



Australian  
Human Rights  
Commission

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# Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018

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Australian Human Rights Commission

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Submission to the Senate Legal and Constitutional Affairs Legislation  
Committee

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## 1 Introduction

1. The Australian Human Rights Commission (the Commission) welcomes the opportunity to make this submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (the Bill).
2. In October 2018, the Government, Opposition and minor parties all publicly committed to amend the *Sex Discrimination Act 1984* (Cth) (the SDA) to remove the ability for religious schools to discriminate against students on the basis of their sexual orientation or gender identity.<sup>1</sup>
3. The Commission supports this agreed objective.
4. Human rights are universal, inalienable, indivisible, interdependent and interrelated. As such, our law must accommodate all the human rights that are engaged. Particularly relevant in the context of religious schools are the rights of the child, the right to be free from discrimination, the rights of young parents and their children and the right to freedom of religion.
5. The Commission considers that the Bill would achieve the stated objective, by protecting the rights of children and the right to equality and non-discrimination, while also respecting the right to freedom of religion. A number of amendments have been proposed to the Bill. Of these, the Commission considers that the amendments proposed by Senator Patrick, on behalf of the Centre Alliance, in Sheet 8614 would helpfully clarify the operation of section 37 of the SDA.
6. This submission examines the rights engaged by the Bill and the proposed amendments. Finally, it considers this reform in the context of a comprehensive approach to protecting religious freedom while ensuring accommodation of all human rights.

## 2 Recommendation

7. The Commission recommends that the Bill be passed with the adoption of the amendment in Sheet 8614.

## 3 Human rights engaged by this Bill

### 3.1 The right to freedom of religion

8. The right to freedom of thought, conscience and religion is principally protected in Article 18 of the *International Covenant on Civil and Political Rights* (ICCPR), which provides that:
  1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
  2. No-one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice.
  3. 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.
  4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.<sup>2</sup>
9. Further protections for religion are contained in the ICCPR, especially:
  - Article 2(1) states that the rights of individuals set out in the Covenant must be ensured without distinction, including on the basis of religion
  - Article 4 protects freedom of religion even in times of public emergency
  - Article 20(2) prohibits advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence
  - Article 24(1) entitles children to protection without discrimination, including on the basis of religion
  - Article 26 protects the right to equality before the law and equal protection of the law, and requires states to enact laws that prohibit discrimination on the grounds of religion, alongside other grounds
  - Article 27 entitles minorities to practise their own religion.<sup>3</sup>

10. Article 14(1) of the *Convention on the Rights of the Child* (CRC) provides that parties to the CRC 'shall respect the right of the child to freedom of thought, conscience and religion'.
11. An equivalent right to freedom of religion is protected in Article 9 of the European Convention on Human Rights (ECHR),<sup>4</sup> and the right is also protected in a number of other international treaties.

### **3.2 The right to be free from discrimination on the basis of sexual orientation or gender identity**

12. Articles 2 and 26 of the ICCPR protect people from discrimination on the basis of 'race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.<sup>5</sup> Article 2(1) of the CRC protects an equivalent right in respect of children:

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.<sup>6</sup>

13. The phrase 'other status' has been interpreted by human rights treaty bodies to include attributes such as age, disability and sexual orientation:
  - In *Toonen v Australia* (1992), the UN Human Rights Committee held that the reference to 'sex' in ICCPR Article 2 included sexual orientation.<sup>7</sup>
  - In General Comment 20 (2009) the UN Committee on Economic, Social and Cultural Rights said that 'other status' includes sexual orientation. The Committee added that 'gender identity is recognised as among the prohibited grounds of discrimination; for example, persons who are transgender, ... often face serious human rights violations, such as harassment in schools or in the workplace'.<sup>8</sup>
14. Additionally, the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity (Yogyakarta Principles)<sup>9</sup> address a range of international human rights law standards and their application to matters of sexual orientation and gender identity. In particular, Principle 16 of the Yogyakarta Principles provides that '[e]veryone has the right to education, without discrimination on the basis of ... sexual orientation and gender identity' and calls on states to take all necessary legislative measures to ensure equal access to education and equal treatment of students, staff and teachers within the education system.

15. The Commission considers that the Bill protects the right of students to be free from discrimination on the basis of sexual orientation or gender identity by removing the ability of schools to discriminate against them on this basis.

