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SENATE
LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
Thursday, 7 February 2019

Members in attendance: Senators Fierravanti-Wells, Ian Macdonald, O'Neill, Patrick, Pratt, Rice.

Terms of Reference for the Inquiry:
To inquire into and report on:
Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018.
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Committee met at 08:53

CHAIR (Senator Ian Macdonald): I call to order this hearing of the Senate Legal and Constitutional Affairs Legislation Committee for its inquiry into the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018. This is a public hearing and a Hansard transcript of the proceedings is being made. I note that, following today's public proceedings, the committee will also hear evidence in camera from witnesses who have requested an opportunity to talk to the committee confidentially about their personal experiences relevant to the bill.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is a contempt of the Senate to give false or misleading information. We prefer to take all evidence in public, but if for any reason anyone would like to be heard in camera they should raise that with the committee or the secretariat as soon as possible. If a witness objects to answering a question, we need to know the ground upon which the objection is taken and the committee will look into it. The committee has agreed that answers to questions taken on notice, should there be any, should be returned by tomorrow, which is a bit difficult. The committee has a time limit. The committee is due to report on Monday. I think we'll be extending that by a day or two for logistics reasons. If there are any questions, we would appreciate an answer as soon as possible.

I welcome the Australian Human Rights Commission. They are old friends at this committee. They almost know all the rules better than we do. I welcome Mr Edward Santow and Mr Graeme Edgerton from the commission. You are aware of parliamentary privilege. We have received a submission from the Human Rights Commission, which we, for our purposes, have numbered No. 171. We ask you to make a brief opening statement and then we'll ask you some questions. There are more senators here, but, because I'm conscious that you're on a fairly strict time limit—and I mention that to my colleagues as well—we will get on. There are other senators around the building who will be coming in as their arrangements are met. Over to you for an opening statement, and then we'll ask some questions.

Mr Santow: This bill would make it unlawful for any school to discriminate against a child on the basis of sexual orientation, gender identity, marital or relationship status, or pregnancy. Currently, the Sex Discrimination Act contains an exemption that permits religious schools to discriminate in that way. This bill would remove that exemption. The government, opposition and a number of minor parties have committed to removing that current exemption. There appears to be broad community support for that reform, including among the communities that would be most affected. The Australian Human Rights Commission strongly supports this report. Under international law, all children have the right to receive an education without discrimination on any basis. LGBT children are at particular risk of harm, and discrimination can compound those risks. The bill responds to those imperatives.

In assessing the bill, the commission also gave closer attention to the impact on freedom of religion. We consider the bill would impinge on this right in a way that is permissible under international human rights law. In particular, the bill pursues a legitimate aim, to prohibit some forms of discrimination. In addition, the bill would not have a disproportionate impact on religious freedom, because it preserves significant autonomy for religious schools to teach children in accordance with their doctrines, tenets and beliefs. In practical terms, it's worth noting that many, though not all, religious institutions that educate children have expressed support for removing this exemption, and there have been very few instances of the current exemption to the Sex Discrimination Act being invoked.

There have been some amendments proposed to the bill. The amendment proposed by Senator Patrick would clarify that the bill only affects the activities of educational institutions, and not other religious bodies, and the commission acknowledges that this amendment would support the bill's objectives. The commission does not support the other proposed amendments. For example, it has been suggested that the bill could prohibit faith based schools from teaching on moral issues in accordance with their religious beliefs, but the commission draws attention to current section 7B of the Sex Discrimination Act, which provides that a condition, requirement or practice, including by a religious school, will not amount to indirect discrimination if it is 'reasonable in the circumstances'. The commission considers this protection sufficient to address the problem that the relevant amendment seeks to deal with.

We also urge wider reform in this area. Since 1992 the commission has opposed the use of exemptions in the Sex Discrimination Act. For instance, the current exemption allowing discrimination against teachers and other staff should be removed. Such reform should be carefully targeted to preserve religious schools' ability to...
organise their affairs according to their beliefs. In addition, for over two decades the commission has recommended stronger protections for freedom of religion, including by making religious and other belief a protected attribute under federal antidiscrimination law and by improving education and data collection about religion as well as interfaith dialogue. We're happy to answer questions.

CHAIR: Thanks very much, Mr Santow. Mr Edgerton, did you want to make any additional comments?

Mr Edgerton: No, thank you, Chair. I've got nothing else to add.

CHAIR: Some witnesses gave evidence yesterday. They were principally academics or lawyers. There was a suggestion that the bill may be unconstitutional under section 116 of the Constitution. There was also the comment I particularly noted that this bill was a reaction to a leaked report of the Ruddock commission. I don't know whether it was. The evidence suggested that this was done in some haste and, similarly, that the government amendments were done in some haste. It was suggested that there are many consequential implications of this bill that should be properly, carefully and moderately considered to bring about the reform—and some of the reforms you mentioned, Mr Santow, in protecting religious freedoms as well. The suggestion was it's not something that should be done on the run by politicians responding to leaked reports. Now, that's a view of the witnesses. The suggestion was that the matter be referred to the Law Reform Commission and the whole issue, including some of the protections you mentioned, be fully investigated. I'm wondering if you heard or saw the evidence yesterday. If not, I think my summary is reasonably accurate of the evidence that was given. Do you have any comment on that?

Mr Santow: I'll start on the constitutional question. The euphemism that's often used in court in this kind of context is that it would be a very heroic submission that section 116 would make unconstitutional this amendment to the Sex Discrimination Act. I'm not aware of any High Court authority that would provide real support for that argument. On the contrary, the High Court of Australia has taken a very cautious approach to the impact that section 116 has. I think there are no laws since Federation that have been ruled unconstitutional as a result of section 116. Did you want to add anything?

Mr Edgerton: I think that's right. I think that the focus in some of the submissions has been on the part of section 116 that says the Commonwealth may not enact laws that prohibit the free exercise of religion, but I think—and the Federal Court has said this—there's a difference between prohibiting the free exercise of religion and burdening the free exercise of religion, and things that might have an impact on the practice of religious people won't necessarily be the same as prohibiting someone from exercising their religion—for example, prohibiting churches from operating. That's all I would say about section 116.

Mr Santow: If I can go to the second part of your question, which was about the haste—I think that was the word you used—with which this amendment is being considered: I guess we differentiate between two separate issues. The first is the current capacity of religious schools to discriminate against children on the basis of sexual orientation and gender identity. We see this as a discrete issue that can be dealt with on its own terms. It is, I think, a very important issue and indeed an urgent issue with schools recently returning from the summer holidays.

We also note that there is strong community and indeed political support for this reform, and so we do see that this reform is important and urgent. Our submission does also point to, as you acknowledged, Chair, a number of other reforms in this area, and we think that they are also important. They have more complexity to them, and so whether or not it's a process led by the Australian Law Reform Commission, it certainly is necessary that consideration be given to the other legislation that is affected by those other proposed reforms.

CHAIR: The comment was made that doing things in haste on the run is never a good way to pass laws, and they usually have repercussions that are unintended. That was why the first witnesses were urging caution, not opposing the principle. As you may have seen, the Catholic Church has indicated that they'd never relied on this, although the archbishop in Brisbane did say that the fact that it's there gave them a certain comfort that people who enjoy litigation wouldn't take them on. So, as I understand the summary here of the Catholic Church—and it's probably not a fair thing to do—they've never used the exemption so they say and they're happy enough to see it go, providing there was at the same time some legislation that did guarantee the sorts of concerns that the Catholic Church have about their belief and their faith education.

