

Sex and Gender Education (SAGE) (Australia)

Proposed Religious Discrimination Bill, SAGE Discussion Paper: 15 July, 2019

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Since 2001 SAGE has campaigned for the human and legal rights and dignity of people of sex and/or gender diverse groups of people who may be intersex, have atypical sex characteristics, sex non-specific, transexed, transsexual, transgendered, cross-dressers, androgynous, bigendered, gender fluid, without sex and/or gender identity, and people with sex and gender culturally specific differences. Sex and/or gender diverse groups of people is an inclusive phrase and excludes no one who may be sex and/or gender diverse in any way.

Recently members of the new coalition government have been putting forward a new religious anti-discrimination bill for debate in parliament. Whilst we support the right of anyone to follow their religion or belief systems, our members have grave concerns that changes in the law may impact upon the rights and well-being of sex and/or gender groups of people by design or accident.

In discussing these matters, it is important to consider the legal antecedents. Before settlement by European colonialists in the late 1700s Australia was part of the continent Australasia with nations who became to be known as Aboriginal people. With them the settlers brought Christianity and tried to force it on the First Nations People during the Aboriginal genocide and enslavement. We do not attempt to speak for the First Nations People here, simply to respect their and Australia’s history.

What is referred to as the colonial period from 1888 to 1901 is when Australia was classed as a penal colony of colonial military forces which passed to the Commonwealth on 1 March, 1901 (Grey, 1990), following federation. Religious organisations were referred to as groups believing in the supernatural. By 1931 Australia had the power to self-rule but chose not to do so. Each state remained colonial dependencies of the British crown. The Australia Acts came into force on 3 March, 1986, which no longer required the Queen of the United Kingdom (who is the Head of the Church of England) to give Royal Assent to bills for Australia or its states. At no time has Australia or any of its states had an official religion, so Australia has no official legal religion today.

Today Australia is a multicultural country in which many religions, belief systems as well as atheism is practiced and permitted. There is no legal sanction of any religion or belief system at the present time.

Article 26 of the ICCPR (United Nations, 1966) recognises the right of all persons to equality and to non-discrimination on certain grounds—including:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and

guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

On 29 September, 2015, 12 UN entities (ILO, OHCHR, UNAIDS Secretariat, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP and WHO) released an unprecedented joint statement:

“Failure to uphold the human rights of LGBTI people and protect them against abuses such as violence and discriminatory laws and practices, constitute serious violations of international human rights law and have a far-reaching impact on society – contributing to increased vulnerability to ill health including HIV infection, social and economic exclusion, putting strain on families and communities, and impacting negatively on economic growth, decent work and progress towards achievement of the future Sustainable Development Goals”

On 1 August, 2013 The Australian Sex Discrimination Act (1984) incorporated that it was unlawful under federal law to discriminate against someone on the grounds of their gender identity, intersex status or sexuality. This meant that the act covers discrimination on the grounds of sex, gender and sexuality, with one exception for religious reasons in religious institutions.

Unfortunately, this gave rise to a new level of discrimination for many people from sex and/or gender diverse groups. They were able to be fired from their jobs such as teaching in religious schools for simply being sex and/or gender diverse. It also allowed for the exclusion of children from those schools because of their sex and/or gender diversity. So, it gave rise to discrimination based on biological presentation, gender presentation or perceived sexuality in educational institutions.

Some religious teachers put forward the idea that a person has a choice over being sex and/or gender diverse and ignore the science that shows biological imperative. Furthermore even if people did have a choice, which many do not, this creates a class of a vulnerable minority sector of society, for no reason other than being non-hetero-normative, which is out of line with the United Nation’s (1948) Declaration of Human Rights, of which Australia is a signatory.

Sex and/or gender diverse groups of people suffer profound levels of discrimination in Australia. These are the groups with some of the highest levels of suicidal thoughts and attempts in Australia due to lack of social acceptance, harassment, exclusion from the workplace and violence.

The survey of 272 people, from the University of New England, is the largest survey of intersex people ever conducted in Australia (Jones, Hart, Carpenter, Ansara, Leonard, and Lucke, 2016). It found 18% of intersex people drop out of high school compared to 2% of the general population, with 63% of participants earning under \$41,000, and 41% earning less than, \$20,000. Of 176 who answered questions on well-being, 26% had engaged in self-harm on the basis of issues related to having a congenital sex variation, 60% had thought about suicide, and 19% had attempted suicide.