### 3.3 The rights of the child

16. The rights of children are protected in the CRC. Particularly relevant to this Bill are Article 28, which deals with the right of all children to receive an education, and Article 29(a), which states that the education of the child must be directed to the 'development of the child's personality, talents and mental and physical abilities to their fullest potential.'
17. The UN Committee on the Rights of the Child has outlined four principles to help governments effectively implement the Convention:<sup>10</sup>
  - States are obliged to respect children's rights without discrimination.
  - The best interests of the child must be a primary consideration in all actions concerning children.
  - States are obliged to ensure to the maximum extent possible the survival and development of the child. The Committee has said that it 'expects States to interpret "development" in its broadest sense as a holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development'.
  - Due weight must be given to the child's right to express their views freely in all matters affecting them.<sup>11</sup>
18. There is considerable evidence that LGBTI children and young people experience higher rates of mental illness than their peers as a result of ongoing stigma associated with differing sexual orientations and gender identities, and the resulting discrimination, bullying and harassment. According to the National LGBTI Health Alliance:
  - LGBTI young people aged 16–27 are five times more likely to attempt suicide in their lifetime than the general population.
  - 18% of same-gender attracted and gender diverse young people aged 14–21 years have self-harmed. This increases to 32% of those who have experienced verbal abuse, and 54% of those who have experienced physical abuse.
  - LGBT people are twice as likely to have symptoms of a mental health disorder, and three and a half times more likely to be diagnosed with an anxiety disorder in their lifetimes.<sup>12</sup>

19. In 2014 the Young and Well Cooperative Research Centre and the University of Western Sydney conducted a study into the issues facing young Australians who are gender variant and sexuality diverse. This involved a survey of 1032 young people between the ages of 16-27 who identified as gender variant and sexuality diverse, as well as focus groups and workshops. They reported that:
- Participants frequently watched and learned from other young people 'coming out' within their secondary school environments. More often than not, out young people were bullied, and this meant that other young people decided not to reveal their sexual orientation or transgender status. Keeping this information secret has implications for the health and wellbeing of these young people.
  - The participants who did reveal their sexual orientation or transgender status within a secondary school environment encountered [...] homophobia from peers and teachers, [...] social isolation and disrupted education.
  - Teachers in government schools were more accepting and supportive than students, but [...] in religious affiliated schools students were more accepting and supportive than teachers.<sup>13</sup>
20. This report recommended that exemptions for schools in Anti-Discrimination legislation relating to sexuality should be repealed, to better protect the rights of students.<sup>14</sup>
21. A 2018 issues paper by the Western Australia Commissioner for Children and Young People noted:
- The school environment can be a particularly challenging experience for children and young people. High levels of bullying, violence and discrimination that can occur within school and education settings have a significant impact on the education, employment and health and wellbeing of LGBTI children and young people ... Having a diverse sexual orientation, diverse gender identity, or being intersex are not in themselves risk factors for poor mental health, rather it is the social exclusion and discrimination that LGBTI children and young people face which has a negative impact on their mental health and wellbeing. There is a distinct link between children and young people's experiences of homophobic or transphobic discrimination and abuse with poor mental health outcomes, self-harm, suicide attempts and drug use.<sup>15</sup>
22. This highlights the very significant harms that can result from children being subject to discriminatory treatment on the basis of their sexual orientation, gender identity or intersex status, and emphasises that the best interests of children, and their holistic development, are served by being protected from all discrimination. This Bill serves that objective.

### 3.4 The rights of young parents and their children

23. The United Nations Committee on the Rights of the Child has emphasised the need to support young parents and their children in light of their particular vulnerability:

Articles 24 and 27 of the Convention require that adolescent parents and caregivers be provided with basic knowledge of child health, nutrition and breastfeeding, and appropriate support to assist them in fulfilling their responsibilities towards the children they are responsible for and, when needed, material assistance with regard to nutrition, clothing and housing. Adolescent caregivers need extra support in order to enjoy their rights to education, play and participation.<sup>16</sup>

24. As a party to the CRC, the Australian Government must uphold the rights of all young parents and their children, as well as pregnant girls, including the right to access education, and take appropriate measures to ensure that children are protected against all forms of discrimination on the basis of the child's status or that of the child's parents.
25. In 2017 the National Children's Commissioner conducted a project investigating the rights and needs of young parents and their children, many of whom reported being directly or indirectly discriminated against in relation to continuing or accessing education. The Commissioner recommended reviewing laws, policies and practices to ensure that access to education for all children is guaranteed (recommendation 12) and discrimination on the basis of pregnancy, breastfeeding or parental status is prohibited (recommendation 13).<sup>17</sup>

