

Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, 5 November 2020

Thursday, 5 November 2020 - Uncorrected Transcript

1. *The Hon. SCOTT FARLOW: I am not sure if you have seen the submission from the NSW Jewish Board of Deputies, but it made the suggestion under recommendation 7 that a further subsection of section 22N should be added. It reads:*

*Add a further subsection to section 22N which provides an exception if (a) an organisation engages an employee or contractor specifically as a brand ambassador
...*

I am just wondering if you think that is something that would be valuable considering the concerns you raise with respect to sports players in particular, effectively brand ambassadors, on the second page of your submission.

Dr KOONIN: I have not read the submission from the board of deputies and I would like to give a considered response, so I would be really happy to take that question on notice and get back to you.

ACON Response:

ACON does not support the proposal put forward in the submission from the NSW Jewish Board of Deputies, Recommendation 7 to add a further subsection to Section 22.

ACON strongly believes that all people, including all employees, should be equally subject to the same laws, including anti-discrimination laws.

As outlined in the ACON Submission, the Bill (Sections 22N(3)-(5), 22S(2)-(4) and 22V(3)-(5)) makes it difficult for an employer to respond to discriminatory conduct that occurs outside of occupational settings, provided that conduct is motivated by religious beliefs.

The addition of a subsection that provides an exception if an organisation engages an employee or contractor specifically as a 'brand ambassador' will not make it any easier for an employer to respond to discriminatory conduct by all employees.

As outlined in ACON's Submission, the impact of the Bill could lead to professional regulators in the healthcare industry being unable to investigate a social worker, doctor or psychologist who espouses discredited conversion practices outside of their work hours or makes harmful statements about the health needs of sexuality and gender diverse communities.

It also means that an employer in a trusted public service organisation may be unable to engage in disciplinary action against a staff member (such as a teacher, paramedic or police

officer), who expresses a faith based opinion about women, people with disability or people of diverse sexualities and genders, while on a break, or on a public forum such as social media while not at work.

The Bill, either with or without the proposal put forward in the Jewish Board of Deputies' Submission, will make it near impossible to foster inclusive cultures or meet broader community expectations around treating people equally and with respect.

- 2. The Hon. SAM FARRAWAY: Dr Newcombe made it very clear in his evidence that he as the head of that organisation—and we are only talking about that organisation, the Independent Schools Association, which clearly he said he does not represent the Catholic school system or the public school system—had no knowledge of a student never not being accepted into an Independent Schools Association accredited school. So it was pretty clear, his evidence, and I think that that goes to the question that I asked. I was only referring to what he gave in evidence.*

Dr KOONIN: So your question after that discussion, to be clear, is: Do we have evidence of students being refused admission to schools on the basis of sexuality? No, I do not have evidence of students being refused admission to schools on the basis of sexuality. We certainly have evidence of students being discriminated against in schools. Some of that is anecdotal and there is some data that we can provide to the Committee. To your original question, no I do not know of an instance of a student being refused admission.

ACON Response:

While ACON does not work directly with people under the age of 18 years old, we can, however, provide the Inquiry with evidence of the impact of discrimination including religious discrimination on school students.

Meta-analyses of research have demonstrated that young people who identify as LGBTIQ+ (Lesbian, Gay, Bisexual, Tran, Intersex, Queer or other sexuality or gender diversity) are disproportionately affected by poor mental health and psychological distress, including the onset of depression, PTSD, self-harm and suicide (Knight et al., 2017). Research also indicates this trauma is linked to perceived and experienced discrimination (Almeida, Johnson, Corliss, Molnar, & Azrael, 2009) and can have ongoing impacts for people (Mustanski, Andrews, & Puckett, 2016).

A recent Australian research project (Ullman, 2015) painted a stark picture of our schools. 94% of the students surveyed (N=704) reported homophobic or transphobic language. 58% of those respondents reported hearing such language every day. When this language was heard by adults, it was reported that the adult intervened in less than 5% of instances.