Mr Santow: I think it's true to say that the exemption is rarely invoked, but the committee that was led by the Hon. Philip Ruddock did report on instances in which the exemption has been invoked. So, one religious school declined to enrol a child in connection to sexual orientation, gender identity status on the basis that it would not be a positive for the child. That sort of situation, whether or not it leads to litigation, I think, exemplifies the concern with having a law on our statute books that permits activity that we can fairly say, as a community,
should not be permissible. That's why we would say that it is urgent. While I take your point about the importance of avoiding—

CHAIR: Not my point; the point of the witnesses.

Mr Santow: I take the point that it's important to avoid unintended consequences, and I guess the response to that is whether or not this particular amendment would have wide-ranging intersections with other legislation. I think the answer to that question is no, and that's why we say this is a discrete change to the law, it's an important one and why we urge that it take place.

CHAIR: It wasn't the conclusion of Mr Ruddock, of course, who looked at it very closely. I think I agree with the community broadly, and in the evidence given so far nobody really opposes the principle. It's just a question of making sure we don't make the same mistakes in what is, quite frankly, in parliamentary terms a pretty rushed bill and amendments being dealt with in the dying days of this parliament. Anyhow, thank you very much. We're after your view, not my views or the views of other witnesses, but I just wanted to put those points to you. So thank you very much.

Mr Edgerton: Can I mention something just in terms of the unintended consequences. We were listening to some of the evidence given yesterday by the Catholic panel, including the Archbishop of Brisbane. My understanding from some of the Catholic educators was that in Queensland there's already a prohibition against discrimination against LGBTI students and that hadn't caused any undue difficulties for them in terms of being able to teach in accordance with their faith. So when you are talking about unintended consequences and the balance of convenience—and, as the Human Rights Commissioner has said, there are some states where there is some discrimination, as identified by the Ruddock panel—if making this narrow change in relation to students wouldn't cause an undue burden then perhaps the balance of convenience lies in favour of making this change now and having other changes put off for a further inquiry.

CHAIR: What about the human rights of other children—the majority, dare I say—whose parents want them brought up in a certain way? They have certain rights. The example given was of someone having two dads. The rainbow family children might not have felt comfortable about that, but of course the alternative also applies to the majority of families who really don't want their children to think about families with two dads. Whether that's right or wrong is irrelevant, from my point of view, but it does show that other people have rights too and an ability to make sure that their children are brought up in the way they want until the children are old enough to make up their own minds.

Mr Santow: Our community is a very diverse one in many respects. That diversity is something that I think, as a whole, we celebrate in Australia. Coming across someone with a different background is generally a real positive. But it can also present newness, which can be challenging. We accept that. But, broadly speaking, I don't think that there is a human right that is specifically engaged by someone who says that they feel uncomfortable in the company of someone who is, to them, motivated by different things.

CHAIR: It's not 'in the company of' but in a classroom situation where some things are taken as normal which some families object to. I would think they have rights too.

Senator PRATT: Mr Santow, you said that the Human Rights Commission had been in favour of repeal of the exemption since when?

Mr Santow: Since 1992.

Senator PRATT: The Sex Discrimination Act came in when?

Mr Santow: In 1984.

Senator PRATT: What is the impact of those exemptions? In terms of those that are saying that we need more deliberation and debate about this issue, particularly in relation to what seems to be reasonably simple issues in relation to students, what is the importance and urgency of getting this reform done as quickly as possible? You must have noticed, for example, the impact on LGBTI young people of both the postal survey and now them continuing to be in the limelight because this issue was raised last year.

Mr Santow: In my role as Human Rights Commissioner, I speak to and listen to a very wide cross-section of our community, including LGBTI children and their families and, indeed, religious institutions and others. What comes through really loud and clear is that the law is very, very important in setting standards that centrally affect our culture. The Ruddock committee, for example, reported on the fact that LGBTI kids can feel that they have to leave a school because of bullying on the basis of their sexual orientation or gender identity status. That is something that causes us enormous concern. So whether or not exemptions like the one we are talking about here are formally invoked in litigation is not the only question here. It is about what our parliament, our primary
institution of democracy, sets out as permissible and impermissible behaviour, because that is taken note of in different ways right across the community. That's the reason why we say that this is both an urgent and an important reform.

Senator PRATT: The Prime Minister said that this issue could be acted on quickly and urgently. Now it seems that the government wants to kick it off to the Australian Law Reform Commission.

CHAIR: Sorry, that's—

Senator FIERRAVANTI-WELLS: I think you need to get your words precise and go to what the Prime Minister actually said before you start quoting.

Senator PRATT: I appreciate you clarifying that for me. What's the position?

Senator FIERRAVANTI-WELLS: I'm happy to give you the transcript. When you've got the transcript, you can read it onto the record.

Senator PRATT: That's fine.

CHAIR: And don't confuse my comments as chair of this parliamentary committee with the government's position.

Senator PRATT: I am just feeding off what I have seen come out in the public debate.

Senator FIERRAVANTI-WELLS: Get your facts right, Senator Pratt, before you start feeding off—

CHAIR: Senator Fierravanti-Wells—

Senator PRATT: You've corrected me and that's fine. I really just want to ask Mr Santow what the impact is of saying to young people, 'We think you deserve protection.' It heightens that sense of vulnerability and people's sense of their place in their school. Then, if there is delay attached to actually delivering that protection, what is the impact of that?

Mr Santow: I think I've already answered that question by saying that there's clear community and political consensus that this reform is an important and urgent one. We certainly strongly agree with that, and that urgency means that this reform should be acted on as soon as possible.

Senator PRATT: The Children's Commissioner also very strongly supports this reform. You're the commissioner with responsibility for LGBTI rights and other freedoms. I note that the Children's Commissioner did a report a couple of years ago on young parents and the children of young parents. Can you perhaps touch on that issue in relation to pregnancy and marital status discrimination in schools.

Mr Santow: In 2017, the National Children's Commissioner conducted a project which was essentially investigating the experiences from a human rights perspective of young parents and their children. Many of them reported that they had suffered discrimination or unfavourable treatment in an education context. Under the current exemption to the Sex Discrimination Act, it is permissible for a religious school to discriminate on the basis of things like pregnancy. Again, while we accept that schools generally do not want to do that, it's very important that there be an absolutely clear statement in law that that is never permissible.

Senator PRATT: Yes, on a doctrinal basis.

Mr Santow: Exactly. I think the work of the National Children's Commissioner bears out, in a real, practical way, some of the consequences when you take a vulnerable group like young parents and open the door to them being treated less favourably.

Senator PRATT: Notwithstanding that, if a school found that they were unable to accommodate a pregnant student because it became a form of indirect discrimination against them, that would still fit within a reasonableness test in any case, would it not?

Mr Santow: It's difficult to make a general statement along those lines, but, yes, it's true that, if there were some kind of claim of indirect discrimination, there is a backstop, as it were, where, if the action taken by the school is reasonable, it is not unlawful.

Senator PRATT: An example could be that every student enrolled in a school attends the international hockey Olympics and pregnant women can't do that. You could then argue that it was reasonable to exclude them from the school. There's a test there that can be applied around whether indirect discrimination is reasonable for a doctrinal purpose in terms of teaching or for any other practical reason that the school might need to employ, if that discrimination is indirect and not direct.

Mr Santow: The sex discrimination distinguishes between direct discrimination where an individual is targeted, usually in connection with some protected attribute—in this case, pregnancy—and indirect
discrimination, which is where you have a general rule that has a differential impact on people because of a particular protected attribute. So, without going into the detail of that specific hypothetical—

Senator PRATT: My examples are not necessarily accurate.

Mr Santow: But I think the general point is accurate, and that is that you can have general principles that might have a marginal effect that is different on particular groups that are otherwise protected under antidiscrimination law. Provided it's reasonable in the circumstances, then it's not unlawful.

