



Thank you for the opportunity to provide further input into the review of the Equality Bill and its impact on Religious and Faith Communities.

The two supplementary questions we were asked to report back on were:

1. Can you give examples of how non-Christian religions would be impacted by removing exemptions for religious organisations in the Anti-Discrimination Act (ADA)?
2. Aside from the proposed amendments to the ADA, can you give examples of how non-Christian religions would be impacted by other parts of the Bill?

OUR RESPONSE:

One of the primary problems with the removal of exemptions, and the Bill in total, is that it removes the ability to differentiate with regards to biological sex – and yet this is a determining factor for the majority of the population in many instances, and definitely for many religions. Please see below for information based on discussions and consultations with a variety of religious leaders on this issue. It is of particular relevance to women's only spaces, and many women from the various faith communities have expressed their concern for women's safety.

Further, the Bill is problematic for educational institutions, as it operates on a false assumption that it is only 'priests' or equivalent, who affect the culture of religious and educational institutions. The phrase 'even the maths teacher' is highly relevant here – to all religions and faiths – because being part of a faith community is an essential element of each person's role. All faith leaders have expressed this concern with regards to the Bill, and its prevention of faith communities to maintain the ethos, culture and beliefs of their religious institutions, associations and schools. This is what parents are choosing when they choose a faith-based school, and it is invasive for this legislation to enforce different beliefs through restriction of hiring with reference to faith. Either we are pursuing diversity and inclusion, or we are not – and when it comes to the diverse faith communities, differentiation is not discrimination.

HINDU

"Within the Hindu culture, with regards to restrooms and toilets and those areas where privacy is important, including jails, there should be separate spaces for men and women, even if someone has changed their gender.

As a woman, this is important issue for women's safety - for all women, not just Hindu women."

Neelima Paravastu
Hindu Council of Australia

MUSLIM

Interview with Hussein Faraj, President of the United Shia Islamic Foundation

"The legislation removes the ability to distinguish between people based on biological sex. And, it removes the ability to employ teachers with the same ethos. Both of these are not acceptable, and are counter to the Islamic faith.

One of the key reasons for people choosing faith-based schools is that people want their children to be around people of the same faith. The biggest concern for these schools and the families is that they can't choose their own teachers. Most parents do not want to send their children to school where there are teachers with differing faiths. It's the reason the parents chose the school in the first place.

With regards to biological sex, this is a supremely important issue for the Islamic faith. Whether a woman wears a head covering or not, there are things that are forbidden. It doesn't matter what the law might say about choosing your own gender, the Islamic faith relates to your biological sex. Even though someone identifies as the opposite sex, females cannot be touched by someone of the opposite biological sex. This is problematic for intimate body searches of a trans person, for gyms, public toilets – many parts of society.

When it comes to prayers, in our Mosques, men and women pray in different areas. If someone who was born as a biological woman, even if they identify as male, even if their birth certificate says that they are male, if they were to pray in the male area, that becomes a problem for everyone there – everyone's prayers are void. It is an enormous issue. We have rules that govern what we can and can't do between females and males. It can't happen. It makes all of the prayers of everyone there void. You can't have a female pray amongst the males and vice versa. This is relevant to all religious prayers, and also celebrations such as engagements, birthdays and other cultural celebrations.

Female and male bathrooms - we can't have them mixing, because it is about biology, not chosen gender.

Visibility of women's hair and body. If a biological woman has covered her hair and covered up to her elbows and ankles, no biological male can see her. It is considered a great sin for the female if they see her. It's one of the largest sins. It's a very important part of Islamic religious belief. It's absolutely not allowed – whether the laws of the state or nation allow it or not, under Islamic faith it is not possible.

When it comes to a women's gym, I can't even stress how enormous how this would be if there was a biological male in the female changeroom. It's inconceivable, and would bring great stress upon the females. If this was to happen, apart from the sin and stress, the women would then not be able to go to that premises. They would lose the ability to exercise there, and would have to cancel their membership – it would not be a choice."