The Australian Trans Pathway study found that young trans people had a very high risk of poor mental health, self-harming and suicidal thoughts and attempts; 75% of young people have experienced anxiety or depression, 80% had self-harmed, and 48% had attempted suicide. It also found that young trans youth had limited access to health services, 60% felt isolated from medical and mental health services, and 42% who had reached out to a health professional experienced a lack of understanding or respect around their gender identity. The study revealed that health professionals displayed a lack of education about gender diversity, were unable to make appropriate referrals and displayed transphobia (Strauss, Cook, Winter, Watson, Wright Toussaint, & Lin., 2017).

Areas of Concern and Recommendations

1. No government, according to international law, has any business being involved in financing or promoting discrimination directly or indirectly of any sector of society with taxpayers' money as it is a contravention of its human rights commitments.
2. Since there is no law against anyone practicing a religion in Australia, no possible incoming religious anti-discrimination law should allow religious people of any religion to refuse any publicly offered service to anyone who is from a sex and/or gender diverse group on the grounds of that diversity.
3. Even though Australia has not sanctioned any religion, certain religious schools and institutions receive government funds and tax-free status as part of a charity. There needs to be a provision that government funding is removed from any educational institution or educational entity that teaches hate speech against sex and/or gender diverse groups of people. Such private religious institutions often receive greater financial benefits from the government than state schools that have not discriminated against sex and/or gender diverse groups. People have the right to their private beliefs but they have no right for the government and taxpayers' money to fund hate speech and discrimination.
4. Charities are required to pass a public benefit test to retain their tax exemption status. It is not in the public interest should any charity or religious organisation be involved in condemning sex and/or gender diverse people therefore such exemptions should be removed from those charities and religious institutions involved. Neither should such entities be able to donate to causes that engage in or use hate speech and discrimination against sex and/or gender diverse groups.
5. Religious-driven theology has previously been used to drive surgical and medical intervention in the lives of intersex people and people with atypical sex characteristics, which in many cases has caused great harm in the form of unwanted and non-consensual medical intervention of children and infants. This intervention has been proven in many cases to cause considerable physical and mental harm to those people. Such non-medical

emergency medical intervention should only be supplied with the informed consent of the child themselves. Such ‘Adam and Eve’ theology has also been used to withhold medical treatment from children and adults experiencing sex or gender diversity or dysphoria. Religious-driven medical services that commit these clinical abuses should not be funded by governments and funding should be withdrawn from such institutions.

6. Governments should not provide funds to any schools or learning institutions that refuse to teach a full sex education program that includes a positive education program around people who are sex, gender and sexuality diverse. To withhold any such scientific knowledge from children is nothing less than child abuse and demonisation of and discrimination against people who are sex, gender or sexuality diverse.
7. No person who may be from a sex and/or gender diverse group should be fired from a job or expelled from religious-based schools, educational institutions, hospitals or medical facilities on the grounds of their sex and/or gender diverse status.
8. No relative or connected person to someone who is from a sex and/or gender diverse group should be harassed, excluded from employment, services or fired because of their connection to the person who is sex and/or gender diverse, due to harassment from other people’s religious beliefs.
9. By the government funding institutions and educational establishments teaching hate speech or failing to include information around sex and gender diversity, it is endorsing those religions. Since Australia has no official religion, that government is indirectly endorsing such discrimination which is contrary to Australian anti-discrimination laws and international legal commitments.
10. No religion or religious guided institution should be given special privilege above other ordinary Australian citizens or provided with money to harass those citizens because of their sex or gender status.
11. All people should be prohibited (including religious people), from hate speech around people who are sex and/or gender diverse. Hate speech causes violence and harm. Just as racial discrimination is hate speech, so is speech around condemning sex and/or gender diverse groups.
12. The Marriage Act gives all people in Australia the right to marry another person regardless of their sex, gender or sexuality. No alteration should be made to the Marriage Act that allows discrimination on the grounds of sex or gender regardless of to whom a person is married or intends to marry. It should in fact be amended to exclude discrimination on religious grounds.

Whilst we at SAGE support people rights to their religious beliefs no religious group should have the extraordinary privilege or the right to condemn, harass, raise hate speech against sex

and/or gender diverse people or exclude them from publicly available services that are available to the rest of society.