More alarmingly, 45% reported physical abuse in schools based on the perceived or actual sexuality or gender of the victim. For more than 10% of students, physical violence based on sexuality or gender identity happens every week. Data on the experience of transgender students indicates even graver concerns for mental health and wellbeing (Ullman, 2017).

Conversely, the creation of supporting environments reduces the prevalence of such trauma. Studies have shown, for example, that in environments where same sex marriage has been legalised, poor mental health outcomes are reduced. (Knight et al., 2017; Raifman, Moscoe, Austin, & McConnell, 2017). Again, specific research on trans people's experience indicates that support and positivity in the school environment significantly shifts these outcomes (Ullman, 2017).

Returning to Mr Farraway's original question, it is unclear what mechanism could be used to ascertain the sexual orientation or gender identity of a typical school entrant (say, twelve years old at high school entry). It is therefore unsurprising that the head of the Independent Schools Association was unaware of any of examples of discrimination on the basis of sexual orientation or gender identity on school entry. This does not mean such discrimination does not occur in the school environment. Concerns have also been expressed by members of our communities that legislation such as the proposed may mean that students who disclose or discover their sexuality or gender identity during school may be asked to be removed from the school environment. If this were to happen, especially during key moments in education such as during preparation for the Higher School Certificate, the compound effect would be incredibly damaging for the student, and likely affect their ability to excel.

In an assessment the impact of the religious discrimination on school students, the Humans Rights Law Centre's *Submission to the Senate Legal and Constitutional Affairs Committee's inquiry into Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff*, outlined that:

“More than 1 in 3 school students in Australia attends a religious school. Existing religious exemptions allow religious schools to refuse admission, discipline, suspend, expel or cause any other detriment to a student on the basis of their sex, sexual orientation, gender identity, marital or relationship status or pregnancy, provided it is in accordance with religious doctrines, tenets, beliefs or teachings or the discrimination is in good faith to avoid injury to the religious susceptibilities of adherents of that religion” (Humans Rights Law Centre, 2018).

Further, the Australian national *Writing Themselves in Study in 3* study, reported that: same-sex attracted and gender questioning young Australians with a religious background were more likely than their non-religious peers to:

- report self-harm and suicidal ideation;
- feel negatively about their same sex attraction;
- have experienced social exclusion;
- have been subjected to homophobic language from friends;
- report homophobic abuse and feeling unsafe at home;
- be unsupported by their parents, siblings and teachers when disclosing their sexual orientation or gender identity; and
- attend schools with no policies or supports protecting them from bullying because of their sexual orientation or gender identity. (Hillier et al, 2010)

The Humans Rights Law Centre's Submission lists several cases study examples of real-world impact of religious discrimination on school students, these include:

"Case study: Disciplinary punishments at a religious boarding school:

Due to my mother's homophobia I was sent to a strict Catholic boarding school where I was forced to scrub floors and walls on my hands and knees and pray multiple times a day. I am not religious and it was an extremely homophobic environment. Within a month I was on anti-depressant[s] and expelled after attempting suicide because 'Suicide is a sin and so it was not acceptable to take part in the school' (Humans Right's Law Centre, 2018).

"Case study: Bullying of intersex teenager at a religious school:

T is a 15 year old child, with male sex of rearing, who has just been diagnosed with 47,XXY when his doctor ran some tests as a result of significant breast development and other physical changes. T has been shunned by other pupils at school and has experienced bullying due to his physical differences. These include allegations that this makes him partly a woman, or gay. His religious school has recently banned a gay couple from a school formal. T should be protected from harassment at any school." (Humans Right's Law Centre, 2018).