JUDAISM

In consultation with Shua Solomon, President of the Rabbinical Council NSW, the following problems were outlined with respect to legislation that seeks to remove the ability for freedom of expression and practice of religious belief, in particular with regards to gender and sexuality. This is not an exhaustive list. Also, it is important to note that, just as in most religions, there are variations among belief and practice. For example, the Rabbinical view for Modern Orthodox and Orthodox Judaism, is different to Progressive and Reformed Judaism.

The following issues are of concern for Modern Orthodox and Orthodox Judaism, and some are of concern to all (e.g. Mikvah):

SEPARATION OF GENDERS AT SYNAGOGUE

When you attend a Jewish synagogue, genders are separated. Males and females sit separately.

WOMEN'S ONLY SPACE - MIKVAH

A Mikvah is a segregated space for cleansing, where people are without clothing. Men and women never use a Mikvah at the same time, and some are reserved for women only at all times. As an example, women engage in a cleaning process, in a women's only space, as part of religious observance. It is a vital part of their religious practice, and a requirement, and is viewed as of greater importance than the building of a synagogue for worship:

"The Centrality of Mikvah

Before exploring the deeper dimensions of this ritual, we must briefly examine the centrality of mikvah to Jewish life.

Most Jews, even those who deem themselves secular, are familiar, at least conceptually, with religious observances such as the Sabbath, the dietary laws, Yom Kippur and a number of other Torah laws.

The mikvah, and observance of Family Purity is a biblical injunction of the highest order.

Most Jews see the synagogue as the central institution in Jewish life, But Jewish law states that constructing a mikvah takes precedence even over building a house of worship."

(chabad.org)

PROGRESSION TO ADULthood

There are separate biological sex-based processes for the progression from childhood to adulthood.

Boys: Bar mitzvah – once this has occurred, the boy becomes a man at age 13, and therefore becomes part of a group of 10 males for prayer. Prior to engaging in this ceremony, they are not counted as part of the 10.

Girls: Bat mitzvah – similarly, this represents the transition from girl to woman at age 12. Only for a female.

These gender-specific processes have been in place for millennia, and signify and recognise them as a man or a woman.

HOW WOULD THE PROPOSED EQUALITY LEGISLATION AFFECT THESE JUDAISM PROCESSES

It would put a conflict between the Jewish law (and Jewish religious ceremonies and traditions), and the law of the country/state. There also may be unintended consequences, which result in a restriction of freedom of belief and expression of these vital Jewish beliefs.

CONCLUDING REMARKS AND QUESTIONS:

FAIR & REASONABLE?

The Bill proposes that the judicial system judges what actions are 'fair and reasonable', but in this instance, you would be asking our judicial system to become highly detailed experts on every single religion represented in NSW to be able to judge this fairly – which is not a reasonable expectation. It also results in 'punishment by process'. The faith communities contribute a wealth of community-wide benefit – and it is a poor use of resources to setup faith communities to have to justify the basis of many of their beliefs as fair and reasonable in the judicial system in response to any claims.

A far better approach would be positive permission for religions to be able to freely believe, pursue and express their beliefs – representing the wide and varied beliefs of humanity, where there is somewhere for everyone. This legislation is essentially asking everyone to agree. They don't, and nor should they.

QUESTIONS FOR THE LEGISLATIVE COMMITTEE:

1. How will freedom of expression of religious belief be upheld? In particular, how will freedom of religion (and the expression of it) be upheld when these beliefs carry centuries of tradition and practice with gender and biological sex differentiation?
2. How will women's only spaces be preserved, so that women's religious rituals and ceremonies are not drastically altered?
3. How will the legislation provide positive protection for women's only spaces, so that the law cannot be abused by predatory males who seek to self-identify as males to gain access to women's only spaces, or, change their gender once arrested for a criminal act, and therefore gain access to women's only prisons? There are already precedents for both of these instances in the UK.
4. In light of ongoing horrific domestic violence crimes, how will this legislation preserve women's only spaces as places of safety?

Please also find attached some further points overleaf (and other attached documents), outlining research regarding cognitive abilities of young people, and also clarification regarding Intersex and the 1.7% figure which was quoted in the inquiry as part of one of our questions.

INTERSEX

We consulted with a senior medical practitioner in the field of juvenile and teen health, in consultation with an endocrine specialist, to gain clarity around the figure of 1.7% Intersex.