Religious Abuse History in Australia

We acknowledge that not all religious groups discriminate against sex and or/gender diverse groups in Australia. There are Christian, Jewish, Muslim, Buddhist and other groups who welcome and respect people who have sex and gender diverse differences in Australia and other countries.

The UK's orthodox Chief Rabbi, Ephraim Mirvis made this statement (Burns, 2018):

"Our children need to know that at school, at home and in the community, they will be loved and protected regardless of their sexuality or gender identity."

Father Rod Bower from the Church in Gosford on NSW's Central Coast has grave concerns about any proposed religious anti-discrimination bill and made the public comment:

“It is a deep concern for me that people could use religious cover to marginalise already marginalised groups or discriminate against those already discriminated against.” (Bolger, 2019).

Australia though has a long history of religious abuse. The invading colonial British forces at the end of the 17th century brought with them Christian oppression. Missionaries and the churches were part of enslaving Indigenous Australians, committing genocide, stealing their lands and children, displacing populations and forcing them to convert to Christianity against their will (Broome, 2010).

The Catholic church has covered up hundreds of cases of paedophilia by its priests (BBC News, 6 February 2017) whilst continually condemning innocent sex, gender and sexuality diverse people and attempting to influence government to deny the latter equal rights (Bishops, Dioceses and Agencies of the Catholic Church, 10 December 2010). At the same time, the Catholic church has practised misogyny, denial of women's rights and forced women into roles of servitude and domesticity (McCarthy, 2018) and consistently hidden cases of rape within the church (McPhillips, 2019). It also has a history of being involved in money laundering (Perry, 2018).

We can also see that the Anglican church chooses to ignore the realities of sex and gender diversity, taking an approach of pushing people towards a strictly male or female identity, regardless of the recognised harm and offence that may cause sex or gender diverse people (Anglican Church Diocese of Sydney, 2017). The church donated \$1,000,000 towards blocking marriage equality in Australia (Browne, 2018). It has clearly stated it wishes to ban its premises from being used for any kind of activity that may be other than heteronormative (Koziol, 2018).

Conversion Therapy has been used by churches in Australia (Silver, 2014). All major medical and health organisations in the Western World have outrightly condemned conversion therapy programs as being harmful and ineffective. Sex and gender diverse people have been driven into these programs through religious programming, harassment, shaming, bullying and sex and gender diverse hate speech.

Hillsong is another church that covered up paedophilia (Pulpit and Pen, 2016). Ex-members of churches such as Hillsong have experienced trauma through the church's rejection and pejorative views of people who are sex, gender or sexuality diverse and being other than heteronormative (Butler, 2019). At one time this church also directed attendees toward conversation therapy.

To suggest to a child or adult that they are 'wrong' or will 'burn in Hell' simply because they are from sex and/or gender diverse groups is nothing less than ignorance, superstition, prejudice, abuse, emotional traumatising, a violent mental attack and emotionally devastating that frequently leads to post-traumatic stress disorder.

To suggest that same thing about a person to someone else is inciting ostracisation, shunning, shaming, harm and inhuman treatment. Private religious beliefs should not entitle someone to publicly propagate such hate speech under any circumstances as it is discrimination and unfair treatment.

It seems that during Australian history ordinary Australians have had far more to fear from religious groups than religious groups have from law abiding sex and/or gender diverse citizens. During the Religious Freedom Review (Ruddock, Croucher, Bennett, Brennan & Aroney, 2018) the majority of submissions against sex and gender diverse people's rights were clearly from extreme Christian groups who were clearly homophobic, transphobic and intersex-phobic and angry at losing the marriage equality plebiscite vote.

So, it can clearly be said that many extreme religious organisations fall far short of moral superiority and for many Australians they are not a source of guidance personally or for the nation's moral code. To force those ordinary Australians to accommodate their extreme religious beliefs and prejudices is to create an unequal society.

As a result of the Religious Freedom Review (Ruddock et al., 2018) held throughout Australia determining whether a Religious Freedom Act was necessary, the expert panel stated in their report:

"1.122 However, the Panel did not support enactment of a standalone Commonwealth enactment of this kind at this time."

"1.153 Having considered the various arguments as to why fundamental reform of the current legal framework for protecting freedom of religion is needed, the panel remained unconvinced of the urgent need for such change."

