

Australian Law Reform Commission
Advisory Committee
PO Box 12953, George Street Post Shop
Queensland 4003

24 February 2023

Dear Advisory Committee,

Thank you for providing an opportunity for the NSW Advocate for Children and Young People (ACYP) to provide feedback to the Australian Law Reform Commission's (ALRC) inquiry into Religious Educational Institutions and Anti-Discrimination Laws and comment on the associated Consultation Paper.

ACYP is an independent statutory office overseen by the NSW Parliamentary Joint Committee on Children and Young People. ACYP advocates for and promotes the safety, welfare, wellbeing and voice of all children and young people aged 0-24 years, with a focus on the needs of those who are vulnerable or disadvantaged.

Research conducted by our office in recent years highlighted the additional disadvantage and vulnerabilities faced by young people who identify as LGBTQIA+. As a result, throughout 2022, ACYP conducted broad consultations with young people who identify as LGBTQIA+ and developed the [Voices of LGBTQIA+ Young People in NSW Report](#) (*LGBTQIA+ Report*). We have attached a copy of this report for the Committee's review.

For the purpose of this inquiry, ACYP's comments are focused on Proposition A and the associated proposals, relating to discrimination against students on the grounds of sexual orientation, gender identity, marital or relationships status, or pregnancy. ACYP supports Proposition A and goals to protect students' rights at school, specifically to prevent the expulsion or denied application of enrolment of a student based on their gender or sexual orientation.

We believe the report speaks to the need for this reform and have highlighted a few key issues below.

Throughout the consultations conducted in 2022, ACYP heard from one student who said they had been expelled from their Catholic school as a result of their sexuality. There were also students who had not been open about their sexuality or gender identity throughout their current or previous school experience, which they said directly related to their fear of being expelled (see p70 of the *LGBTQIA+ report*). Adoption of the proposals to support Proposition A will both protect students' rights as well as support students who may be afraid to be open about their identity for fear of negative consequences. While we understand there

are varying views in this space, we also assert that students' rights should be protected even if this practice is not widespread.

We note one of the potential impacts of Proposition A could be that a failure to address homophobic or transphobic bullying would be unlawful. Regarding this, we highlight the findings of our report that bullying – ranging from broad homophobic comments to direct physical harassment - was widespread among all school sectors, and that students felt teachers' intervention was limited. We draw the Committee's attention to *Chapter 2: Experiences of Education* and the sub-sections *Experiences with peers* and *Teacher intervention in bullying*. Some students felt a lack of teacher intervention made bullying behaviours even more harmful. Others felt the teacher's lack of intervention was evidence that teacher's personal views aligned with the bullying. We have included an excerpt below.

Despite the support students felt from their friends, the main issues students reported facing in schools were bullying, homophobia, transphobia, harassment and in some cases, physical violence. This was compounded by a lack of what young people felt was an appropriate response from their teachers and school leaders, some of whom young people felt were also disrespectful, homophobic or transphobic.

"I definitely experience a lot of people at the school being shit to say the least, especially there's a lot with teachers' discrimination at times too, which isn't good, because of personal bullying I've found from other peers and students, that makes it a really unsafe place to go to a teacher and be like, 'hey this is happening' because, you know, I know that it won't be important or like ... I don't know, it won't be like a thing that will be like 'oh we need to go fix that' because they won't, because they also have similar views to that."

It is important to note that not all students described this as the main issue they faced, however it was by far the most prevalent issue raised throughout the consultation. Even among those who reported that it was not their chief concern, some offered that this was only because they had changed schools and that their experiences of homophobia or transphobia were encounters from a previous school. (*LGBTQIA+ Report* p56-57)

ACYP notes the clarification in Proposal 7, that the content of the curriculum would not be subject to the *Sex Discrimination Act 1984 (Cth)*, but that "the way" religious perspectives are taught would be subject to review, to protect students from discrimination. ACYP recommends that further detailed guidance about these requirements may be needed to ensure students' wellbeing and rights are protected. Highlighting the findings of the report in *Chapter 2: Experiences of Education* under the subheading *Experiences with teachers*, we note that while some students across all school sectors had positive experiences with teachers, others did not and some of those at religious schools spoke about the difficulty they faced with the way the school's beliefs were taught.