The question we received at the Equality Bill inquiry quoted that 1.7% people of all people in NSW are born intersex.

This is a misleading statement. Intersex refers to an enormous variety of distinctions - including extra chromosomes in people who have otherwise binary presentation, and a minor penile urethra abnormality, where the urethra is abnormally positioned and corrected soon after birth via a medical procedure to ensure ease of urinary passage. Recent passing of legislation in the ACT has limited this surgery, which has major implications for quality of life for these people.

In terms of how many people are born with ambiguous genitalia, the actual figure is 0.02-0.05%. This is vastly different to the question we received, which led everyone to believe that nearly 2 in 100 people are born with ambiguous genitalia. In fact, the figure is perhaps more like 2 in 10,000.

Please see the enclosed statement I received from the medical experts, which refers to two issues: brain development in teens (see below), and Intersex.

COGNITIVE CAPACITY:

Enclosed is a one-page research summary on Cognitive capacity. There are multitudes of studies on this topic, but the one we are referring to represents 20 international authors and research across 11 countries, published in the Law and Human Behaviour journal, so is highly appropriate here.

FAITH-BASED SCHOOLS WELLBEING, COUNSELLING & PASTORAL CARE:

The tenor of the inquiry questions the other day, and the Bill itself, seemed to assume that faith-based schools are callous places ready to 'unload' on any child instantly, which is really not the case whatsoever. The opposite is more than true. Faith-based schools have a highly integrated wellbeing and pastoral care system, that cares for each child individually as needs arise. Speaking with a wellbeing staff member at a faith-based school this morning, she articulated that often their school attracts children who have not been able to fit in anywhere else, because of the strong focus on the child's wellbeing. Having a strong, faith-based tenet of belief is not a license for non-care of children. In fact it is the opposite - where children are leaving state-based schools where they have not found their fit, and coming to a more caring environment, driven by the staff's genuine Christian love and care for all children. She mentioned that this is possible because the school is able to employ specifically on the basis of faith as a key eligibility for joining staff, and that without this they would not be the strong caring community that they are.

EXAMPLE OF A CHILD TRANSITIONING GENDER IN A SYDNEY FAITH-BASED SCHOOL

For example, one Sydney school I am closely connected with recently had a student (biological female) who has now decided to live as a male. It was the child and family's own

decision to change schools, which they did during a term break - choosing to go to a different Christian school. Not because the first school was intolerant or disapproving of the family's choice - they received long-term family and individual support throughout the entire journey, which has been years until this point. They changed schools because they had been there for 11 years (prep to year 10) and wanted a fresh start. It is quite telling that they chose to go to another Christian school, and not a state school to achieve this.

The clear agenda from the Bill that staff at Christian schools are unsupportive of the mental health of children, no matter what the circumstances, is not only inaccurate - it is offensive. Faith is a key driver of the strong wellbeing, support and counselling available at Christian schools - "Love the Lord God with all your heart soul and mind, and love your neighbour as yourself" (Mark 12, The Bible).



RE: Equality Bill proposing to legislate that children under 16 years can self-evaluate their own counsellors for expertise to advise on gender care.

According to developmental psychology, **the age of maturity differs for 'hot' and 'cold' cognitive processing, but is not less than 16 years, and does not reach adult levels until the 20s in emotionally charged circumstances requiring deliberation.** The process of deliberating gender care is highly emotionally charged and has long-term implications – a 'hot' situation, requiring advanced levels of cognitive processing not present until adulthood beyond the age of 18.

The following published research paper excerpts represent 20 authors, from 11 different countries.

"Cognitive capacity – the basic cognitive processes supporting the ability to reason logically – matures by 16, whereas psychosocial maturity – the capacity to exercise self-restraint, especially in emotionally-arousing contexts – does not fully mature until several years later" (Icenogle et al., 2019).