Thousands of sex and/or gender diverse people around the world are being harassed, abused, violently attacked and murdered due to prejudice and religious puritanism (Human Rights Campaign, 2019.) We know hate speech and preaching that sex and/or gender diverse people are wrong, sinful and evil leads to violence against these groups. Increased violence and murder of people who are from sex and/or gender diverse groups is driven by hate speech and has become so profuse in America that it prompted Dr Mukkamala on behalf of the American Medical Association (Ennis, 2019) to make the following statement:

“The number of victims could be even higher due to underreporting and better data collection by law enforcement is needed to create strategies that will prevent anti-transgender violence.”

Stonewall UK published research that indicated 40% of trans, including all sex and gender diverse groups, have been subjected to hate crimes and violent attacks because of their gender identity. Many intersex people or people with atypical sex characteristics are at times perceived by the public as trans. It further reported that four out of five people who experienced attacks upon LGBT people were reluctant to go to the police. (Bachmann & Gooch, 2017).

In Australia at this time sex and/or gender diverse groups are experiencing hate speech from religious groups and people such rugby player Israel Folau when referring to trans children whilst preaching:

“This is what the devil is trying to do, to instill into the government, into this world, into society, and it is slowly happening” (Sydney Morning Herald, 2019).

Such public religious hate speech clearly leads to harassment, social violence, reduced employment prospects, and a profound sense of lack of safety that sex and/or gender diverse groups feel and experience in public and private. Freedom of speech and opinion should never include a freedom to incite public hatred, discrimination or violence for religious reasons or any other.

Australia’s Moral Duty to Equality

Australia presents itself as a democracy to the world, an egalitarian society where all are respected and given equal opportunity, without harassment or discrimination. To use an Australian saying we believe in “a fair go”.

This being said, it is the moral duty of the government to protect minority sex and/or gender diverse groups from aggressive, abusive, violent and derogatory hate speech from religious persons and groups that damage and traumatise the lives of such children and adults to the point where where sex and/or gender diverse people become one of the highest groups of suicide risk in Australia.

To create a religious protection bill where religious persons and groups can discriminate against sex and/or gender diverse people, but not against other groups, is to extraordinarily single out sex and/or gender diverse groups. Also to allow religious people to discriminate against sex and/or gender diverse groups, when ordinary people cannot, is to give religious people special privileges.

Since Australia has no official religion it has by default separated state and church. By giving exemptions to religious people and organisations, in any state or territory, to discriminate against sex and/or gender diverse groups, in any way, the country endorses those religions as privileged and Australia becomes a religious country.

Therefore, we propose that all our recommendations be incorporated into any changes federally in the law to protect all sex and/or gender diverse groups against religious hate speech and vilification which should be classified as a hate crime, harassment and diminishment of human

rights. Religious freedom should never mean a license to harm. Australia has a duty to create its laws according to the UN human rights charter, of which it is a signatory, not on the beliefs of its religious populations.

References

Anglican Church Diocese of Sydney (2017). Gender identity: A report from the Social Issues

Committee. Retrieved from

https://www.sds.asn.au/sites/default/files/Gender%20Identity.Report2017.FINAL.v2.pdf?doc_id=NTU0NDg=

Australian Sex discrimination Act. (1984). Retrieved from

<https://www.legislation.gov.au/Series/C2004A02868>

Bachmann and Gooch (2017). LGBT in Britain - Hate crime and discrimination. *Stonewall*.

Retrieved from <https://www.stonewall.org.uk/lgbt-britain-hate-crime-and-discrimination>

BBC News (2017 February 6). Child abuse: 7% of Australian Catholic priests alleged to be

involved. Retrieved from <https://www.bbc.com/news/world-australia-38877158>

Bishops, Dioceses and Agencies of the Catholic Church. (2010 December 10). Australian

Human Rights Commission consultation on protection for discrimination on the basis of

sexual orientation and sex and/or gender identity. Retrieved from
http://www.sydneycatholic.org/pdf/AHRC_submission.pdf.

Bolger, R. (2019). Christian leaders speak out against proposed religious discrimination laws. *SBS News*. Retrieved from <https://www.sbs.com.au/news/christian-leaders-speak-out-against-proposed-religious-discrimination-laws>

Broome, R. (2010, February 1). Aboriginal Australians: A history since 1788 (4th ed.). *A&U Academic*.

