns about “Don’t Mess with Marriage” are two-fold. The first concern is that the Archdiocese of Hobart used Catholic schools and their students to distribute its view that marriage must remain a heterosexual institution during the marriage equality debate. The particular concern is that LGBTIQ+ students and children of same-sex couples were required by their schools to take the booklet home. The second concern, expressed succinctly in a discrimination complaint by Martine Delaney, was that

‘The document told us, as fact, same-sex-attracted people are, somehow, “not whole”; their relationships no more than friendships and inferior to heterosexual marriage in quality and importance; that they raise unhealthy children; and, most offensively, that same-sex parenting is “messing with kids”.’⁸

Just as “Don’t Mess with Marriage” was timed to intervene in the marriage equality debate, so “We are Salt to the Earth” was timed to intervene in the debates about transgender inclusion, banning conversion practices, national laws governing discrimination in faith-based schools and national laws about misinformation and disinformation. And just like “Don’t Mess with Marriage”, “We are Salt to the Earth” denigrated LGBTIQ+ people, for example by portraying transgender people as a radicalised threat to “biological reality”. Indeed, in “Salt” LGBTIQ+ human rights and inclusion are portrayed as existential threats to Catholic schools, Catholicism, faith, family, truth and human flourishing.

The Archdiocese’s defence of both publications is that they simply state Catholic doctrine on marriage, family, sex, gender and relationships. However, if this was the case they would have prompted much less concern from those who have reported to us. As explained, they go much further than expounding doctrine; they denigrate LGBTIQ+ people and our human rights. They also expound a very politicised and overly-conservative position that many Catholics would contest is Catholic in name only (including the many Catholics who have welcomed Pope Francis’ decision to allow priests to bless same-sex unions⁹). In the eyes of many people who have reported to us, these publications have exacerbated, and rendered acceptable, the discrimination and bullying they already experience.

****Advocacy against Tasmania’s discrimination protections*

⁸ <https://newmatilda.com/2019/09/30/stop-the-lies-the-trans-woman-at-the-centre-of-the-religious-freedoms-bill-speaks-out/>

⁹ <https://www.abc.net.au/news/2023-12-19/pope-francis-blessings-same-sex-couples-lgbtq-catholic-church/103245774>

Some of the reports we have received refer to direct and indirect advocacy against Tasmania's existing discrimination protections for LGBTIQ+ staff and students in faith-based schools by the Archdiocese of Hobart, the Catholic Education Tasmania and the Christian Schools Association.

For example, all three bodies supported the former Federal Government's Religious Discrimination Bill, including that bill's proposed override of Tasmania's existing discrimination protections. The Archbishop of Hobart and Catholic Education Tasmania stated publicly that if the Bill passed they could not rule out sacking or refusing to employ LGBTIQ+ staff¹⁰. The Religious Discrimination Bill did not pass, but many LGBTIQ+ teachers in Tasmanian faith-based schools were fearful of a purge. Some who contacted us were already looking for work elsewhere, pending the passage of the bill.

We have recently seen the same kind of advocacy from Catholic and Christian school authorities regarding proposed amendments to the federal Sex Discrimination Act. These amendments would remove exemptions for LGBTIQ+ staff and students in faith-based schools. They would bring Commonwealth law into line with the Tasmanian Anti-Discrimination Act. But that hasn't stopped the Archdiocese, the CET and the Christian Schools Association from claiming the federal amendments would be "an existential threat" to faith-based schools and that "some schools may need to close"¹¹. This seems hyperbolic given there is no evidence that faith-based schools have suffered in any way from existing state protections. If the sky hasn't fallen in Tasmania over the last quarter century why would it fall nationally? But the message to LGBTIQ+ staff and students in Tasmanian faith-based schools has been clear: their school authorities want the right to discriminate against them.

This message has been reinforced by advocacy by the Archdiocese of Hobart and Christian School Associations for "a positive right of religious freedom". In "We are Salt to the Earth" Archbishop Porteous wrote,

"This legislation (for a positive right) needs to have a state override provision to ensure that all Australians have the same consistent legal

¹⁰ <https://www.examiner.com.au/story/7612781/if-new-religious-discrimination-laws-pass-catholic-schools-may-use-them/>

¹¹ <https://www.theaustralian.com.au/nation/politics/tasmanian-catholics-rebel-against-religious-freedom-changes/news-story/b7bff2afdbc7bf55af2d8c125e9bda69>
<https://www.examiner.com.au/story/8637171/christians-make-case-to-canberra-at-passionate-tasmanian-rally/>

<https://cathnews.com/2024/03/19/archbishop-porteous-warns-existence-of-religious-schools-under-threat/>

protections for the expression of their religious belief regardless of the state in which they live”.

