

# Submission to the NSW Anti-Discrimination Act Review

*On behalf of the research team funded by the Australian Research Council Discovery Grant ‘Youth, Sexuality, and Religion: Digital Media, School Cultures, Exemptions’<sup>1</sup>.*

## **Our team**

We are a team of eight scholars collaborating on an ARC-funded Discovery Project. We are internationally recognised experts across several fields including Youth Studies, Education, Sociology, Religion Studies, Psychology, Cultural Studies, and Gender and Sexuality Studies. Through the combination of our expertise, we are able to understand this issue deeply and assist in envisioning a new legislative landscape that protects the rights of all stakeholders. Our team includes:

- Professor Anna Hickey-Moody, RMIT University
- Associate Professor Joel Windle, University of South Australia
- Professor Alphia Possamai-Inesedy, Western Sydney University
- Professor Katherine Johnson, RMIT University
- Dr James Gardiner, Western Sydney University
- Dr Alexandra Ciaffaglione, RMIT University
- Dr Lizzie Maughan, University of South Australia
- Margaret Lovell, University of South Australia

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<sup>1</sup> <https://www.youthreligionsexuality.com>

## Summary of recommendations

1. Amend the Anti-Discrimination Act 1977 (NSW) by removing Section 56(d) (religious exceptions allowing discrimination on grounds including sexual orientation, gender identity, and marital status).
2. Remove provisions in the Act permitting religious educational institutions to discriminate in employment against staff based on sexual orientation or gender identity.

These align with *Australian Law Reform Commission's* recommendation to repeal Section 38 of the Federal Sex Discrimination Act<sup>2</sup>.

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<sup>2</sup> Australian Law Reform Commission. 2024, *Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-Discrimination Laws*. <https://www.alrc.gov.au/news/adl-final-report-tabled/>

## Our focus

Our submission responds to terms of reference 1 and 8 of this review, which are:

1. Whether the Act could be modernised and simplified to better promote the equal enjoyment of rights and reflect contemporary community standards
8. Exceptions, special measures and exemption processes.

This submission provides context, evidence, and analysis that demonstrates the need to better protect and support LGBTQ+ students and staff in religious schools by removing the exemptions to the Anti-Discrimination Act. Our research demonstrates the ways that religious LGBTQ+ community members are erased by the current framework and instead highlights the many ways that LGBTQ+ rights coexist with religious belief in everyday people's lives.

## Important context

We would like to affirm the significance and helpfulness of *Equality Australia's* national report<sup>3</sup> on LGBTQ+ discrimination in faith-based schools and organisations titled 'Dismissed, Denied and Demeaned', released in March 2024. We recommend that the NSW Law Reform Commission read this report thoroughly and implement its recommendations in full.

In particular, we restate for the Commission that "students in religious educational institutions are particularly vulnerable to LGBTQ+ discrimination under Commonwealth, **New South Wales** and Western Australian laws" (p. xix) and that "workers in religious educational institutions and faith-based service providers are particularly vulnerable to LGBTQ+ discrimination under Commonwealth, **New South Wales**, Queensland, South Australian and Western Australian laws" (p. xx). Clearly, New South Wales is lagging behind when it comes to protecting the rights of the LGBTQ+ community, in particular young people and teachers in religious schools.

The key findings of this report accurately sum up the state of affairs in NSW, according to our expert perspective. These are that:

- LGBTQ+ discrimination is endemic across religious schools and organisations in Australia;
- LGBTQ+ discrimination affects LGBTQ+ people and the people who love, support and affirm us;
- our laws do not protect all of us, equally; and

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<sup>3</sup> Kassisi, G. and Ray, O. 2024. *Dismissed, Denied and Demeaned: LGBTQ+ Discrimination in Faith-Based Institutions in Australia*. Equality Australia. Australia. <https://coilink.org/20.500.12592/gxyg72w>

- Australia is out of step with international law and practice in comparable overseas jurisdictions such as Canada, the UK, South Africa, and the European Court of Human Rights, where the rights of LGBTQ+ people to equality and non-discrimination have been prioritised over unconditional religious freedoms (p. xxii)