"One way to think about the difference between these capacities and abilities is to distinguish between "cold" and "hot" cognition. Cold cognition refers to mental processes (such as working memory or response inhibition) employed in situations calling for deliberation in the absence of high levels of emotion. Hot cognition involves mental processes in affectively charged situations where deliberation is unlikely or difficult. Recent research has borne out this distinction, showing that in response inhibition tasks, young adults (aged 18-21) perform comparably to somewhat older individuals when tested under emotional neutral conditions but more poorly – and similarly to younger teenagers – when tested under arousing ones" (Icenogle et al., 2019).

REFERENCE:

Icenogle, G., Steinberg, L., Dueli, N., Chein, J., Chang, L., Chaudhary, N., Di Gunta, L., Dodge, K. A., Fanti, K. A., Lansford, J. E., Oburu, P., Pastorelli, C., Skinner, A. T., Sobring, E., Tapanya, S., Uribe Tirado, L. M., Alampay, L. P., Al-Hassan, S. M., Takash, H. M. S., & Bacchini, D. (2019). Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a "Maturity Gap" in a Multinational, Cross-Sectional Sample. Department of Health and Human Services, USA. Law and human behaviour, 43(1), 69-85. <https://doi.org/10.1037/lhb0000315>

"Research Paper Impact Statement

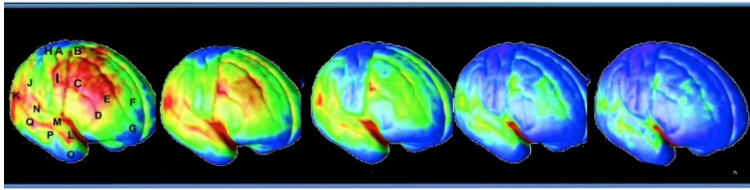
Public Significance Statement—Cognitive capacity—the basic cognitive functions that serve as the foundation for higher-level, complex thinking processes—reaches adult levels during adolescence (around 16). In contrast, psychosocial maturity—one's ability to exercise self-restraint in emotional situations—reaches adult levels during the 20s. Importantly, in a study of over 5,200 participants, these distinct age patterns emerge across 11 diverse countries around the world. Thus, having two legal age boundaries that distinguish adolescence and adulthood—one for decisions typically made with deliberation and another for decisions typically made in emotionally charged situations—may be more sensible than having just one. (Psychnfo Database Record (c) 2020 APA, all rights reserved)"

QUESTION:

How do the proposed provisions in the Equality bill reflect both the:

- the long-term, respected medical and psychological research considering cognitive development in adolescents and young adults, and
- the cognitive capacity required to make long-term, life-altering medical decisions (such as gender interventions)?

Adolescent Brain Development



Ref: Brain development in children and adolescents: insights from anatomical magnetic resonance imaging. *Lenroot RK, Giedd JN Neurosci Biobehav Rev. 2006; 30(6):718-29.*

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Neurodevelopment of children and adolescents. Differences in cognition, behaviour, emotions of children, adolescents and adults have been known for thousands of years. A landmark study in 2006 by Giedd demonstrated the anatomical changes including increases in white matter up to the age of 25 years.

Intersex is an umbrella term that includes individuals born with a variety of sex characteristics including conditions of chromosomes, gonads or hormones.

The prevalence of intersex is reported differently depending on which definition of intersex is used. The prevalence reported by Anne Fausto-Sterling is often quoted that Intersex “might be as high as 1.7%” however this figure includes conditions (such as late congenital adrenal hyperplasia, klinefleter syndrome) which many clinicians do not recognise as intersex.

Intersex should include those conditions which chromosomal sex is inconsistent with phenotypic sex, or which phenotype is not classified as either male or female. Using this definition – the prevalence of intersex is 1 in 5 500 births or 0.018% (reference Sax L Aug 2002 “how common is intersex a response to Anne Fausto-Sterling” *Journal of Sex Research* 39 (3):174-178). The prevalence of ambiguous genitalia is also stated to be 0.02-0.05%

Clinically – the term **Disorders of Sex Development (DSD)** is currently used.

In NSW our publicly funded paediatric services provide a specialist multidisciplinary DSD service to work in collaboration with the parents of these children to develop management and care plans for these. This includes Paediatric Endocrinologists, Geneticists, Paediatric Surgeons, Urologists, Gynaecologists, social workers and clinical Psychologists.