## 4 The Bill

26. The Bill would repeal the exemption in section 38(3) of the SDA, which currently permits educational institutions established for religious purposes to discriminate against students on the ground of their sexual orientation, gender identity, marital or relationship status or pregnancy.
27. In order to fall within the current exemption in section 38(3), the discrimination must be done 'in good faith in order to avoid injury to the religious susceptibilities' of adherents of the particular religion in respect of which the institution was established. Provided that this criterion is satisfied, the kinds of discrimination currently permitted include:<sup>18</sup>
- refusing or failing to accept the person's application for admission as a student

- discriminating in relation to the terms or conditions on which the institution is prepared to admit the person as a student
  - denying the student access, or limiting the student's access, to any benefit provided by the institution
  - expelling the student
  - subjecting the student to any other detriment.
28. As noted above, the Government, Opposition and minor parties agree that this exemption in section 38(3) should be repealed.
29. The Bill also proposes an amendment to section 37 of the SDA. This section contains general exemptions regarding the activities of religious bodies. In particular, section 37(1)(d) provides a general exemption for any act or practice of a body established for religious purposes if the act or practice 'conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion'.
30. The Bill proposes to amend section 37 to avoid the possibility of educational institutions relying on the more general exemption in that section to engage in discriminatory practices against students following the repeal of section 38(3).<sup>19</sup>
31. As discussed in more detail below, the Bill does not propose to change the indirect discrimination provisions, which are subject to a test of reasonableness.

## **5 Proposed amendments to this Bill**

32. A number of amendments to the Bill have been proposed by the Government and other parties. These address concerns that fall broadly into four categories: those concerning the meaning of 'education' and 'educational institution'; those concerning the ability of religious schools to teach and organise their affairs in accordance with their beliefs; those concerning the 'reasonableness' test and the best interests of the child; and those concerning employees of educational institutions.

### **5.1 The meaning of 'education' and 'educational institution'**

33. The Bill proposes to add a paragraph to the general exemption for religious bodies in section 37 stating that the general exemption in section 37(1)(d) does not apply to an act or practice of a body established for religious purposes if:

(a) the act or practice is connected with the provision, by the body, of education; and

(b) the act or practice is not connected with the employment of persons to provide that education.<sup>20</sup>

34. The Government has expressed concern that this proposed amendment to section 37 could make unlawful educational activities of certain religious bodies which do not fall within the definition of 'educational institutions' and thereby constitute an unwarranted interference with the right to freedom of religion.<sup>21</sup>
35. The term 'body established for religious purposes' would cover bodies such as temples, churches, mosques and synagogues. Moreover, it is conceivable that an 'act or practice connected with the provision, by the body, of education' could include a church-run seminar on marriage, a Torah study course run by a synagogue, or even a sermon in a mosque. Hence, it would be useful to clarify the scope of sections 37 and 38 of the SDA, as amended by the Bill.
36. The Government amendment in Sheet KQ147 proposes to address this problem by removing the amendment to section 37 altogether.<sup>22</sup> The Commission considers this unsatisfactory, as it may allow educational institutions to continue to rely on the general exemption in section 37(1)(d) following the repeal of section 38(3).
37. A proposed amendment from Senator Patrick, Centre Alliance, outlined in Sheet 8614, aims to deal with the concern more specifically by replacing the word 'body', in item 1 of Schedule 1 of the Bill, with the words 'educational institution'.<sup>23</sup>
38. This amendment would clarify that the Bill only purports to affect the education and training activities of educational institutions, not other religious bodies. For this reason, the Commission recommends that the amendment outlined in Sheet 8614 be adopted.
39. An alternative amendment to section 37(3) has been proposed by the Australian Greens in Sheet 8601. That amendment would have the effect that no religious body could rely on the exemption in section 37(1)(d) in relation to an act or practice connected with the provision of education. Because of the breadth of activities that might constitute the provision of education, and the application of this proposed amendment to bodies beyond those that are 'educational institutions' for the purposes of the SDA, the Commission does not support this proposed amendment in the present Bill.