## Why change to the Anti-Discrimination Act is urgent and necessary

1. Discrimination and profound harm against LGBTQ+ students in NSW religious schools is endemic.
- **Youth wellbeing:** In our research<sup>4</sup> with queer and religious young people, participants reported being made to feel like they “had to choose” between their religion and sexuality at school. This had profound effects on their mental health, quality of learning, and the quality of their relationships with peers, teachers, families, and broader communities.  
LGBTIQ+ Health Australia<sup>5</sup> has found that LGBTQA+ young people aged 16-17 are almost five times more likely to have attempted suicide in their lifetime than same sex attracted youth and transgender people aged 14-25 are fifteen times more likely.
  - **Impact of school exclusion:** Students report being disciplined, expelled, and placed in inappropriate counselling relationships to ‘pray the gay away’<sup>6</sup> – causing isolation, reduced learning outcomes, strained peer/family relations, and mental health trauma.
  - **Enabling cultures of silence:** Our research has found that the current legislative environment facilitates a culture of silence around issues of gender and sexuality in some religious schools. This culture of silence led schools to ignore or permit homophobic and transphobic bullying. Owen, a young gay man from Sydney, explained that when he was the victim of homophobic bullying, the teachers noticed “but they didn't intervene. They didn't care or it was a slap on the wrist.” The religious school he went to also failed to discuss LGBTQ+ relationships in any part of the curriculum. Owen explained, “There was no conversation about, you know, bisexual people, homosexual people, pansexual people, asexual people, you know, no conversations about it and no conversations about gender diversity. And so when you're, you know, as a teenage boy realising who he is in

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<sup>4</sup> A. Hickey-Moody, K. Johnson, A. Possamai-Inesedy, J. Windle, A. Ciaffaglione, J. Gardiner, M. Lovell & L. Maughan. (2025) *Youth Religion Sexuality: Interim Project Report*. RMIT University, Online

<sup>5</sup> LGBTIQ+ Health Australia. 2021. *Snapshot of Mental Health and Suicide Prevention Statistics for LGBTIQ+ People*.

[https://assets.nationbuilder.com/lgbtihealth/pages/549/attachments/original/1648014801/24.10.21\\_Snapshot\\_of\\_MHSP\\_Statistics\\_for\\_LGBTIQ\\_People\\_-\\_Revised.pdf?1648014801](https://assets.nationbuilder.com/lgbtihealth/pages/549/attachments/original/1648014801/24.10.21_Snapshot_of_MHSP_Statistics_for_LGBTIQ_People_-_Revised.pdf?1648014801)

<sup>6</sup> Kassisieh, G. and Ray, O. 2024. *Dismissed, Denied and Demeaned: LGBTQ+ Discrimination in Faith-Based Institutions in Australia*. Equality Australia. Australia. <https://coilink.org/20.500.12592/gxyg72w>

the back of a PDHPE class, and all you're seeing is, you know, this is what should happen... It's kind of difficult, you know, from an emotional standpoint, it's difficult. I don't fit into this category. Where do I fit?" This gap in education relevant to LGBTQ+ students was experienced by all of our study's NSW participants that attended Christian schools. We also heard reports of student-led LGBTQ+ initiatives being quashed by leaders and parents of religious schools.

2. Being punished for your gender and/or sexuality at work in NSW must end.
  - **Teacher safety:** Discrimination is profoundly damaging for LGBTQ+ teachers, whose gender and/or sexuality do not interfere with their capacities to educate young people on their chosen areas of specialisation. However, within their workplace, LGBTQ+ teachers are being pushed to stay silent, some being forced to hide their queerness through performing heterosexuality and using 'beards'.<sup>7</sup> LGBTQ+ teachers' identities are increasingly being surveilled, because schools (religious and non-religious) prioritise the comfort of heterosexual and cis-gendered staff at the expense of the wellbeing of LGBTQ+ teachers and students<sup>8</sup>.
  - **Workplace discrimination:** Scholarship is progressively highlighting how the particular context of religious schools harm LGBTQ+ teachers.<sup>9</sup> In NSW, a teacher transitioning gender was allegedly sidelined and denied teaching shifts for a year within Catholic systemic education – a case now in federal court<sup>10</sup>. Beyond individual cases, many experiences of LGBTQ+ teachers within religious

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<sup>7</sup> Ciaffaglione, A. 2023. *LGBQ Teacher Identities in Australian Catholic School Workplaces*. Doctoral dissertation, RMIT University.