That means ending discrimination protections for LGBTIQ+ students and teachers in Tasmanian schools. How can it be considered appropriate to expect LGBTIQ+ students and teachers to agree with, or at least be messengers for, the removal of their own human rights? This is simply cruel.

As if these negative messages are not bad enough, they have been reinforced by claims that students or teachers who do not feel comfortable with the stated views of the Archdiocese should seek education or work elsewhere. The Archbishop again,

"We are accused in the media of wanting to 'fire' staff, or 'discriminate' against students who disagree with Catholic teaching. However, it is the case that no one is being forced to teach in or be a student at a Catholic school. It makes no sense for a person to seek to work for or enroll in a Catholic school if they disagree with the teaching of the Catholic Church. If they initially can accept the Catholicity of the school but later find that their personal views are at variance with those of the Catholic faith, then it would only make sense they should seek an alternative educational institution more aligned with their views."

This has caused deep pain for some LGBTIQ+ teachers, including those of deep faith, who enjoy their work, make an important contribution to school life and are respected members of their school communities. It makes LGBTIQ+ students who may have had little choice over where they are schooled, feel even more disempowered, isolated and targeted.

The Archbishop's response to laws that prohibit discrimination and bullying against LGBTIQ+ students and staff is not to obey those laws but to override them. His solution to discrimination and bullying against LGBTIQ+ students and staff is not to prevent such mistreatment but to invite those who are mistreated to leave. There is little of Jesus of Nazareth's teachings to be found in the Archbishop's position.

Archbishop Julian Porteous is entitled to the free expression of his religious views, even though he has suppressed the views of other clerics who have disagreed with him¹². But the free expression of the Archbishop's views should not and must not extend to the exclusive and mandatory use of schools as platforms for his views and the use of students and staff as his messengers. The Archbishop does not own Catholic schools and they are not his megaphone. Neither does he have a

¹² <https://www.abc.net.au/news/2018-07-05/frank-brennan-banned-from-tasmania-by-archbishop-julian-porteous/9945468>

monopoly over what constitutes Catholic doctrine and ethos. Faith leaders, faith communities, parents, staff, students and taxpayers all have a stake in Catholic schools and should all have some say over what is expressed in and through these schools. There must be institutional checks and balances to ensure that no one person or small group of people is able to dictate school values and curricula, and draw schools into their own cultural and political battles. The responsibility for managing schools should be shared.

To summarise this section, there is evidence of discrimination and bullying in state schools because of a patchy and inconsistent application of DECYP policies. There is overwhelming evidence that some faith-based schools are not protecting LGBTIQ+ students and staff from discrimination and that some religious school authorities and religious leaders are actually condoning and encouraging discrimination in schools in violation of their obligations under the Anti-Discrimination Act. Their response to that Act is to advocate against it applying to them. Their response to LGBTIQ+ staff and students who will not suffer mistreatment is to invite them to leave.

5. Remedies and recommendations

Further data gathering

It is essential that more data is gathered on a regular basis about discrimination and bullying in Tasmanian schools. Only with this data can we determine exactly what needs to be done and if it is effective. The anecdotal evidence presented in this submission points us towards an unmet need, but only with regularly-gathered empirical evidence can we gauge the depth of that need and if our solutions are working.

We recommend,

An appropriate independent body such as Equal Opportunity Tasmania or the University's Institute for Social Change be given a mandate and funding to gather data on discrimination and bullying within all Tasmanian schools.

That this Committee ask for any existing policies, memos and emails that have a bearing on whether faith-based schools are adhering to their legal obligations under the Anti-Discrimination Act and the Education Act, especially in regard to the treatment of young trans and gender diverse people and the employment of same-sex attracted people in leadership positions.

Discrimination

The Anti-Discrimination Act provides strong protections against discrimination on relevant grounds including sexual orientation, gender identity, sex characteristics and relationships status. However, there is substantial evidence that some schools routinely violate these legal protections.

We recommend,

Equal Opportunity Tasmania write to all schools in Tasmania reminding them of their legal obligations in regard to discrimination, giving concrete examples of what these obligations entail in day-to-day school life and reminding faith-based schools they are not exempt from these obligations.