## 5.2 The ability of religious schools to teach and organise their affairs in accordance with their beliefs

40. The Government amendment in Sheet KQ149 proposes to clarify that religious educational institutions are able to maintain teaching activities that are in good faith in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed.<sup>24</sup>
41. The Explanatory Memorandum for this amendment notes that ‘many faith-based schools have raised concerns that the removal of this exemption [in s 38(3) of the SDA] entirely may challenge their ability to teach in accordance with their religious beliefs or ethos’.<sup>25</sup>
42. The SDA makes unlawful two kinds of conduct: direct and indirect discrimination. ‘Direct’ discrimination involves treating a person less favourably *by reason of*, for example, their sexual orientation or gender identity (or because of actual or imputed characteristics that appertain to people with a particular sexual orientation or gender identity).<sup>26</sup> ‘Indirect’ discrimination involves imposing a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging people with, in this case, a particular sexual orientation or gender identity.<sup>27</sup>
43. The agreed objective of the Bill is to remove the ability for religious schools to discriminate *directly* against students on the basis of their sexual orientation or gender identity. The Commission has not identified any credible justification for the claim that it should be legally permissible to treat particular students less favourably by reason of their sexual orientation, gender identity, marital or relationship status or pregnancy.
44. Therefore, it seems more likely that the proposed amendment in Sheet KQ149 is motivated by a concern that teaching conducted in accordance with a religious belief or ethos may amount to *indirect* discrimination.
45. The Explanatory Memorandum accompanying Sheet KQ149 offers an example of the kind of conduct that the amendment in that sheet is intended to protect:
 

A school that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed teaches that its doctrines, tenets, beliefs or teachings prescribe a particular view on a moral matter, or a particular understanding of social institutions. The teaching is provided in good faith.<sup>28</sup>
46. Section 7B of the SDA currently provides that the imposition of a condition, requirement or practice will not amount to indirect discrimination ‘if the condition, requirement or practice is reasonable in the circumstances’.

47. Section 7B therefore already provides that teaching in accordance with a religious belief or ethos will not amount to indirect discrimination if any conditions or requirements imposed on students are reasonable in all the circumstances. In the Commission's view, this provides an adequate protection for educational institutions.
48. Further, there is a risk that the amendment in Sheet KQ149 could make certain forms of direct discrimination lawful, which would undermine the agreed objective of the Bill.
49. For these reasons, the Commission does not support this amendment.

### **5.3 The 'reasonableness' test and the best interests of the child**

50. The Government amendments in Sheets KQ148, KQ150 and KQ151 deal with the indirect discrimination provisions in section 7B of the SDA. The proposed amendments in Sheets KQ150 and KQ151 add factors that would need to be taken into account when determining whether an act or practice, which could be seen as discriminatory against students, is 'reasonable'.<sup>29</sup> The proposed amendments in Sheet KQ148 would prescribe a set of circumstances in which the 'reasonableness' test would be met, namely:
  - 'the condition, requirement or practice is imposed, or proposed to be imposed, in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed' and
  - it is imposed 'in a manner that is consistent with a policy of the educational institution' that is in writing and publicly available, and
  - 'if the student is a child—in imposing, or proposing to impose, the condition, requirement or practice, the educational institution has regard to the best interests of the child'.<sup>30</sup>
51. As noted in section 4.2 above, the Commission considers that the current form of section 7B contains appropriate protection for religious schools to teach and organise their affairs in accordance with their beliefs.
52. The Commission observes that these proposed amendments contain provisions emphasising the 'best interests of the child'. This important principle is reflected in Article 3 of the CRC, referred to above. As there are many possible ways of incorporating this principle into domestic Australian law, it is important to do so in a way that most effectively protects the relevant human rights at stake.
53. The UN Committee on the Rights of the Child has emphasised that the 'best interests of the child' principle must be a primary consideration when

undertaking any measures, including legislation, in relation to children.

They note:

The expression 'primary consideration' means that the child's best interests may not be considered on the same level as all other considerations. This strong position is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of children are not highlighted, they tend to be overlooked.<sup>31</sup>

54. The Committee has also noted that any form of discrimination in the provision of education is inconsistent with the Convention on the Rights of the Child: especially Article 28, which deals with the right of all children to receive an education, and Article 29, which states that the education of the child must be directed to 'the development of the child's personality, talents and mental and physical abilities to their fullest potential'. The Committee goes on to state:

Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities.<sup>32</sup>

55. Under international human rights law, the requirement to give primary consideration to the best interests of children should be considered alongside the requirement not to discriminate against children in the provision of education. In this light, the Commission considers that the most effective way for Australia to adhere to its obligations under the CRC, including the requirement to give primary consideration to the best interests of the child, would be to prohibit discrimination on the basis of sexual orientation or gender identity in this context.
56. By definition, discrimination involves unfavourable treatment on the basis of a protected attribute. The Commission has been unable to identify a circumstance in which unfavourable treatment towards a child on the basis of his or her sexual orientation or gender identity could be in the child's best interests. To avoid suggesting otherwise, the Commission does not support including in the SDA a provision that allows discrimination where it is deemed to be in a child's best interests.