<sup>8</sup> Ferfolja, T. 2020. *Gender and Sexuality Diversity in a Culture of Limitation: Student and teacher Experiences in Schools*. Taylor & Francis Group

<sup>9</sup> Carlile, A. 2020. Teacher experiences of LGBTQ-inclusive education in primary schools serving faith communities in England, UK. *Pedagogy, Culture and Society*, 28(4), 625-644. <http://dx.doi.org/10.1080/14681366.2019.1681496>;

Neary, A., Gray, B., & Sullivan, M. 2018. Lesbian, Gay, and Bisexual teachers' negotiations of civil partnership and schools: Ambivalent attachments to religion and secularism. *Discourse: Studies in the Cultural Politics of Education*, 39(3), 434-447. <https://doi.org/10.1080/01596306.2016.1276432>

Ferfolja, T. 2005. Institutional Silence: Experiences of Australian Lesbian teachers working in Catholic high schools. *Journal of Gay & Lesbian Issues in Education*, 2(3), 51-66. [https://doi.org/10.1300/J367v02n03\\_05](https://doi.org/10.1300/J367v02n03_05).

<sup>10</sup> Kelly, Caity. January 1, 2025. *Teacher who told Sydney Catholic Schools she was transitioning allegedly asked to move and not given shifts*. The Guardian. [https://www.theguardian.com/world/2025/jan/21/teacher-sydney-transitioning-job-change-discrimination-case-ntwnfb?CMP=share\\_btn\\_url](https://www.theguardian.com/world/2025/jan/21/teacher-sydney-transitioning-job-change-discrimination-case-ntwnfb?CMP=share_btn_url)

schools are embedded in the school culture, tied to religious traditions, culture and doctrine, which results in blatant homophobia and alienation.<sup>11</sup>

- **Unsafe learning environments:** Further, when a teacher is punished for being LGBTQ+ or is forced to hide their identity, students suffer. This kind of school culture, fostered by the current legislative environment, promotes shame, isolation, and fear for LGBTQ+ students, teachers, and allies alike. This explicitly goes against educational policy<sup>12</sup> which highlights the importance of students to feel like they belong in their school community, linking to student voice, empowerment, and feelings of safety.

## Experiences in comparable jurisdictions

In 2021, Victoria passed the *Equal Opportunity (Religious Exceptions) Amendment Bill 2021* with strong support across the chamber. This law removed exemptions from the state's anti-discrimination laws that were enabling religious organisations such as schools and services providers to discriminate against staff, students and people seeking to access services on the basis of their sexual orientation, gender identity, marital or parental status.

In Victoria's approach, faith-based schools and organisations are still able to employ people who share their beliefs in positions where religion is essential to the role, and where it is reasonable and proportionate to do so. But faith-based organisations are no longer be able to fire or turn away LGBTQ+ staff who can do the job required of them, and students can no longer be punished, discriminated against, or expelled on the basis of their gender or sexuality.

This balance between the carve-outs given to religious schools and anti-discrimination protections for LGBTQ+ students and staff aligns with the recommendations of the *Australian Law Reform Commission (ALRC)*'s review into the Sex Discrimination Act<sup>13</sup>. The ALRC review recommends that the Federal Government “substantially narrow the circumstances in which discrimination by religious educational institutions against their students and staff is permissible at law” so that “religious schools are in much the same position as all other schools, except that religious schools would not be

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<sup>11</sup> Ciaffaglione, A. 2023. *LGBQ Teacher Identities in Australian Catholic School Workplaces*. Doctoral dissertation, RMIT University.