EOT proactively investigate the adherence schools to the Tasmanian Anti-Discrimination Act if there is reason to believe there are systemic failures to adhere to the Act.

Working It Out be resourced to develop and deliver education programs specifically for school communities about how to reduce levels of discrimination and bullying, including against LGBTIQ+ people.

A review by the Tasmanian Law Reform Institute or other body of existing exemptions in the Anti-Discrimination Act, especially in relation to discrimination on the grounds of religious adherence in student enrollment and staff employment in faith-based schools, to determine if these exemptions are being abused to justify discrimination on other grounds such as sexual orientation, gender identity, relationship status etc.

Bullying

Evidence of high rates of bullying in Tasmanian schools and the adverse impact of this bullying on LGBTIQ+ students and staff is overwhelming.

We recommend,

The adoption of relevant recommendations from the Tasmanian Law Reform Institute's final report on bullying issued in 2016 (especially recommendations 1 and 4 – 16). These include,

- The passage of a criminal code specifically naming and criminalising bullying
- A civil framework that institutes a mediated and restorative justice response to bullying
- Stronger protections for employees
- Legislative requirements on educational institutions, mandating their implementation of anti-bullying policies and procedures.

- The establishment of bullying working groups and policies in the state school system and other systems.

School authorities

It is the responsibility of law makers and statutory authorities to act on discrimination and bullying in schools. But school authorities also have a responsibility. As Fielder et al note in their study of staff in faith-based schools, “leadership matters”.

We recommend,

DECYP, CET and other school authorities commission independent, external audits of their compliance with existing anti-discrimination law and anti-bullying policies.

Develop and make available a range of resources relevant to professional development and classroom programs dealing with anti-LGBTIQA+ discrimination and bullying.

Allow and encourage staff to attend professional development in how to reduce levels of anti-LGBTIQA+ discrimination and bullying, and promote safety and inclusion.

Allow and encourage classroom programs that reduce anti-LGBTIQA prejudice and promote understanding.

Develop and ensure the delivery of sex and relationships education that addresses the needs of, and meaningfully includes, LGBTIQA+ people’s experiences. Include LGBTIQA+ people’s experiences and contributions more comprehensively across curriculum, including history and literature. [This is a recommendation of the Telling Us the Story report.]

Encourage people of all genders, sexes, and sexualities to work in the sector. [This is a recommendation of the Telling Us the Story report.]

Regularly evaluate curriculum and staff and student experiences to monitor and develop LGBTIQA+ inclusion. [This is a recommendation of the Telling Us the Story report.]

Schools

Ultimately, schools are responsible for implementing anti-discrimination and anti-bullying policies and programs.

We recommend,

The adoption by all schools of LGBTIQ+ inclusion policies that explicitly address discrimination and bullying and are based on the schools' obligations under the Anti-Discrimination Act, the Education Act and other legislation and frameworks. These policies should include examples of policies and practices that are not acceptable and referrals to resources that will help foster inclusion. [This is a recommendation of the Telling Us the Story report.]

Professional development for all teaching and other staff in how to reduce levels of anti-LGBTIQ+ discrimination and bullying, and promote safety and inclusion.

Classroom programs that reduce anti-LGBTIQ+ prejudice and promote understanding.

Visible promotion of LGBTIQ+ inclusion in educational facilities (e.g. rainbow stickers, flags). [This is a recommendation of the Telling Us the Story report.]

Providing approval of, and resources for, pride and diversity groups. [This is a recommendation of the Telling Us the Story report.]

We recognise that some faith-based schools and school authorities will wish to challenge discrimination and bullying from within their own faith traditions. We respect and support this. We note that Edmund Rice Education Australia, a Catholic education organisation, has well-respected programs promoting LGBTIQ+ inclusion¹³. Similar resources exist for other Christian denominations and other faiths.

State schools

The patchy progress of state schools towards LGBTIQ+ inclusion calls for a response that ensures consistency across the state system.

We recommend,

Funded targets for staff professional development; for example, a target of 50% of DECYP staff trained in LGBTIQ+ inclusion by 2027. Similar targets have been adopted by the Departments of Health and Police and Emergency Services.

An LGBTIQ+ inclusion officer in every state secondary school who can be a point of contact for students with problems, staff seeking information, parents with concerns, external services providing specialist support and expert knowledge, the establishment of pride groups and the adoption of LGBTIQ+ inclusion policies. These officers would differ from school

¹³ <https://www.erea.edu.au/safeandinclusive/>

counsellors in that they would be proactive in developing LGBTIQ+ inclusive initiatives.