Finally, the Macquarie University paper "*Religious Anti-Gay Prejudice as a Predictor of Mental Health, Abuse, and Substance Use*" explored whether opposition to same-sex sexuality on religious grounds predicted detrimental outcomes among same- and both-sex attracted individuals. The paper found that:

"Exposure to religious anti-gay prejudice predicted poorer mental health, abuse, and alcohol use outcomes among both sexual minority and heterosexual individuals. Social, legal, and institutional policies — as well as clinical and pastoral care practices — that facilitate the expression of anti-gay prejudice on religious grounds may therefore pose broad and substantial threats to wellbeing" (Sowe B., Taylor A., Brown J., 2017)

Disturbingly, the paper concluded that both for lesbian, gay and transgender people and for their heterosexual counterparts:

"...that both broad and substantial harm may ensue when religious bodies and faith adherents—including clinicians and pastoral care workers—espouse, and expose others to, anti-gay religious ideology." (Sowe B., Taylor A., Brown J., 2017)

It is our belief that school, an environment in which students spend between six and eight hours each weekday, should be an environment which strives to be safe and supportive, and as the arbiters of that safety, teachers, administrators and other school staff have an implicit responsibility to uphold the 'social and emotional development' of students, particularly where research supports that school age children are ready for such instruction (Ryan, Patraw, & Bednar, 2013).

Schools are an integral part of the development of citizens of New South Wales. It is a desire shared by the population that our young people emerge from school environments with the necessary knowledge and skills to function successfully, contribute to society and live healthy lives. Schools that aim to create supportive and nurturing environments for all students are the best way to ensure these outcomes.

It is for these reasons that, we do not support legislation that is not aimed at increasing social wellbeing for students and reducing stigma and discrimination.

- 3. Dr KOONIN: Also of high levels of stress and shame, more instances of physical and verbal abuse and more problematic alcohol use. And again we are happy to provide data on that. Thirdly, and this is back to some comments made by my colleague Mr Mackie and others, we know already that LGBTQ people face significant barriers in accessing appropriate health services and often that is caused by perceptions of prejudice and sometimes it is caused by instances. I am happy to provide some direct quotes from people's experience anecdotally but in terms of data, we have recently consulted with our community on precisely this issue.*

Approximately one-third of our community do not access health service because they are uncertain that they would receive an audience with a health professional who would understand their life or health needs or because of fear of judgement. Our concern is that a bill like this, structured the way it is, would make it harder for those communities who are already having difficulty accessing appropriate health care to do so. I say this in the context of wanting to ensure that of course people of faith are protected from discrimination too but we are aiming to seek the appropriate balance and we are not sure this bill achieves that.

Ms JENNY LEONG: Thank you, Dr Koonin. If you wanted to provide the additional first-person experiences on notice that is completely acceptable for you to make an additional submission to the inquiry.

ACON Response:

LGBTQ Mental Health: Data

The impact of discrimination on lesbian, gay, bisexual, transgender and intersex (LGBTI) people is well documented. It includes negative impacts on mental health, higher levels of suicide, higher rates of substance abuse, verbal and physical violence as well as economic disadvantage.

LGBTI people 'have one of the highest estimated rates of suicide in Australia, with LGBTI young people five times more likely to attempt suicide – elevated by their experiences of homophobia, transphobia and discrimination, violence and abuse, and social isolation.' (Mental Health Commission of New South Wales. 2018). Mental health is not a result of having a diverse sexuality or gender identity, but rather the impact of minority status and subsequent stigma and discrimination.

The following statistics provide a snapshot of the severity of mental health among Australian LGBTI communities:

- HIV Futures 8 reported 51.8% of people living with HIV had been diagnosed with a mental health condition at some point in their life, and 42.4% had 'ever' been diagnosed with depression, and 28.5% had 'ever' been diagnosed with anxiety. (La Trobe University, 2018)
- The Australian Institute of Health and Welfare estimate '32% of homosexual/bisexual people aged 16 and over in Australia met the criteria for an anxiety disorder in the previous 12 months, compared with 14% heterosexual people.' (Australian Institute of Health and Welfare, 2018)
 - Evidence exists that 'LGBTI people are at a higher risk of suicidal behaviours (Skerrett, DM., Kölves, K. & De Leo, D., 2015). and have the highest rates of suicidality (Rosenstreich, G., 2013) compared with any population in Australia.
- Recent 2018 SWASH findings report 41% of lesbian, bisexual and queer (LBQ) women reported high or very high psychological distress, 62% of which were aged 16-24. 31% said they had felt life was not worth living in the past 12 months, and 14% had self-harmed. (Mooney-Somers, J., Deacon, RM., Scott, P. & Parkhill, N., 2018.)
- The National LGBTI Health Alliance provides a snapshot of mental health statistics for LGBTI people, key highlights include:
 - LGBTI young people aged 16 to 27 are 5 times more likely to attempt suicide in their lifetime than the general population.
 - Transgender people aged 18 and over are nearly 11 times more likely to attempt suicide in their lifetime than the general population. (The National LGBTI Health Alliance, 2016).

LGBTQ people face significant barriers: data and quotes

In 2020 ACON conducted an unpublished market research project (N=-574) to ascertain the community's experience of engaging in health care. In answer to the question 'What had stopped you from seeing a General Practitioner?' (note: respondents could tick more than one answer):

- 33.3% agreed with the statement 'I am not confident a GP would understand my life and my needs'.
- 32.1% agreed with the statement 'Fear of Judgement' and
- 26.6% agreed with the statement 'Lack of Trust.'

The following are direct quotes from community members provided to several unpublished markets research surveys and project reports conducted by ACON between 2018-2019. The quotes highlight some of the first-person experiences of discrimination toward LGBTQ people from some health care providers.

- 'The first two GPs I visited were completely arrogant and refused to help someone in my 'condition'. They refused to help me as I was just looking for attention, and [said that] this phase would soon stop.'
- 'I have attempted to come out to my GP before but because she doesn't understand non-binary identities she avoids the topic and treats me as a cis female, so I just go along

with it to make life easier. I believe my GP is not educated in gender diversity due to my experiences with her, and fear judgement if I come out, as well as not wanting to deal with her confusion and have her focus on gender as an issue when it isn't one. I shouldn't have to deal with the burden of coming out to my GP so I avoid it.'

- 'I had a really awful experience with breast screening, I have to go and do the things I do because I have breasts. I went along and the nurse I encountered there, not only was she rude but it could have put my own health at risk. She looked me up and down in an obvious way that made me feel uncomfortable and asked me if I was a woman or a tranny... I have to say, I perceive myself as a strong person but I felt so uncomfortable I nearly left'
- 'Visible LGBTIQ+ people face further discrimination in areas of credibility with drug seeking behaviours. Basically, a whole lot of assumptions about who we are based on hair, dress... before any actual engagement happens.'
- 'Previously I have had negative experiences with GPs, including homophobia and whorephobia. It has taken many years to find someone non-judgemental. He is against contraception so I don't feel he can be completely impartial'
- "I need to get a sexual health test so I visited my local doctor to have a test done. I was asked when last had sex with a man. I said 10 years ago. The doctor looked at me oddly asking when did you last have penetrate sex. I said I am a lesbian. I was met with the reply, you don't have anything to worry about you don't really need to be tested women are clean.'
- 'Male GP told me that "unless you have had a penis inside you it is not worth me doing the test.'
- The first two GPs I visited were completely arrogant and refused to help someone in my 'condition'. They refused to help me as I was just looking for attention, and [said that] this phase would soon stop.
- 'My experiences with healthcare providers have been a bit mixed, a lot of assumptions and misunderstandings and I don't feel safe, I don't feel safe to be myself. I am not in a space that has an understanding of being gender fluid'
- "Visible LGBTIQ+ people face further discrimination in areas of credibility with drug seeking behaviours. Basically, a whole lot of assumptions about who we are based on hair, dress... before any actual engagement happens.'

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