Mr Edgerton: From the director side, we heard some evidence yesterday from some of the academics in the first panel that schools may want to directly discriminate against pregnant students, for example, because it's considered to be a morality issue—having children out of wedlock—and we would be concerned about that.

Senator PRATT: I just really wanted to underscore that this legislation is not just about LGBTI young people. It affects all attributes that are exempt under the Sex Discrimination Act.

Mr Edgerton: As you say, if there were an indirect effect, then it would have to be subject to that test of reasonableness.

Senator PRATT: We've covered this reasonably well in terms of the indirect discrimination test and the reasonableness test. Mr Santow, you are the commissioner who looks after not only LGBTI rights but also the—what's the other part of your title? Is it the freedom commissioner or religion—

Mr Santow: There are probably half a dozen areas. I should hasten to say that this submission, as all of our submissions are, is a submission of the Human Rights Commission as a whole. I have primary responsibility for issues affecting LGBTI human rights, as well as religious freedom, migration of refugees and a number of other areas.

Senator PRATT: I really just want to ask you about the approach that the Human Rights Commission has taken in balancing rights. There's been some arguments coming from various places in the community that says there needs to be a proactive right to teach or to discriminate if this legislation were to go ahead. You said very clearly that that would undermine the principles of antidiscrimination and the purpose of the law. How have you gone about balancing the religious rights and the right to religious freedom in Australia with the rights of people who should be protected from discrimination?

Mr Santow: The orthodox position in international law and in the vast majority of the liberal democratic countries that we would compare ourselves to is that the focus should be on prohibiting discrimination, and that is why the Human Rights Commission, for over two decades, has been such a strong advocate for making it unlawful, as a general proposition, to discriminate against people on the basis of their religious or other beliefs. We've been advocating that really strongly for a long time. There are some limited protections in that space, but they're limited to specific contexts like employment. What we would also say is that exemptions, which essentially permit certain categories of a person to discriminate against other categories of person, are not the most effective way of protecting the human rights of the group that you're trying to protect, and that's the kind of law that can have unintended consequences.

Senator PRATT: This is my last question. Those exemptions currently apply to a wide range of mainstream services that are funded by government that apply across education, health and other community services—that's true, is that not?

Mr Santow: That is true. This bill deals only with section—

Senator PRATT: I know it only deals with education.

Mr Santow: But, yes, the exemptions more broadly cover a wide range of other—

Senator PRATT: The principles of what—

CHAIR: You did say that that was your last question. We are running out of time.

Senator PRATT: we should be seeking to do is to constrain that to very much more a religious domain and religious practice rather than that broad delivery of services. That's the principle of what you're talking about.

CHAIR: If that's the question, we'll get to the answer and then I'll move to Senator Fierravanti-Wells,

Senator PRATT: I'm very happy for you to take the call and give it to someone else.

CHAIR: These people have to leave at 9.20, and we have another member of the committee and three other members.

Senator PRATT: That's fine, Chair. I was expecting you to remove the call from me and hand it on to someone else. I've probably had more than my fair share.
Senator FIERRAVANTI-WELLS: I am conscious of the time. I'll ask you to take my questions on notice because they'll require a more detailed response. I would be interested to hear—this wasn't clear from your submission, as your submission was very much focused on the principle of removing a lot of these clauses. There wasn't much there regarding the point that was stressed in the review about the hierarchy of rights and the idea that one right doesn't take precedence over another. I particularly refer you to that clause in the Ruddock review. I'd ask you to provide detailed responses on what your views are in relation to addressing that very important issue of the hierarchy of rights and why one right doesn't take precedence over another.

Also, your submission didn't go to the issue of addressing the protection of religious freedom of the school community and the right of parents to choose a school that reflects their faith, bearing in mind that, based on information provided to us, three in 10 students attend faith based schools, if my stats are correct. When you're talking about 5.7 million students aged between zero and 19 years of age in 2016, we are talking about a large number of students.

Also, could I ask you particularly to go to the submissions that were provided by the Australian Family Association and the submissions provided by the Institute for Civil Society. They tend to raise a series of questions. Given the role that you would likely be playing, and given the assertions that you've made in your submission, I would appreciate it if you could address the concerns that are raised by both those submissions. They are generally concerns that are raised in other submissions, but they are very much set out quite clearly, for example in relation to potential breaches of antidiscrimination legislation, the proposed amendments and in particular the stance that you've taken and the consequences that that could give rise to.

Given the categorical assurances that you've given in your submission, I would appreciate it if you could comment in particular on these questions and give the same degree of categorical assurance, if you can, in relation to the concerns that are raised by these bodies—in particular, the questions that are raised by the Institute for Civil Society—you'll go through that and see the questions that they've asked—and, in particular, the unintended consequences of the repeal of that section and the interaction between section 21, section 37 and section 38, and the consequences, especially when you are talking about educational institutions such as training colleges for missionaries, youth workers, chaplains, counsellors, pastoral workers, adult religious and theological colleges.

CHAIR: Thank you, Senator Fierravanti-Wells. I appreciate you putting those on notice. I wonder, Mr Santow, whether you have a quick response to the hierarchy of rights question. Bearing in mind that we have to report on Monday, supposedly, we're asking you to give written responses by tomorrow, which is not going to be easy, so if there were a quick response you could give, that might be useful to the committee.

Mr Santow: I think that's a very important question. Perhaps I can direct your attention to a number of parts of the submission where we do deal with that question, starting at paragraph 4; and really the entirety of part 3 of our submission, goes to that question. We agree that it is unhelpful to talk about the notion that there is a hierarchy of human rights. On the contrary, human rights are universal, inalienable, indivisible, interdependent and interrelated. It is very common for a number of human rights to be engaged by a particular issue or problem, and then the challenge is to make sure that there is an appropriate accommodation between those rights that are engaged, particularly when those rights are in tension. As I say, that is a common issue. Precisely how that is done will depend on the circumstances, and, of course, legislators have choices there. It's not like there is only one right answer. The key to determining whether or not there's been a proper accommodation is to ask questions like whether the legislation is pursuing a legitimate aim, whether it is necessary for the pursuit of that legitimate aim and whether it has a disproportionate effect on other human rights that are engaged. That's precisely the analysis that we've undertaken in our submission.

In respect of those other questions, we're happy to take those on notice.

Senator FIERRAVANTI-WELLS: I specifically asked the question given the concerns that were raised in other submissions that did not appear to have been addressed in your submission. That's why I've asked the question. I'll leave you to take it on notice. Thank you.

CHAIR: We don't have a hierarchy in committees, but I have dealt with the three permanent members of this committee. I'll quickly go to everyone else, but I would ask you to be brief in view of the fact that the Human Rights Commission have indicated they have to leave. I'll start with Senator Patrick.

Senator PATRICK: Mr Santow, there's something I'm trying to understand. The rights that you describe in your submission are rights that are coupled to individuals more so than institutions; would it be fair to say that? The right to freedom of religion is a right that's afforded to an individual; those rights are not coupled to a religious institution?
Mr Santow: The way that the legislation is currently drafted, it is a religious institution, in this case a school, that is able to exercise the right. Internationally, human rights law tends to focus on individual rights, but the way that that is given expression in Australian law can be more complex than that, and certainly in the case of section 38(3).

Senator PATRICK: Sure. I'm just trying to differentiate. I'm well aware that the bill has effect on an institution. But the rights that you describe—rights of the child, rights of parents, rights of freedom of religion—in international law seem to be attached to individuals.

Mr Santow: Primarily but, as I say, the way that they're enjoyed can bring into play an organisation—a religious or other organisation. That's a normal, ordinary situation.