More funding so external providers like Working It Out can do their essential work of providing support for students, teachers and whole school communities, not just in schools where there are urgent problems to be solved (as is the case now), but across all schools.

A DECYP LGBTIQ+ Action Plan that includes the above.

Faith-based schools

Overwhelming evidence of non-adherence in some faith-based schools to the state's Anti-Discrimination Act, as well as standards 5 and 13 of the Tasmanian educational regulations that govern non-government schools, poses a set of different challenges for those schools and their regulatory bodies.

According to the letter from Mr Rockliff cited above, the Non-government Schools Registration Board (NGSRB) receives an annual report from the authorities governing faith-based schools, including Catholic Education Tasmania, about their adherence to the Education Standards for registering non-government schools. It conducts between three and five random visits to schools to confirm what has been reported by school authority, and it can inspect schools if it believes the Standards have not been met.

As far as we know, no action has been taken by the NGSRB in regard to discrimination and bullying against LGBTIQ+ students and staff. However, the evidence presented to this inquiry strongly suggests a systemic pattern, not only of such discrimination and bullying, but of non-adherence to discrimination legislation and to the standards that allow for continued registration.

Something has gone seriously wrong. Either faith-based school authorities are not reporting what is happening in their schools or the NGSRB is failing in its duty to ensure LGBTIQ+ students and staff are protected under the Anti-Discrimination Act and Standards 5 and 13.

We recommend,

An amendment to the Education Act and the Standards governing the registration of faith-based schools that mandates the development of inclusion policies and programs for categories of students and staff who have traditionally faced discrimination and bullying, explicitly including but not limited to LGBTIQ+ students and staff.

The development of policies and procedures that allows the NGSRB to identify and act on discrimination and bullying against LGBTIQ+ students and staff, and other categories of students and staff who have traditionally faced higher rates of discrimination and bullying. This recommendation should not depend on the implementation of the above recommendation.

A funding allocation for faith-based schools to allow them to meet the legislative and regulatory requirements outlined above.

Development of new models of consultation and management for Tasmania's faith-based schools that ensure everyone with a stake in those schools has some say over their policies and curricula, and that there are checks and balances to ensure no single person or small group of people have absolute and unchallenged control.

6. Countering arguments against dealing effectively with LGBTIQ+ discrimination and bullying

Below, we respond to some of the views put forward by those opposed to concerted action to reduce levels of anti-LGBTIQ+ discrimination and bullying in schools, including faith-based schools.

"Schools are already stretched to the limit"

We understand that schools, particularly state schools, are under resourced. However, there are ways to effectively challenge discrimination and bullying which are not resource intensive.

Given the impact of discrimination and bullying, not only on the mental health outcomes of LGBTIQ+ students but also their educational outcomes, it is vital that we prioritise efforts to reduce this mistreatment.

"Discrimination and bullying will naturally reduce as community attitudes change for the better"

Unfortunately, this has proven not to be the case. While we may have seen some reduction in prejudice and discrimination against same-sex attracted people in the wake of marriage equality (from previously very high levels), there remains discrimination and bullying against them at school. There has also been a significant increase in prejudice and discrimination against trans and gender diverse people in the past few years, which is reflected in schools.

We cannot assume the arc of history bends towards justice. LGBTIQ+ people and the broader society of which we are a part, must act to ensure this is the case.

“Many religious schools already have policies against discrimination and bullying”

So do state schools, yet we know that anti-LGBTIQ+ discrimination and bullying still occur in these schools. This is because of the failure to apply general policies to LGBTIQ+ students and staff, or the failure to address the prejudices and stigma that perpetuate anti-LGBTIQ+ discrimination and bullying.

“There are low levels of discrimination and bullying in faith-based schools”

Some submissions to this inquiry made the point that the ACER survey found less bullying in faith-based schools than state schools. However, ACER did not ask about bullying on the grounds of sexual orientation or gender identity, so it’s impossible to know from ACER if this type of bullying follows the broader trend.

If the level of bullying in faith-based schools is lower than state schools, that is an argument for keeping Tasmania’s strong laws against discrimination and bullying in faith-based schools, not weakening them.

“Parents choose faith-based schools because of their ethos and values”

Some parents choose faith-based schools for reasons of faith, although their faith-based values are not necessarily the same as conservative clergymen or exclusive of LGBTIQ+ people. Some parents choose faith-based schools for other reasons including geographical proximity, classroom discipline and school facilities.

