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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
legcon.sen@aph.gov.au

Dear Committee,

We thank you for the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee regarding the proposed amendments to the *Sex Discrimination Act 1984* (SDA) as it relates to removing discrimination against students.

This submission is being made on behalf of the South Australian Rainbow Advocacy Alliance (SARAA) and the Queer Youth Services Network (QYSN), both of which are based within Adelaide, South Australia.

SARAA is the peak body for the health and human rights of Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer (LGBTIQ) people in South Australia. QYSN is a professional network comprised of service providers and community groups that support LGBTIQ youth in South Australia.

SARAA and QYSN have both identified that the proposed amendments before the Committee will directly impact the communities who we support, and as such we write to you to express our shared concerns.

Current exemptions

SARAA and QYSN are both concerned about the existing religious exemptions in the SDA, specifically s37(1)(d) and s38 as they relate to education institutions established for religious purposes.

Through our engagement with LGBTIQ people in South Australia we are aware of cases where students in religious schools have experienced behaviours that we believe would constitute discrimination as outlined in s5A and s5B of the SDA. Examples include:

- Students who have been bullied by their peers due to their sexual orientation or gender identity, and school staff opted not to act to protect the student as the bullying aligned with the religious tenets of the school;
- Students who received negative or derogatory responses from school staff when disclosing their sexual orientation or gender identity;
- Students who felt so unwelcome at school due to bullying, harassment or differential treatment relating to their sexual orientation or gender identity that they subsequently relocated to a different school.

Furthermore, we are aware of other school students and employees who opted to conceal their sexual orientation or gender identity when attending these institutions out of fear of experiencing discrimination.

We also note that while we have heard these stories from several people, we believe there are

countless more who are unwilling to share their stories publicly out of fear of jeopardising their current or future enrolment or employment.

The impact of current exemptions

For many LGBTIQ school employees – especially teachers – there is a perception that they must hide their sexuality or gender identity in the workplace or they risk losing their job. For many students, there is the fear that they will be bullied, discriminated against, or expelled if they "come out" at school. In either instance, this leads to a situation where the LGBTIQ person feels forced to hide their identity.

Regardless of whether the individual does disclose their sexuality or gender identity, the presence of religious exemptions provides an environment where LGBTIQ students and employees can feel unsafe and unwelcome. People we have heard from spoke about how this contributed to poorer mental health and emotional wellbeing, as well as how they avoided intimate relationships due to a fear of being "outed".

It has also been highlighted to us that for many LGBTIQ people, they are unaware of their sexual orientation or gender identity at the time of enrolment in a school or at the time of gaining employment (it must be remembered that many LGBTIQ people will not question their sexual orientation or gender identity until later in life, by which point they may already be employed). For these individuals, current exemptions provide grounds for their enrolment or employment to be terminated.

This was clearly demonstrated in the case of one former teacher who spoke with us:

This teacher had worked in a religious school for many years before becoming aware of their sexuality. They were passionate about their career and loved teaching in the school they were employed in. They were also an adherent of the school's faith. When they realised that they were attracted to people of the same gender, they felt like they had to make a choice: they could either be open about their sexuality and risk their career, or they could remain "in the closet" in order to maintain connection to a career and faith that were as fundamental to their identity as their sexuality. They opted to remain in the closet, which prevented them from freely expressing their sexuality or pursuing relationships in a way that their heterosexual peers were able to.

We don't believe that anyone should have to make a decision like this. Whether it is a student or an employee, everyone deserves the right to work and receive an education without fear of discrimination. It is also important to note that this teacher's sexuality did not prevent them from fulfilling their obligations as an educator or upholding the religious tenets of the school in which they taught.

Consideration of religious freedoms

We are mindful that there are many people in Australia who are concerned about how the removal of the religious exemptions outlined in s37(1)(d) and s38 will impact upon religious freedoms.

We fully accept and respect the rights of all people to hold and practice their religious beliefs. We respect that spiritual faith is a fundamental part of an individual's identity and believe that people should not be discriminated against based on their religious beliefs. We also acknowledge that many LGBTIQ people have deeply held religious beliefs of their own, as is seen in the case of the teacher mentioned above. It could be argued that LGBTIQ people of faith are the people who are most impacted by current religious exemptions, as these exemptions prevent them from being able to express their faith and sexuality/gender identity concurrently if they are employed or enrolled within a religious school.

As it relates to the matter at hand, we believe that the right to freedom of thought, conscience and religion or belief must be balanced against the right to equality and non-discrimination. To that end we agree with the assessment in the Explanatory Memorandum for this Bill that any limitations to rights that would result from the proposed amendments outlined in Schedule 1 are "reasonable, necessary and proportionate".

Consideration of proposed amendments

We have considered the amendments suggested in Schedule 1, as well as the amendments proposed by the Government, Centre Alliance, and Australian Greens.

Schedule 1

We note that the proposed amendments in item 1 (the addition of a new s37(3) to the SDA) mirror s37(2) as it relates to Commonwealth-funded aged care services. We would like to note that s37(2) has been part of the SDA since 2013 and has not adversely impacted upon the religious freedoms of service providers or care recipients of faith-based aged care services. On the contrary it has improved protections for older LGBTIQ people accessing aged care services and has been demonstrated to have had an overall positive impact regarding creating more inclusive and equitable aged care services for older LGBTIQ people.

Our one objection to item 1 is the proposed s37(3)(b), which would allow for ongoing discrimination as it relates to employment. We do not support such an exemption and instead argue that employers should not be allowed to discriminate against staff based on sexual orientation or gender identity. As this relates to protecting "religious susceptibilities" we note that many LGBTIQ people are adherents of religion themselves (as seen in our earlier case study), and they can and do uphold the doctrines, tenets or beliefs of a religion regardless of their LGBTIQ status.

As such we support the proposed addition of s37(3)(a) to the SDA, but we oppose s37(3)(b).

Government amendments

Regarding the amendments proposed by the Government, we oppose all of them on the basis that they do not adequately address the concerns we have outlined relating to existing religious exemptions. We are particularly concerned about the practicality of the provision of a reasonableness test being conducted "in good faith" to "avoid injury to the religious susceptibilities" of religious adherents. We believe that there is a potential for LGBTIQ students to be unduly affected in this process and that the only reasonable solution is to remove all religious exemptions as they relate to students.

We also oppose the Government's proposal for education institutions to be able to discriminate provided they have a written policy outlining how such practices align with their doctrines, etc. We refer to our earlier comment explaining how LGBTIQ students or employees may not be aware of their sexuality or gender identity at the time of enrolment or employment commencing. We argue that discriminating against a person after their studies or employment have commenced would have an adverse impact on the individual and would thus be unreasonable.

Australian Greens amendments

We fully support the amendments proposed by the Australian Greens. It is our belief that these amendments provide adequate protections for LGBTIQ students and employees alike and do not unduly impact upon religious freedoms.

Conclusion

We support the amendments proposed by the Australian Greens. We believe that these amendments represent the best solution to protect the right to equality and non-discrimination without unduly impacting upon the right to freedom of thought, conscience and religion or belief.

Kind regards,

Matthew Morris on behalf of the Queer Youth Services Network and the South Australian Rainbow Advocacy Alliance