Gray, E.M., Harris, D., & Jones, T. 2016. Exclusionary spaces and points of interruption for Australian LGBTQ teachers. *Sexualities*, 19(3), 286-303. <https://doi-org.ezproxy.lib.rmit.edu.au/10.1177%2F1363460715583602>.

<sup>12</sup> NSW Department of Education. (2025). Our Plan for NSW Public Education. *NSW Government: Education*. <https://education.nsw.gov.au/about-us/strategies-and-reports/plan-for-nsw-public-education#About1>

<sup>13</sup> Australian Law Reform Commission. 2024, *Maximising the Realisation of Human Rights: Religious Educational Institutions and Anti-Discrimination Laws*. <https://www.alrc.gov.au/news/adl-final-report-tabled/>

prohibited by the *Fair Work Act* from being able to give preference in employment to a person of the same religion where that is reasonably necessary and proportionate”, for example in the role of a religious studies teacher.

## LGBTQ+ rights and religion: Not a binary conversation

*Equality Australia* has identified that around one in four LGBTQ+ people profess a religion or faith, and most LGBTQ+ people support protections for people of faith to practice their religion freely and safely<sup>14</sup>. Further, many people of faith, including teachers, religious leaders, and school staff seek to include and affirm LGBTQ+ people and they themselves can be disadvantaged by laws that do not protect them against discrimination based on their sincerely held religious convictions in support of LGBTQ+ people. Even within the same religious denomination, there are a range of practices, beliefs, and approaches.

Our research produced an abundance of examples of religious people accepting and celebrating LGBTQ+ friends, family, and congregants. For example, Samuel recounted the time where his priest encouraged and celebrated his gender transition. “Our Anglican church got a new priest, who showed up and started overtly preaching about how everybody that lives within the rainbow world is actually made just as they are by God, which was very confronting for a lot of people, but it meant that we started attracting rainbow cherubs to the services. At the end of 2018, I said I needed to talk to him and tell him something. He was like, ‘OK, well, I think becoming Samuel is great. I think being Samuel is going to be awesome’”.

Supportive family members also had a profound impact on our study’s participants. Em, a young Muslim woman from a Muslim family, reflected on the significance of her sisters supporting her when she disclosed that she was a lesbian. “They said don't worry about it. I love you. You're always in my sister.” Similarly, having support from his Christian mother has comforted and empowered Owen in his journey toward living confidently as a gay Christian. He recounted, “Even when I said, oh, you know, ‘God hates me’, my mum said, ‘God doesn't hate anybody. Stop being ridiculous. That’s what some 80-year-old priest wants you to believe it. God doesn't hate anyone. You know, he loves everyone. He made you the way he made you, and he made you for a reason’”.

Much of the public discourse around changes to the Anti-discrimination Act positions religious communities against LGBTQ+ ones. In reality, there is significant overlap in these communities. Often, debates pitting LGBTQ+ people against people of faith are

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<sup>14</sup> Kassisieh, G. and Ray, O. 2024. *Dismissed, Denied and Demeaned: LGBTQ+ Discrimination in Faith-Based Institutions in Australia*. Equality Australia. Australia. <https://coilink.org/20.500.12592/gxyg72w>

disingenuous and designed to prevent change. In this framing, the experiences and perspectives of LGBTQ+ people of faith and their allies are erased.

### Key recommendations:

1. Amend the Anti-Discrimination Act 1977 (NSW) by removing Section 56(d) (religious exceptions allowing discrimination on grounds including sexual orientation, gender identity, and marital status).
2. Remove provisions in the Act permitting religious educational institutions to discriminate in employment against staff based on sexual orientation or gender identity.

There are fair and reasonable ways to amend this legislation to create a safe and respectful environment for all. Strong examples of this balance can be found in the *Australian Law Reform Commission's* 2024 report 'Maximising the realisation of human rights: Religious educational institutions and anti-discrimination laws', as well as Victoria's *Equal Opportunity Act 2010*, which was amended in 2021 to better protect LGBTQ+ students and staff from discrimination in religious organisations and schools. By implementing our recommendations, the NSW Government would be aligning its laws with the NSW Social and Emotional Wellbeing Strategy, International Human Rights obligations, and education equity commitments.