Senator PATRICK: Sure, but are there any rights afforded in international law to a religious institution per se in the same way that we're looking at these rights of individuals?

Mr Santow: Certainly as far as I'm aware—and correct me if I'm wrong—the core international human rights law treaties don't speak specifically about religious institutions.

Senator PATRICK: I think it's worth distinguishing the fact that this bill talks about how a religious institution is affected.

Mr Santow: Sure.

Senator PATRICK: A lot of the submissions talk about the rights of individuals. This is a line of questioning similar to yesterday's, but the people I asked were not able to inform me, and perhaps you can. Of the complaints that we see from LGBTQI children—and some of them sound very disturbing—do those complaints involve children on children or teacher on children, as opposed to institution on children? Is there any breakdown? I'm just trying to understand where the volume of complaints lie.

Senator PRATT: There's no right to complain currently.

Mr Santow: Yes. There's a very, very limited jurisdiction that we retain in this space at the moment. So, yes, they're very, very low numbers, but we would expect, if there is a complaint, that it would be a complaint primarily from the child complaining about the institution.

Senator PATRICK: Is it possible, obviously without identifying people, to provide the committee with some statistics, particularly in relation to sexual discrimination or gender biases and so forth, on the number of complaints you receive where an individual is alleged to be discriminating versus where an institution is discriminating?

Mr Santow: Is this across all of the areas in which the commission can receive complaints?

Senator PATRICK: Noting that we're trying to protect LGBTQI kids—that's what we're trying to do.

Senator PRATT: And pregnant young people—

Senator PATRICK: Yes, sure. That would fall within the scope of the changes being asked for.

Senator PRATT: But they don't have statistics on that, because they can't take complaints.

Mr Santow: We can do our best to do that. It is also difficult to get that sort of data really quickly, and I'm conscious of what the chair said about the deadline.

Senator PATRICK: Sure, and it was actually Tuesday, Chair, not Monday that we agreed to. I accept there are some complaints that never make it to the commission—I absolutely accept that.

Senator PRATT: They don't have jurisdiction.

Mr Edgerton: We'll be a little bit constrained as well by the types of discrimination that we cover. Usually we're looking at discrimination in various areas of public life, so in provision of goods and services, in provision of housing and in provision of accommodation. Usually they're dynamic. They're individual versus the provider—

Senator PATRICK: We're clearly after religious institutions—or schools, sorry.

Mr Edgerton: And we don't have a general ambit to look at complaints about bullying, for example.

Senator PATRICK: I guess we're talking about schools, and only what you have complaints on. Obviously you can't provide statistics on complaints you don't have. Where I'm going with this—

CHAIR: Can we get to where you're going, because these people have to leave?

Senator PATRICK: I do take your points about the law setting a standard. I'm just trying to work out whether or not better results are achieved by education—so, if you've got a teacher that's inappropriately picking on a kid, whether or not education is a better tool than perhaps legislation. Do you have a view on that?
Mr Santow: I think that's probably a choice that we should not make. I think what the research shows really clearly is that you need to align three things: education, the law and the more amorphous notion of your culture. I think our culture in Australia is generally very strong. We believe in equality, the right to a fair go, but we do need to be really careful to also make sure also that our law and what we teach are aligned with that.

Senator PATRICK: I recall the cyberbullying inquiry basically came to a finding that legislation won't be as effective as putting a lot of effort into education. That's where I was going.

Mr Santow: I understand what you're saying. Our point is simply that you need to have those different tools operating in concert.

Senator PATRICK: I want to give you a circumstance, because I'm trying to untangle some of this. I will give you two examples. If a teacher is teaching a class that 'Marriage, in accordance with our faith, is between a man and a woman, but the law allows for same-sex marriage,' would that give rise to discrimination?

CHAIR: Can we perhaps take that on notice? I am conscious of your time, and we do have a program as well.

Senator PATRICK: I'm trying to get to the next point. If that were not discrimination and we went to a different circumstance, where a teacher then said, 'In accordance with our faith, marriage is between a man and woman and anything else is a sin,' is there a difference between those two statements? We heard examples in the inquiry yesterday, where one of the witnesses suggested that might be what is taught. I'm trying to work out whether any of those give rise to a discrimination claim.

Mr Santow: The short answer to your question is that religious schools are permitted under Australian law to teach in accordance with their doctrines, tenets and beliefs. If what you're describing is in accordance with doctrines, tenets and beliefs, then that is permissible under Australian law.

Senator PATRICK: So, under the changes, if this legislation is implemented and I stood up in a class and I said, 'In accordance with our faith, marriage is between a man and a woman and same-sex marriage is a sin,' that is not discrimination?

CHAIR: That's a very important question. If you can give an answer, we'd appreciate it, but I suspect you might want to think about it.

Mr Santow: We do. The problem for us as a body that receives complaints is that, unfortunately, it would really depend on the surrounding circumstances, but the general principle holds: it will not change if this bill is passed. That is that religious schools will be able to teach in accordance with their doctrines, tenets and beliefs. It is certainly possible to imagine a scenario where that teaching goes beyond explaining what their religious text states and may actually discriminate against a school child. I think it's absolutely clear that the community does not want that. It's also clear that—

CHAIR: I suspect, Mr Edgerton, that as a lawyer you might have a slightly different view on the scenario that Senator Patrick gave. If a teacher gets up and says, 'It's a sin, according to the faith, to have a same-sex marriage,' I just think you might want to think about—

Mr Edgerton: No, I completely agree with what the Human Rights Commissioner said.

CHAIR: It's not contrary to this bill?

Mr Edgerton: It sounds to me like that's just an accurate description of the doctrine of the particular faith, but, if there are other surrounding circumstances that mean—

Senator FIERRAVANTI-WELLS: So was Archbishop Porteous—

Senator PRATT: That's Tasmanian law, not Australian law.

CHAIR: You're your own bosses, but I'd hate you to be quoted in a court case sometime in the future, saying—

Senator FIERRAVANTI-WELLS: [inaudible] categorical assurance, you'd better be very clear about it.

Mr Edgerton: The Human Rights Commissioner said that all of these situations depend on their own facts, but if it's limited to just describing what is part of a religious doctrine of an organisation—

CHAIR: Saying to kids, 'Your parents are living in sin'?

Senator PRATT: That might be individualised discrimination.

Mr Edgerton: As soon as you start adding other things that aren't really about—

Senator PRATT: That becomes direct discrimination.

Senator O'NEILL: This is why it's complex and why we shouldn't rush it.

CHAIR: We shouldn't be rushing it—you're quite right—the whole thing.
Senator PATRICK: I invite you to consider that. Could I have one more question?

CHAIR: Not really, Senator Patrick. Perhaps you could put it on notice. It's now 20 to 10. We have other witnesses waiting. These people had to leave by 9.20—20 minutes ago, so—

Senator RICE: I have just one question. Thanks, Mr Santow and Mr Edgerton. You noted in your opening statement that you feel that discrimination against staff at the school should also be removed. You also note in your submission that you don't support part 1 of the two amendments that were proposed by the Greens, because it's broad. I'd like you to reiterate the importance of removing discrimination against staff as well.

Mr Santow: The commissioner's position has been very, very clear—that is, we do not believe that there should be an exemption that permits discrimination against staff, including teachers. What we've also said is that amending the law in this space has some complexity to it. It would also need to consider the relevant provisions of the Fair Work Act, for example. That's why we say that needs to be done in a very carefully considered way. I guess this also picks up on one of the questions that Senator Fierravanti-Wells asked. We've also emphasised in our submission really strongly that any reform along those lines needs to continue to preserve the capacity of religious schools to teach in accordance with their doctrines, tenets and beliefs.