Whatever their reasons, almost all parents want their child to be safe and accepted and their child’s teachers to be selected on the basis of competence, not ideological adherence. In particular, they want their child’s school to be free of discrimination and bullying.

“Laws against discrimination and bullying are an infringement of religious freedom”

The religious freedom is fundamental to democracy. But it is not absolute.

The purpose of discrimination law is to ensure that everyone has equal access to the essentials of life, including education and employment,

regardless of irrelevant attributes such as sexual orientation, gender identity, sex characteristics or relationship status etc.

The importance of this right is reflected in the Article 2 of the International Covenant on Civil and Political Rights.

It recognises freedom from discrimination as a fundamental and uncaveated right. It says that all other rights in the Covenant must be enjoyed “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (“sex” which has been interpreted to include sexual orientation etc)”.

Article 18 of the Covenant establishes freedom of religion as an important right. However, it states that religious freedom is not absolute. It says,

“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 public safety, order, health, or morals or the fundamental rights and freedoms of others.”

The right to freedom from discrimination, as established in Article 2, is not a right that Article 18 overrides.

“Laws against discrimination and bullying are an infringement of freedom of speech and parental rights”

Freedom of speech is also fundamental to democracy. But like freedom of religion, it is not absolute. There are many ways in which free speech is curtailed to protect other rights. These include defamation laws and hate-speech laws. There should also be caveats on speech that is likely to encourage discrimination or bullying in schools. But ultimately, the issue here is not the curtailment of free speech. It is ensuring that one person or a small group of people, does not monopolise discussion on a particular issue in schools by having a much louder megaphone than those who are less powerful and more vulnerable, and by not allowing other voices to be heard.

Parents have the right to have their children educated in school communities where discrimination and bullying have no place, including discrimination and bullying against LGBTIQ+ students and staff. In regard to all the many and varied efforts to reduce LGBTIQ+ discrimination and bullying in Tasmanian schools, including faith-based schools, across the whole 26 years that Tasmania has had legal protections against LGBTIQ+ discrimination in those schools, we are not aware of a single complaint from a parent, not one.

“This is a Trojan horse for a woke, neo-Marxist, post-modern, post-truth attack on religious belief, religious schools and traditional values”

Equality Tasmania has a long and proud history of working with people of faith, and faith-based organisations, to reach our shared goal of LGBTIQA+ equality and inclusion. For example, we worked alongside the Scripture Union to pioneer professional training for Tasmanian school chaplains in LGBTIQA+ issues. We have also worked with Anglicare and Baptcare to ensure their services are LGBTIQA+ inclusive. For us the problem is prejudice, not faith. Indeed, faith can inspire some of the most effective responses to prejudice.

Our involvement in the current inquiry has the same motivation. We do not oppose religious faith or religious schools. We seek to work with these schools to address discrimination and bullying. Over the past thirty years we have worked together with many Catholic, Anglican, Uniting and Calvinist schools to reduce LGBTIQA+ mistreatment and achieve greater inclusion. As stated above, we worked successfully with the Archdiocese of Hobart, the then Catholic Education Office and individual Catholic schools to implement Pride and Prejudice, a classroom program challenging anti-LGBTIQA+ prejudice and discrimination. We have also worked with Catholic schools that utilise inclusive Catholic curricula from the Edmund Rice Centre.

That is why it seems odd to us for some religious groups to suggest LGBTIQA+ school inclusion is some, new, unprecedented and threatening development. It is not at all. In reality, it is the highly ideological push-back against LGBTIQA+ school inclusion that is new and dangerous.

“This is an attack on Archbishop Porteous”

As stated above, the Archbishop has the right to express views on LGBTIQA+ issues with which we may disagree. However, when it comes to the Catholic school system, which is a major part of the lives of 10s of 1000s of Tasmanians, that right should be exercised with moderation and consideration. The Archbishop is not a professional educator. Neither are his views shared by the majority of Catholics (for example, according to polling most Australian Catholics supported marriage equality). As we have shown, views like his can have a negative impact on the mental health and wellbeing of LGBTIQA+ students and staff.

That is why we have recommended the views expressed in and through faith-based schools not simply be those of a single person or small group of people, but reflect those of a broader set of stakeholders in these schools.

In short, our concern is not about any one individual. It is about systemic change that promotes less discrimination and bullying, and greater inclusion.

[End]