Browne, R. (2018). Anglican Diocese of Sydney donates \$1 million to oppose same-sex marriage. Retrieved from <https://www.smh.com.au/national/nsw/anglican-diocese-of-sydney-donates-1-million-to-oppose-samesex-marriage-20171010-gyxj6p.html>

Burns, J. (2018, September 2018). Chief Rabbi publishes first LGBT guide for orthodox schools. *BBC News*. Retrieved from <https://www.bbc.com/news/education-45435583>

Butler, T. (2019, February 11). Is Hillsong Church anti-LGBT? What you need to know about its views. Retrieved from <https://www.pinknews.co.uk/2019/02/11/hillsong-church-anti-lgbt/>

Ennis, D. (2019, June 15). American Medical Association responds to ‘epidemic’ of violence against transgender community. *Forbes*. Retrieved from

<https://www.forbes.com/sites/dawnstaceyennis/2019/06/15/american-medical-association-responds-to-epidemic-of-violence-against-transgender-community/#65f9b7b510b4>

Grey J. A. (2008). *Military history of Australia*. (3rd ed.). *Cambridge University Press*.

Human Rights Campaign (2019). Violence against the transgender community. Retrieved from

<https://www.hrc.org/resources/violence-against-the-transgender-community-in-2019>

Jones et al. (3 February 2016). Intersex stories and statistics from Australia. *Open Book*

Publishing. Retrieved from <https://interactadvocates.org/wp-content/uploads/2016/01/Intersex-Stories-Statistics-Australia.pdf>

Koziol, M. (2018, October 19). Sydney Anglicans set to ban gay weddings and pro-LGBTI advocacy on church property. *Sydney Morning Herald*. Retrieved from

<https://www.smh.com.au/politics/federal/sydney-anglicans-set-to-ban-gay-weddings-and-pro-lgbti-advocacy-on-church-property-20181018-p50aga.html>

McCarthy, J. (2018, March 23). Catholic leaders ‘locked in misogynistic culture’, say reformists.

Retrieved from <https://www.smh.com.au/national/catholic-leaders-locked-in-misogynistic-culture-say-reformists-20180322-p4z5rl.html>

McPhillips, K. (2019, February 18). Catholic Church headed for another sex abuse scandal as

#NunsToo speak up. *The Conversation*. Retrieved from

<https://www.abc.net.au/news/2019-02-16/catholic-church-headed-for-another-sex-abuse-scandal-nunstoo/10817270>

Perrye, S. (2018, November 20). Top 5 financial transgressions committed by the Vatican.

European CEO. Retrieved from <https://www.europeanceo.com/finance/top-5-financial-transgressions-committed-by-the-vatican/>

Pulpit and Pen. (2016). Hillsong and pedophilia: Cover-ups galore down under.

Retrieved from <https://pulpitandpen.org/2016/08/11/hillsong-and-pedophilia-cover-ups-galore-down-under/>

Ruddock, P., Croucher, R., Bennett, A., Brennan, F., & Aroney, N. (2018). Religious freedom

review. Retrieved from

<https://www.ag.gov.au/RightsAndProtections/HumanRights/Documents/religious-freedom-review-expert-panel-report-2018.pdf>

Silver, M. (2014, November 24). The dangers of gay conversion therapy. *Sydney Morning Herald*. Retrieved from <https://www.smh.com.au/lifestyle/the-dangers-of-gay-conversion-therapy-20141124-11soyy.html>

Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., & Lin, A. (2017). Trans pathways, The mental health experiences and care pathways of young trans people. Perth, Australia: *Telethon Kids Institute*. Retrieved from <https://www.telethonkids.org.au/our-research/brain-and-behaviour/mental-health-and-youth/youth-mental-health/trans-pathways/>

Sydney Morning Herald. (2019, June 17). Folau launches fresh attack on gay and transgender people. Retrieved from <https://www.smh.com.au/sport/rugby-union/folau-launches-fresh-attack-on-gay-people-transgender-youths-20190617-p51yba.html>

United Nations (1948). Declaration of Human Rights. Retrieved from <https://www.un.org/en/universal-declaration-human-rights/>.

United Nations, International Covenant on Civil and Political Rights (ICCPR) for Australia.
(1966, December 16). Retrieved from:

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

United Nations (2015 September 29). Joint UN statement on ending violence and discrimination
against lesbian, gay, bisexual, transgender and intersex people. Retrieved from

<https://www.ohchr.org/EN/Issues/Discrimination/Pages/JointLGBTIstatement.aspx>