#### **5.4 Discrimination against employees of educational institutions**

57. The Bill proposes to increase the protection for students from discrimination on the basis of sexual orientation or gender identity. The amendments proposed by the Australian Greens in Sheet 8601 would

extend the operation of the Bill to include staff and contract workers of educational institutions established for religious purposes. The proposed amendments would do this by repealing section 38 of the SDA in its entirety.

58. This submission deals with the narrow question of discrimination against students, as proposed in the Bill as originally drafted. The Commission considers that broader reforms to the exemptions in the SDA should be considered in the context of the suite of proposals outlined in sections 6.1 and 6.2 of this submission.

## 6 Further reforms

59. The Commission has made a number of submissions in recent years to inquiries into freedom of religion, most recently to the Religious Freedom Review led by the Hon. Philip Ruddock.<sup>33</sup>
60. The Commission considers that this Bill would (with the adoption of the amendment in Sheet 8614) maintain the right to freedom of religion in Australia, and achieve the important goal of removing discrimination against students on the basis of their sexual orientation, gender identity, marital or relationship status or pregnancy.
61. Several further reforms are also needed in order to better protect freedom of religion alongside other rights in Australia. (For the avoidance of doubt, the Commission submits that these should be considered separately, and should not delay the passage of the present Bill).

### 6.1 Legislative reforms

62. The Commission proposes:
- Protection from discrimination on the grounds of sex, sexual orientation, gender identity, marital or relationship status, or pregnancy for teachers and other staff employed by religious educational institutions, with consideration given to amending the SDA to include a general limitations clause to replace existing specific exemptions. This should be done in such a way as to respect freedom of religion and schools' ability to teach and organise their affairs in accordance with their beliefs.
  - New legislation prohibiting discrimination on the basis of religion or other belief. We note that the Government has, in response to the Report of the Religious Freedom Review (Ruddock Report), proposed such legislation, and we look forward to examining a Bill in detail.

- Comprehensive legislation giving full effect to the ICCPR in Australian law. Human rights are universal, inalienable, indivisible, interdependent and interrelated. As such, our laws must protect all rights equally.

## 6.2 Non-legislative reforms

63. The Commission proposes:
- Collection and analysis of quantitative information on the nature and prevalence of direct violations of religious freedom, including abuse, intimidation, violence or discrimination on the basis of religion, and restrictions on the ability of people to educate their children in a manner consistent with their religious belief.
  - Public education about religion and its place in Australia, the importance of the right to freedom of religion and belief, and the current protections for religious freedom in Australian and international law.
  - The establishment of a multi-faith advisory group to advise the Government on the practical experience of religion and belief, as well as policy and law reform in this area.
64. The Commission notes that, in respect of the first two bullet points above, the Government has proposed that the Commission be resourced to undertake these activities. We look forward to discussing this further with the Government in due course.

## 7 Conclusion

65. The Commission supports the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 with the adoption of the amendment in Sheet 8614.
66. The Commission would welcome the opportunity to further assist the Committee in its inquiry.

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<sup>1</sup> See, for example, Ellen Coulter, 'Scott Morrison Says independent schools will not be able to expel students due to their sexuality', *ABC Online*, 13 October 2018, available at <https://www.abc.net.au/news/2018-10-13/morrison-government-vows-to-end-discrimination-of-gay-students/10372956> (viewed 21 December 2018).

<sup>2</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). At <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (viewed 20 December, 2018).

<sup>3</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). At <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (viewed 20 December, 2018).

