

Hon Simon O'Brien
Chairman
Standing Committee on Environment and Public Affairs
GPO Box A11
Perth WA 6837

To the Chair and Members

Petition 107 - Religious Schools Discrimination

Thank you for the opportunity to make a submission in relation to Petition 107, which my friend Karen Gilgallon and I started in late October. Our issue has not been taken to the Parliamentary Commissioner for Administrative Investigations.

Background information

Our petition respectfully calls to amend section 73 (s73) of the Equal Opportunity Act 1984 (WA) ("EOA") to remove the blanket exemption that allows religious schools to discriminate on the basis of sexuality and gender history.

We started our petition after the principal of Mandurah's Foundation Christian College – which receives millions of dollars of public funding – was legally able to discriminate against the gay father of a primary school student. The principal told the father that while his seven-year-old daughter was at school she could not talk about her father's same-sex relationship. The principal also stated that the girl would not have been allowed to enrol at the school if he knew her father was gay.

Equal Opportunity Act (section 73)

To paraphrase s73 of the EOA, an educational institution that provides education or training conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed can legally discriminate against someone on the basis of their sexuality or their gender history if they do so in good faith in order to prevent injury to the religious susceptibilities of that religion or creed. They can legally discriminate against employees, potential employees, contract workers and any person in "connection with the provision of education or training". This definition is broad enough to affect children attending the school, their parents, their teachers and potentially anyone else with even a remote connection to providing education.

Blanket exemption causes harm and promotes prejudice

Having free reign to openly discriminate against someone on the basis of their sexuality or gender history/identity sends an explicit message that lesbian, gay, bisexual, transgender and intersex (LGBTI) people are not equal, that they are 'wrong', that they should be excluded and feared. To legally sanction such discrimination and promote feelings of shame –, particularly in a school environment where all students and families should feel safe and included – impacts on the entire community.

It's estimated that same-sex attracted Australians have a suicide attempt rate up to 14 times higher than their heterosexual peers.¹ Up to 50% of transgender people have attempted suicide at least once in their lives.² For a more comprehensive look at the literature surrounding LGBTI mental health and suicide, please see Beyond Blue's Briefing Paper³.

The increased risk of mental health issues and suicide for LGBTI people isn't caused by their sexuality or gender identity in and of itself. Rather, it is the associated discrimination and exclusion, such as that allowed by s73 of the EOA.

As a lesbian who may one day have children, it saddens me that such blatant State-sanctioned

¹ P.3, Rosenstreich, G. (2013) LGBTI People Mental Health and Suicide. Revised 2nd Edition. National LGBTI Health Alliance.

² Ibid.

³ <https://www.beyondblue.org.au/docs/default-source/default-document-library/bw0258-lgbti-mental-health-and-suicide-2013-2nd-edition.pdf?sfvrsn=2>

discrimination exists.

Limited legal processes to challenge discrimination

The exemptions in s73 of the EOA mean LGBTI West Australians who wish to challenge a religious school's discriminatory actions cannot do so through the ordinary channels. For example, if a religious school discriminates against a child or their parents on the basis of their race, the person can lodge a complaint to the Equal Opportunity Commission and progress through avenues such as referral to the State Administrative Tribunal, where legal counsel may be provided and damages may be awarded, and even progress to Supreme Court.

However, if an LGBTI community member lodged a complaint in similar circumstances, the Equal Opportunity Commission may not have the remit to take on such a case, given there is no cause of action, and little chance of success due to the exemption in s73 of the EOA.

Alternative mechanism for religious schools to apply for exemptions

Ideally there should be no exemptions to discrimination on the basis of sexuality or gender identity or history. However, even if s73 of the EOA is amended, s135 provides an avenue for people or organisations to apply for exemptions on any ground in the EOA via the State Administrative Tribunal. Whether the exemption should be granted is decided on a case-by-case basis. The amendment to s73 that we are seeking would mean religious schools do not have the right to discriminate handed to them on a platter. However, any school that felt strongly enough about a particular case could pursue this matter through s135 of the EOA.

How can the Equal Opportunity Act be amended?

We propose two options for amending the EOA to remove the exemption: Option one is to remove s73 entirely. This is the preferable change as it reflects the strong public support to completely remove the exemption that religious schools currently have.

Option two is inserting "sexuality or gender history" into s73(3) after "other than the grounds of race, impairment or age". This option clearly removes the exemption and gives LGBTI community members access to a cause of action under s35W of the EOA if they are discriminated against by a religious school.

The petition

As at 3 January, 2015, 22,577 people have signed the online petition at change.org⁴; 115 signed the petition tabled in the Legislative Assembly; and 7 people signed the petition tabled in the Legislative Council on 3 December, 2015.

To achieve this enormous level of support in just a few weeks shows the overwhelming community support to change the EOA so religious schools that receive public funding are held to the same anti-discrimination laws as other publicly funded institutions. Those who signed the petition know that the exemption has no place in a progressive society that values diversity.

Kind regards

Beth Cole

⁴ https://www.change.org/p/peter-collier-colin-barnett-ban-schools-rejecting-kids-based-on-homophobia?recruiter=101460800&utm_source=share_petition&utm_medium=facebook&utm_campaign=share_facebook_responsive&utm_term=des-sm-share_petition-no_msg&fb_ref=Default