Students who attended, or had previously attended, religious schools spoke about the difficulty being in classes where LGBTQIA+ concepts were discussed or taught as being sinful. At times this was taught by religious leaders in the school, but at other times regular teachers. One young person recounted their experience of having their geography teacher lecture them about why same sex marriage should not be legalised.

...Students pointed to these experiences as evidence of “internal hate” among the teaching staff. It was common for students at religious schools to raise concerns about their teachers’ views of homosexuality. For example, one student discussed their feeling that their teachers were secretly hoping to ‘fix’ their LGBTQIA+ identity. A few also raised fear about being expelled if their school found out about their gender identity or sexual orientation and one noted this had happened to them in their first year of high school. (*LGBTQIA+ Report* p69-70)

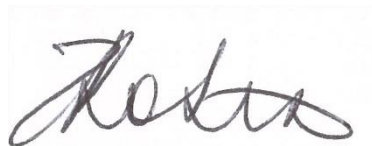
As noted above, a core mandate of ACYP is to consider the safety, welfare and wellbeing of children and young people across NSW and we commend the work of the ALRC in pursuing students’ rights throughout this inquiry, particularly given the vulnerability of young people who identify as LGBTQIA+.

ACYP recommends that, wherever possible, children and young people are meaningfully consulted in the development of decisions that will impact them. For instance, if the Australian Human Rights Commission (AHRC) is to develop further guidance as outlined in Proposal 13, students should be considered key stakeholders for consultation in that process. Similarly, consultation on further reforms recommended in Proposal 14 should also include the views of children and young people.

Included with this letter, please find some relevant quotes drawn from our *LGBTQIA+ Report*, so that young people’s perspectives, in their words, might inform the findings of the Committee.

Please do not hesitate to contact me at zoe.robinson@acyp.nsw.gov.au or my team at acyp@acyp.nsw.gov.au if we can be of any assistance as this review continues.

Yours Sincerely,



Zoë Robinson
Advocate
Office of the Advocate for Children and Young People

Appendix: The experiences of LGBTQIA+ young people in their words

"I went to a Catholic school for not even half a term and one of the kids found out that I had a girlfriend and then went and told the principal, and they actually expelled me from the school."

"I went to a religious country town school – obviously not the most ideal environment."

"... there was a teacher who literally went on a rant about how anyone that was any kind of not straight or cis deserved to burn in hell and was like meant to experience a great deal of pain and then a week later, one of the girls in our class came out as trans and like saying that she had transitioned but the school knew that and the teachers would have had to have known that and the teacher said that with the girl in the class, knowing exactly how that would affect her."

"I do recall at one of the private Anglican schools, I went for a year, there was an anti-trans lesson when it came to the religion class, because I remember them talking about ... teacher talking about transgender people, comparing them to people who said they identified as a different age or different race and like trying to say that it was crazy and unrealistic."

"They weren't supportive of it [identifying as LGBTQIA+], and they, they were quite fearful of it, it was almost like it was an issue that they wanted to fix."

"There was a teacher who straight up compared gay people to paedophiles in my year class."

"The school signed a thing saying that schools should be able to discriminate based on orientation and gender."

"At this school, I feel like I can be myself without being discriminated against, like it [has] always been like a very welcoming community here. But at my previous school, that was not the case. You have to be careful, you don't let the teachers know - definitely not the priest."

"The main challenge in school [student described it as a religious conservative school] is I can't be myself because of the fear I will get bullied or beat because everyone at that school is homophobic and the school says they're taking steps when they're not and it just feels like they don't care about me and it's always tiring to put on a boy mask and it's always hard to hear all the comments and not being able to do anything."

"I had like a group of students who were harassing me and they'd call me a slur, it wasn't the F slur, but it was still a queer related slur and they'd throw food at me a lot of the time and I didn't feel comfortable, and none of the teachers who were patrolling did anything about it."