- <sup>4</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at <https://www.refworld.org/docid/3ae6b3b04.html> (viewed 20 December 2018).
- <sup>5</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). At <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (viewed 20 December, 2018).
- <sup>6</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, available at <https://www.refworld.org/docid/3ae6b38f0.html> (viewed 21 December 2018).
- <sup>7</sup> Human Rights Committee, *Toonen v Australia*, Communication No. 488/1992 (1992); Human Rights Committee, *Young v Australia*, Communication No. 941/2000 (2003) [10.4]. At [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f78%2fD%2f941%2f2000&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f78%2fD%2f941%2f2000&Lang=en) (Viewed 20 December 2018).
- <sup>8</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para 2, of the International Covenant on Economic, Social and Cultural Rights)* 2 July 2009, UN Doc E/C.12/GC/20, available at <https://www.refworld.org/docid/4a60961f2.html> (viewed 20 December 2018).
- <sup>9</sup> *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity*, adopted March 2007, available at [http://www.yogyakartaprinciples.org/wp\\_content/uploads/2016/08/principles\\_en.pdf](http://www.yogyakartaprinciples.org/wp_content/uploads/2016/08/principles_en.pdf) (viewed 21 December 2018).
- <sup>10</sup> These principles are all expressly outlined in the *Convention on the Rights of the Child*.
- <sup>11</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, UN Doc CRC/GC/2003/5 at [12], available at <https://www.refworld.org/docid/4538834f11.html> (viewed 21 December 2018).
- <sup>12</sup> National LGBTI Health Alliance, 'The Statistics at a Glance: The Mental Health of Lesbian, Gay, Bisexual, Transgender and Intersex People in Australia', Web Page, at <https://lgbtihealth.org.au/statistics/> (viewed 21 December 2018).
- <sup>13</sup> Robinson, KH, Bansel, P, Denson, N, Ovenden, G & Davies, C, 2013, *Growing Up Queer: Issues Facing Young Australians Who Are Gender Variant and Sexuality Diverse*, Young and Well Cooperative Research Centre, Melbourne, viii.
- <sup>14</sup> Robinson, KH, Bansel, P, Denson, N, Ovenden, G & Davies, C, 2013, *Growing Up Queer: Issues Facing Young Australians Who Are Gender Variant and Sexuality Diverse*, Young and Well Cooperative Research Centre, Melbourne, ix.
- <sup>15</sup> Western Australia Commissioner for Children and Young People, 'Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) children and young people', Issues Paper, February 2018, at <https://www.cryp.wa.gov.au/media/2841/issues-paper-lgbti-children-and-young-people-february-2018.pdf> (viewed 21 December 2018).
- <sup>16</sup> Committee on the Rights of the Child, *General Comment No. 20 on the implementation of the rights of the child during adolescence*, CRC/C/GC/20 6 December 2016 [55]
- <sup>17</sup> Australian Human Rights Commission, *The Rights and Needs of Young Parents and their Children: a Summary of the Key Findings from the Children's Rights Report 2017*, available at [https://www.humanrights.gov.au/sites/default/files/AHRC\\_CRR\\_2017\\_Summary.pdf](https://www.humanrights.gov.au/sites/default/files/AHRC_CRR_2017_Summary.pdf)
- <sup>18</sup> *Sex Discrimination Act 1984* (Cth), ss 21 and 38(3).
- <sup>19</sup> Explanatory Memorandum, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth), p 2.
- <sup>20</sup> Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth), Sch 1, item 1.
- <sup>21</sup> Explanatory Memorandum Relating to Amendment Sheet KQ147, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth), [6].

- <sup>22</sup> Amendment Sheet KQ147, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth).
- <sup>23</sup> Amendment Sheet 8614, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth).
- <sup>24</sup> Amendment Sheet KQ149, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth).
- <sup>25</sup> Explanatory Memorandum Relating to Amendment Sheet KQ149, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth), [3].
- <sup>26</sup> *Sex Discrimination Act 1984* (Cth) ss 5A(1) and 5B(1).
- <sup>27</sup> *Sex Discrimination Act 1984* (Cth)ss 5A(2) and 5B(2).
- <sup>28</sup> Explanatory Memorandum Relating to Amendment Sheet KQ149, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth), [6].
- <sup>29</sup> Amendment Sheet KQ151, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth); Amendment Sheet KQ151, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth). The difference between these amendment sheets is that Sheet KQ151 is limited to primary schools and secondary schools, while Sheet KQ150 relates to all educational institutions as defined by the SDA.
- <sup>30</sup> Amendment Sheet KQ148, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth) and Amendment Sheet KQ151, Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth).
- <sup>31</sup> UN Committee on the Rights of the Child (CRC), *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art.3 para 1)*, 29 May 2013, UN Doc CRC/C/GC/14, available at <https://www.refworld.org/docid/51a84b5e4.html> (viewed 8 January 2019).
- <sup>32</sup> UN Committee on the Rights of the Child (CRC), *General Comment no. 1 (2001), Article 29 (1), The aims of education*, 17 April 2001, UN Doc CRC/GC/2001/1, available at <https://www.refworld.org/docid/4538834d2.html> (viewed 8 January 2019).
- <sup>33</sup> Australian Human Rights Commission, *Religious Freedom Review: Submission to the Expert Panel*, February 2018, also available at <https://www.humanrights.gov.au/submissions/religious-freedom-review-2018>.