Senator RICE: Yet the Tasmanian and the Queensland legislation currently doesn't allow discrimination against staff as well as students. It's parallel in the legislation. Is that an option at the federal level?

Mr Santow: As a general principle, as a starting point of where the reform should start, that may well be useful, but I'm reluctant to give an answer on the hoof when, as I say, there is real complexity to making sure that that reform is very, very carefully crafted and that it takes into account the other legislation that is engaged, like the Fair Work legislation.

Senator O'NEILL: You've indicated in your response to Senator Rice the parenthetic comment that you make at point 61 of your submission:

(For the avoidance of doubt, the Commission submits that these should be considered separately, and should not delay the passage of the present Bill).

That is with regard to matters arising from the Ruddock report. You keep talking to the bill in its original form as it was put forward by Senator Wong. You've only advocated one amendment, but you're well aware of the process of lawmaker and that amendments are before the Senate that actually do bring in matters of religious freedom much broader. You've indicated there are amendments before the Senate that need to consider other complex legislation including the Fair Work Act.

Mr Santow: Our submission goes through one by one each of the amendments that has been proposed. I'm not quite sure what to say other than we can walk you through those amendments.

Senator O'NEILL: You know that there is no bill arising from the Ruddock report, yet that is actually being collared into this piece of legislation by amendment. And the complexity of that is of concern to me, and I don't believe that you have addressed many of those additional concerns, except to say that this is one bit that should be done with regard to students and everything else should be hived off.

Mr Santow: No. With the greatest respect, what we've said is: 'Here is our position.' We've averted to some very extensive work that the commission has done that deals with those other issues. We participated in the process that was led by the Hon. Philip Ruddock. We provided an extensive submission as well as oral evidence to that inquiry that dealt with those other issues. We've gone through the proposed amendments one by one and we've expressed our view on the human rights implications of those amendments.

Senator O'NEILL: And you've come down in favour of one amendment only; is that correct?

Mr Santow: Yes, that is correct. But what we've also said is that there is further reform that needs to take place and that the forum for that reform is really a question for parliament, but—

Senator O'NEILL: But you suggest quite strongly, in my view, Mr Santow, from your submission, that the forum for that debate should not be engaged or attached or connected to, really, the discussion about the original bill.

Mr Santow: No, we have not said that. What we've said is that some of the specific amendments to this bill we do not support, but what we also say—and it's entirely a matter for parliament as to whether individual members may choose to propose other amendments to the bill. That's entirely a matter for you and your colleagues—

Senator O'NEILL: But your objections are because of the complexity that it brings to the debate that may well occur in the parliament next week.
Mr Santow: I don't think we've said that anywhere. What we've said is that, in respect of the amendments that we do not support, here are the problems with the amendments. What we've also said really clearly is in principle the sort of law reform that we do support. I don't know what else we can do other than be really clear on what the policy position should be.

CHAIR: I will have to cut it off there. Senator O'Neill, you raise some good points which I think reinforce what Professor Quinlan said yesterday about dealing with this in a much more—

Senator O'NEILL: Could I ask one on notice?

CHAIR: Yes.

Senator O'NEILL: With regard to the Christian Schools and the Adventist Schools submission and the section where they discuss the balancing of rights under international law, I'd be particularly interested in your response to their claims about the importance of the Siracusa principles, the covenant and general comment 22 and how the concerns that they raise about the need for those things to be enforced mesh with your assurances that with one amendment we would avoid unintended consequences.

CHAIR: We have asked you a lot of questions on notice. I think it's going to be physically impossible for you to answer them all in any detail. It's up to you how you answer, but, if you want to give very brief answers with a qualification that you'll extend on this later, that would be acceptable. It's up to you.

Mr Santow: We appreciate that.

CHAIR: But for some of the most important ones, if we could have at least a brief answer by tomorrow or, perhaps, Monday at the latest.

As always, we very much appreciate the Human Rights Commission. This committee and the Human Rights Commission are almost indivisible at times. We always love your appearances. Thank you very much and thank you for your help to the committee. Apologies for the delay in getting you away.

Mr Santow: Thank you.

Mr Edgerton: Thank you, Chair.
Thirdly, this bill is out of step with Australia's international covenants. Failure to offer protections for religious freedom would put the Commonwealth in breach of Australia's international obligations under the International Covenant on Civil and Political Rights, the ICCPR, which I'm sure you've heard much about. The protection of religious freedom is broad under the ICCPR. Importantly, it extends not just to individual expression of religious freedom but collective expression. It even has a whole paragraph that deals with the rights of parents to ensure religious and moral education of their students in conformity with their own convictions. There is a complete dearth of Australian law to reflect and include a positive right of religious freedom in the same terms as we have at an international level.
It's clear that religious rights are broad and that they can be collectively exercised. Christian schools are the vehicle by which parents collectively exercise their positive right to ensure religious and moral education of their children in conformity with their beliefs. This bill is out of step with article 18. It dismantles already fragile religious rights. Because of its broad application, it will unreasonably encroach on the rights of parents to ensure religious and moral education of their children, and it will make Christian schools fertile ground for activism. That's a good segue on which to hand over to Mr Brohier.

**Mr Brohier:** Thank you, Mr Steenhof, Chair and members of the committee. I speak as a barrister of law who has been engaged in hands-on litigation in the antidiscrimination sphere in relation to religious freedom issues for the last three or four years, in cases from Perth to Queensland to Tasmania, including a recent case in Victoria in relation to quite remarkable behaviour by a faith based school which was taken to VCAT. I can develop that, if you want, in questions.

Respectfully, we disagree with the Human Rights Commissioner's view on direct discrimination, the question that was put by Senator Rex Patrick. If either of the scenarios that Senator Rex Patrick proposed occurs in a classroom with the Wong amendments or the Greens amendment, that will be very likely to be direct discrimination, because it will be less favourable treatment. The theme of less favourable treatment has been developed in the leading Australian authority on this issue, CYC v Cobaw, which was a decision of the Victorian Court of Appeal. Religious freedom issues were given a very narrow compass, and the issue of what is in accord with the doctrines of a religion was construed narrowly to mean 'mandated' rather than 'in harmony with'. Therefore, it may be that a court will have to investigate fine doctrinal issues, and there will be an issue of whether a certain issue of conduct was mandated by the faith. That will lead to significant litigation. The case of Archbishop Porteous and a similar case in Tasmania which I was personally involved in, the case of Cornerstone Presbyterian Church, go to that issue. We say that this bill will result in litigation which will draw time and effort from Christian schools—and I know that because of a case I was involved in—and therefore shouldn't proceed. Thank you.

**CHAIR:** Thank you very much. I will now go to the Australian Family Association.

**Mrs Kelleher:** Thank you for the opportunity to appear. In summary, I would say that we recommend that this bill and the present proposals in the bill not be supported. My comments are directed to the issue raised, which is effectively the removal of protection of the capacity of faith based schools and educational institutions to make decisions in relation to their operations in a manner in accord with the tenets and ethos of the religion of the school or institution. The AFA's concern in its submission—and the points that I make here relate to this—was the effect of the amendments proposed by the bill on parents and parents' rights. Faith based school representative bodies have put in full and detailed submissions in relation to the position of faith based schools, but I am concerned with the matter of parents. I will make only general comments in relation to the wider issues of religious freedom.

Most parents who send their children to faith based schools do so because they want their children in an environment that reflects their religious and moral beliefs and values. Others who are not religious nevertheless also send their children to such schools because they want them educated in an environment that reflects their traditional beliefs and values around sexuality and relationships.

I've had numbers of calls from parents concerned about the effect on their children and family of curricula, programs, lessons and classroom activities that presume a world view of sex and relationships that's not in accord with their beliefs and convictions in such matters. The world view that I'm talking about is that a person's gender is how they feel—more masculine or more feminine—that it may differ from biological sex, that it's fluid and can change, and that a person can change their gender, which really means sex—that is, a boy can be trapped in a girl's body and can transition or change sex to be a girl, or vice versa. This view is taught in schools, as those on the committee are probably aware, under various programs and curricula—in Victoria, the Safe Schools Coalition and Resilience, Rights and Respectful Relationships. There is also a Respectful Relationships program that is being trialled, I believe, at the moment in Western Australia.

I will just give you a handful of examples. These are just parents whom I have worked with. They are just some of the instances. I know their situation. I've had a parent or family in a faith based primary school who, over a period of months, was able to have teaching about fluid gender theory removed from the curriculum. If the present bill became law, and the protection were removed for faith based schools to make decisions to preserve their ethos and beliefs around the nature of human sexuality and relationships that are consistent with those beliefs, as is proposed by this bill, then this would not have been possible.

I've had a family in a faith based school where the child has been refused re-enrolment—effectively expelled—because of the parents' objection to their child being exposed to this world view which is not in accord with their...
beliefs and convictions. The parents asked that they be advised in advance of any sex or relationships curriculum, or lessons or activities, that included the gender-fluid world view, for their child to be able to opt out, but the school did not accede to this request. That family, at considerable financial cost, had to go to another faith based school, where the parents' and school's convictions align. If the exemption for faith based schools is removed, as proposed by the bill—the subject of this inquiry—then where would this family be able to go to ensure the moral and religious education of their child in accordance with their convictions?

Parents have also experienced very real practical application of transgender theory in relation to gender transitioning. Again, I refer to some examples that I am aware of and have dealt with. There are safety issues in relation to gender-neutral toilets; that's one of the issues that arise when you have gender identity involving gender transitioning. There are some examples of actual incidents. A six-year-old girl was sexually assaulted in gender neutral toilets by a 12-year-old grade 6 boy. This has had a devastating effect on the child and the family, but they didn't want to take the matter to law, so I wasn't really able to assist them there. But they moved to another faith based school—they were in a government school. If the present bill were to become law, then they would not have had that option, as government schools will be governed by school policies which require that a child who identifies as opposite to their birth or biological sex be allowed to use the toilets that the student feels most comfortable using. Certainly, this is the case in Victoria, Queensland, New South Wales and South Australia, where they have such policies, and I have provided links to these policies in the AFA submission. This will mean that either boys identifying as girls will access the girls toilets or there will be gender neutral toilets for all students. This family has really suffered because of the situation.

I've had a case in a faith based primary school where gender neutral toilets were included in a new-build classroom block. Parents objected, and after eight to nine months—and I assisted the parent who was seeking assistance in this matter for the other parents in the school, quite a high percentage of them—the policy was completely reversed. Boys toilets and girls toilets were reinstated, as the majority of parents wished. If the current bill were recommended by the committee and the bill were passed, then there would be little likelihood that parents' concerns would be able to reverse the policy. There was no gender-transitioning child in the school at that point, but, if or when a child at the school was transitioning, that child would have to be allowed to use the toilets that they were most comfortable using, or the gender neutral toilets would have to be reinstalled.

Another parent at a government school led other parents in successfully objecting to gender neutral toilets in, again, a new-build classroom block. But, if there were a student transitioning—and there wasn't at the time—then either that student would be allowed to use the toilets for the sex or gender to which they were transitioning, if they so wished, or the school would have to reinstate gender neutral toilets. Another family moved their children from a government school to a faith based school because of the Safe Schools Coalition program. Their son told them that he could wear a dress to school if that was what he was comfortable in. The mother objected to gender-fluid theory being included in the school curriculum not because of any religious beliefs but because, as she expressed it, 'I believe in science.' If protection for faith based schools is removed, then they may have moved their children to a faith based school in vain, as even a faith based school will not be able to avoid their children being taught gender-fluid theory of sexuality and relationships.

I've confined my comments to the specific subject of the inquiry, which is the removal or restriction of exemptions for faith based schools and religious educational institutions, in particular of course in relation to sexual orientation and gender identity. I haven't addressed the wider issues around religious freedom, but, as the exemptions are part of that wider debate, I have adverted to them in our submission:

… the understanding of the nature and meaning of marriage and of human sexual identity and sexual relationships … for many people are matters of deeply held—

convictions or—

beliefs (whether religious or secular).  

Other witnesses have already commented and others will comment on those wider matters of religious freedom. The AFA chooses to leave those considerations to the debate about what is to come out of the Ruddock review recommendations.

In summing up, I would like to emphasise the AFA view that the faith based schools, in particular, are the ground zero of a battle that is taking place over the hearts, minds and bodies of our children at the heart of the religious freedom battle. If the gender-fluid worldview is effectively mandated in the government sector, then faith based schools will have no exemptions to teach their beliefs of the biological worldview and it will be almost impossible for parents to pass on their beliefs and values to their own child or children. So that means the right to manifest one's religion or beliefs will be very limited, and that is part of the right under article 18 of the
ICCPR, which is not only to hold and believe what you believe but also to manifest it, which I say includes the right to pass that onto your own children.

To conclude, the AFA believes that it is a mark of a truly free and democratic society to have the ability to agree to disagree. Australia, from Federation, has rejected state mandated religions. We are dealing with two distinct worldviews here in relation to these matters of sexual identity and relationships, and they are the biological worldview and the transgender or gender-fluid worldview. If both are not respected—and our view is that this is what the exemptions in the Sex Discrimination Act are about—we effectively have a state mandated religion or ideology being imposed on everyone. When parents in government schools are not able to opt out of gender-fluid sex and relationships education, then it raises the question: is Australia meeting its obligations under ICCPR article 18.4 to respect the liberty of parents to ensure that the religious and moral education of their children is in accordance with their convictions—and that even more so as the current protections or exemptions for faith based schools and religious educational institutions are removed. So, parents would not be able to send their children, even by choice and at greater expense to the family, usually, to faith based schools in the confidence that their children would not be exposed to a worldview that is not in accordance with their convictions or beliefs.

I think we can learn to live with opposing worldviews. There are more than faith based schools. There are faith based schools that people could make inquiry of, but you have to find a school that fits your child. It is not fair to other parents in the schools who may not agree, and you will find parents mainly in faith based schools who would have the biological worldview. Thank you.

CHAIR: Thank you very much for that, and now the Australian Family Coalition, South Australia.

Mr Wyld: Good morning, senators, and thank you for the opportunity to make this submission today. I also acknowledge, given that I can't see them, Mrs Kelleher, Mr Steenhof and Mr Brohier.

I would like to begin with a quote from the then Chief Justice Mason and Justice Brennan:

Freedom of religion, the paradigm freedom of conscience, is of the essence of a free society.

In considering the debate on antidiscrimination law, education and freedom of religion and belief, it is crucial that we better understand the apparently competing claims. I know that this is something that the committee has discussed at length already, particularly the idea of a hierarchy of rights. So these are competing claims—that is, between those seeking to remove alleged discrimination and those who seek to uphold freedom of religion of belief and parental rights to choose.

Freedom of thought, conscience, religion and belief are fundamental human rights—a package deal, if you like—protected by the International Covenant on Civil and Political Rights. These are rights which protect all believers and nonbelievers alike. Australia is a signatory to this document and to numerous other landmark human rights instruments, such as the Siracusa principles, of which you are obviously also aware. These instruments impose serious obligations on signatories but, unfortunately, as has been pointed out, are not currently reflected in Australian law.

I have before me the entirety of the article 18 of the ICCPR, but, given that you have heard from it many times already, I don't propose to read it all, but obviously it goes without saying that it is not restrictive. It's quite broad in its treatment of freedom of religion and belief, particularly the fact that it's not just safeguarding the rights of someone to hold a belief in private, but also publicly to manifest their freedom or belief in worship, observance, practice and teaching; and with particular relevance to the issue before us, article 18.4:

…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.

The UN Human Rights Committee has described the right to freedom of thought, conscience and religion as, 'far reaching and profound' noting that, and I would like to stress this point, article 4.2 of the ICCPR provides that the right cannot be derogated from even in time of public emergency. The UNHCR has adopted the Siracusa Principles, formulated at the conference sponsored by NGOs to achieve consistent interpretation and application of ICCPR clauses, which deal with the limitation of rights granted under it. Article 58 of the Siracusa Principles provides that the:

…freedom of thought, conscience and religion… [is] not derogable under any conditions even for the asserted purpose of preserving the life of the nation.

As I'm sure you'll agree, these are rather strong words.

In light of the issue before the committee it is also worth highlighting that the UNHRC has stated that, 'the right to be free from discrimination is not the same thing a receiving equal treatment in all circumstances.' It has said 'the enjoyment of rights and freedoms on an equal footing, however, does not mean identical treatment in every
instance.' Not every differentiation of treatment will constitute discrimination if criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the covenant.

We would submit that it is clear that 'the liberty of parents, and when applicable legal guardians, to ensure the religious and moral education of their children in conformity with their convictions' without doubt forms such a legitimate purpose under the covenant. It is also patently incorrect to even describe legislative provisions protecting this right and allowing for its free exercise as mere exemptions to antidiscrimination legislation in the first place.

Religious freedom is a fundamental right in itself. While the ICCPR also recognises the right to, 'equal and effective protection against discrimination on any ground,' this right is not afforded the same non-derogable status which attaches to the right of religious freedom. Hence, the hierarchy of rights comments which were had earlier.

Speaking of religious freedom in terms of exemptions to protections against antidiscrimination inverts the relative importance of these rights. Freedom of religion and conscience are integral to a free society. In an environment that's increasingly hostile to basic freedoms its imperative that parliament enacts legislation to protect these rights not to further erode them. We, again, submit that no changes to the Sex Discrimination Act should occur without due consideration to the entirety of the expert panel on religious freedom—that is the Ruddock report and accompanying recommendations. The case for change at this point simply has not been made and the potential impact on freedom of religion and belief is enormous. Thank you.

**CHAIR:** Thank you for that. Thank you all very much for views and your submissions. I will ask all of you, perhaps particularly Mr Brohier, can you have a look at what the Australian Human Rights Commission said about the ICCPR in relation to religious freedoms, which they claim are not being breached by this? On notice, and bearing in mind that we, hopefully, get answers back by the weekend at the latest, very briefly could you have a look at the arguments of the Human Rights Commission and give us our views on where they're wrong, if you wouldn't mind that? And perhaps other witnesses, if they wanted to do that as well. But I chose Mr Brohier as he's a lawyer involved in these things. He maybe will find it the easiest. It's a long time since I did any law—1,000 years ago actually!—but I was concerned on behalf of the Australian Human Rights Commission. Why should I try to impose my view on them? I'm giving an off the cuff legal view on the question Senator Patrick raised about what might happen in the schoolroom. You share the caution I have. You did mention you had an instance in VCAT, in Victoria, which perhaps might be instructive. I wonder if you could briefly tell us what that was about?

**Mr Brohier:** Certainly. So back to a faith based school: a number of years ago, a school in Victoria closed down and there were lots of children who were seeking emergency opportunities in other schools. A group from one family came to our school and asked to be taken on board. One of the children, a teenage girl, was enrolled as a girl. All the documents were for her as a girl. She self-identified as a girl in her aptitude test when she enrolled. In her first year at school, she asked to wear trousers. The head said, 'No, you can't. There's a uniform: skirts for girls, trousers for boys. Everyone is treated the same.' The next week she came wearing trousers. The head spoke to her and said, 'Look, I'm disappointed that you've taken this road,' and she was sent to the reflection room and then went home. For the rest of the term, which was the last term of the year, she wore a skirt. She did well in school. Then she left and went to another school. Three years later, she sued the school on the basis of transgender discrimination. There was no notice given to our school that she was transgender. But the important thing is this: the relief sought in the VCAT was that this faith based school adopt the whole of the Safe Schools curriculum, and that activists—not trained educators, but activists from Ygender and other groups—be allowed to come in and teach the teachers. That was the relief sought in the first summons that was issued in VCAT. The matter then went to mediation, and settled confidentially; I can't go into that. But that is the sort of litigation that will happen if this bill goes through. This is unremarkable treatment of a student by a school, and, if Senator Wong's bill goes through or the Greens' bill is adopted, a statement like Senator Patrick indicated will, very likely, be direct discrimination, or, even if a court finds that it is not, in the end, there will be people who will challenge that. The legislation is there to be taken up, and people will exercise their rights as they see them.

**CHAIR:** Thanks very much for that; I appreciate that. I'll now pass to the deputy chair, Senator Pratt.

**Senator PRATT:** I just have one question for all three organisations. I want to ask, in particular, the Christian Lobby: how do you include the views of lesbian, gay, bisexual, transgender and intersex Christians, and others who don't conform in their belief to traditional beliefs about gender and sexuality but nevertheless identify very strongly as Christians?

**Mr Brohier:** I think you've got to take a step back. You have a situation where you have certain faith based schools that have been set up with certain doctrinal statements. They are there and they're operating.
Senator PRATT: No, no—I'm asking you about the Australian Christian Lobby, not about the schools themselves. It's quite legitimate for me to ask about the nature of your organisation and where it comes from, just in the same way that you might construe people who are interested in these issues—who might, in fact, be Christians of faith who are lesbian and gay—to be activists or something like that. It's quite legitimate for me to ask you about how you include, or if you seek to include at all, the views of LGBTI Christians in determining the submission and the values of and the position put by the Australian Christian Lobby or the Australian Family Association or the Australian Family Coalition. That's my only question.

CHAIR: Well, let's have the answer.

Mr Brohier: Respectfully, that's irrelevant to this inquiry. This inquiry—

Senator PRATT: If you don't, that's fine—

Mr Brohier: I'm answering your question, Senator; let me finish. This inquiry is about this bill, and it's about an educational context. Your question is irrelevant.

Senator PRATT: I can take it, therefore, that you don't.

CHAIR: Do either of the other submitters want to make any comment?

Mr Wyld: I would simply respond that that's the beauty of freedom of association.

Senator PRATT: Good!

Mr Wyld: I think the views of my own organisation are well-known, and there are those who choose to support them and I'm pleased to say that a lot of people do. Likewise, in the political arena, people make their decisions at the ballot box accordingly. This is the thing about freedom of religion and freedom of association, and I think that that's worthy of consideration in this debate.

Senator PRATT: That's a very legitimate answer. It's therefore clear that you don't include the views of Christians of an LGBTI background. Is that essentially what you're saying?

Mr Wyld: Ours is not an overtly Christian organisation in the first place, so I think you might have your facts wrong as a starting premise.

Senator FIERRAVANTI-WELLS: Mr Brohier, you have obviously been practising for quite a long time. In your experience, what is the average cost to the schools of taking these matters to court not just in dollar terms but also in terms of the impact on that school community?

Mr Brohier: In this space, the process is the punishment. There is a tremendous amount of time taken up by the head, and by the teachers concerned, to research, to deal with the defence and to go back of the records. A lot of the time they are meeting with lawyers and are in mediation. That is a huge drain on the school's resources—resources which could otherwise be put to educating children. Schools hate that. They want to educate the children. That is a real cost, in addition to any settlement costs and legal costs.

I will give you another example—not a school situation but a Christian man who is a wedding photographer in Western Australia. He was approached by a classmate and asked to take pictures. He found out that she was in a same-sex relationship. He said, 'I'll do it but you should know that I'm a Christian and I think differently.' She sued him in the anti-discrimination tribunal simply for what he said—not because he refused to provide any service. Again, there was a process and that is the punishment. The case ended because she withdrew her complaint after he refused to settle that at a conciliation conference and she had to go on. But it is the process that is the punishment in a situation like that.

Senator FIERRAVANTI-WELLS: We are talking about thousands and thousands of families—potentially millions of families. Three in 10 children attend a faith based school. We are talking about almost four million
students in almost 10,000 schools. I am quoting ABS statistics from 2017. There are 3.8 million students in 9,444 schools. Of those 3.8 million students, 65.6 per cent are in government schools, 19.9 per cent are in Catholic schools and 14.5 per cent are in independent schools. In evidence given yesterday, Rainbow Families Queensland told us that, according to the 2016 census, there were fewer than 50,000 same-sex couples and only 15 per cent of them had children. So we are talking about only 10,000 children under the age of 25 years. So going back to your activist point, aren't we creating a framework that has the deliberate objective of creating a situation where there is no real issue and the issue is effectively protected under current legislation?

**Mr Wyld:** To suggest that we are trying to create a situation seems rather absurd when we are actually talking about the laws that are currently in place.

**Senator FIERRAVANTI-WELLS:** I'm not saying you; I'm talking about the activists.

**Mr Wyld:** I'll come to that. But in talking about creating a situation, we are talking about the situation that currently exists. In terms of activists trying to create an issue, I would actually suggest that it is the inverse. As has been pointed out repeatedly this morning, this is a manufactured crisis. There is no widespread endemic problem that this bill seeks to address. I would add to that your comment about statistics. I have commented before on the fact of freedom of association actually being a thing. If we seek to actually maintain a pluralistic society, where is the consideration for parental choice in all of this. That is the question I would pose back in response.

**Mr Steenhof:** Thank you, Senator Fierravanti-Wells. I think the point is well made and we would absolutely support the idea that this is addressing an illusory problem and is setting the stage for activists. We are deeply concerned at the rather glib response from the Australian Human Rights Commission, which doesn't particularly stand up to scrutiny. When you look at the specifics of what the Wong bill is proposing, as I alluded to in my opening statement it is not just about admissions and expulsion; it's about removing these protections for schools. If you want to get granular, you can go straight back to the act and see that these religious educational institutions, if the bill is enacted, will now be subject to section 21 of the Sex Discrimination Act, which relates in particular to educational institutions and goes far beyond just admission and expulsion. It will be fertile ground for litigation—costly litigation, time-consuming litigation. I would direct you particularly to section 21(2)(c) of the act, because if this exemption is removed all religious educational institutions, or anyone who provides education and is religious, will be subject to this: that they are not allowed to subject any student to any detriment on the basis of the protected attributes. That goes beyond just admissions and expulsions and it goes to a conflict with the teachings of Christian organisations of the Christian faith, which they have had for millennia, on identity.

**Senator FIERRAVANTI-WELLS:** Mr Steenhof, can I perhaps take it even further: if the end objective is simply expulsion of students, as was the original political commentary in relation to all of this, none of the proposed amendments take into account the interaction between sections 21, 37 and 38, because, I can put it this way, 21 is the vital section that provides the framework of the activity. The exemptions are to that activity. When you start talking about removing exemptions with educational institutions you are not just talking about schools with children; you are talking about a far, far greater body of people who will be affected. So, you are not just talking about, potentially, those students. You are talking about hundreds of thousands of people, if not millions, who fall into the category of a whole range of activities at educational institutions. It is my interpretation correct?

**Mr Steenhof:** That is correct.

**Mr Brohier:** It is provision of education, so it could be Sunday schools or it could be preaching or homilies on a Sunday, which provides education.

**Senator FIERRAVANTI-WELLS:** That's right.

**Mr Brohier:** It could go directly to the pulpit.

**Senator FIERRAVANTI-WELLS:** You take a situation of a particular teaching in a synagogue or, for that matter, in a mosque.

**Mr Brohier:** Friday night in a mosque.

**Senator FIERRAVANTI-WELLS:** Something that could be said in a mosque. For example, it could even potentially go to why in a mosque women and men are put in separate parts of the mosque. I am putting that as a hypothetical. That could potentially be a very issue.

**Mr Brohier:** Or reading the surah—certain chapters of the Koran—in relation to women could be discriminatory, so this goes straight to doctrine.

**Senator FIERRAVANTI-WELLS:** That's a point that's made in some of the submissions.
Senator O'NEILL: Thank you very much for your words today, Mr Wyld. It was a fuller submission, I think, and one that I had the chance to read before you came. Does it disappoint you that the government took so long to release the Ruddock report? Are you concerned that the context of this discussion that we're having now is caught up in the time lag of the failure of that release and proper consideration? It's not that the matter we're discussing is not of import; I think it is very significant, and Senator Wong made a very strong case for action, and I think at the time of the Wentworth by-election, it was very clear the community's response to this issue in the report.

CHAIR: Can we just have the question and leave the political comments.

Senator O'NEILL: I'm concerned that this matter of the Ruddock report delay is a significant issue. Can I ask you for your view about the interplay between this piece of legislation and the delay in the Ruddock review, and how that is affecting your view of this particular piece of legislation?

Mr Wyld: It goes without saying that we were concerned at the significant delay—some six months, I think—between the handing of the report to government and its final release. It's quite relevant to look at this particular bill and the previous schools inquiry, held late last year, in the context of that report, because it was the leaking of the elements of that report by Fairfax Media that led directly to this discussion. I think that the present discussion is lacking in context. I'm fearful, if you want to talk about the political situation, that we have only a certain number of sitting weeks left in the life of this parliament, hence the rushed nature of this is of concern. It ought to be considered in light of a much broader discussion that had been had last year and then subsequently put on ice.

Senator O'NEILL: Mr Brohier, have you had a chance to look at the amendments proposed to the legislation?

Mr Brohier: I've had a brief look at them, yes.

Senator O'NEILL: Does it concern you that the object of the bill, which is very contained, has been significantly expanded by amendments that are seeking to do much more than the original bill intended?

Mr Brohier: Respectfully, I disagree that the object of the bill is contained, because, if you look at the amendment in the light of sections 21, 37 and 38, as Senator Concetta Fierravanti-Wells pointed out, this bill goes far broader than expulsions. If expulsion were the issue then this bill would not be in its present form. We are also concerned, respectfully, with the government's amendments, because they're so complicated. It just shows the difficulty. The government's amendments, section 7—whatever it is—are a minefield for litigation. Therefore we submit that the best course for the parliament is to leave this act alone and deal with it in the context of the Ruddock review with proper religious freedom protections.

Mr Wyld: Yes, I concur with those comments.

Senator RICE: I understand your position is that you'd like to see more legislation to support religious freedoms, but, with regard to this bill, essentially you don't want these amendments to occur; you'd prefer the SDA to continue with the existing exemption, which allows 'educational institutions established for religious purposes' to discriminate against students in connection with the provision of education or training on the ground of 'sexual orientation, gender identity, marital or relationship status or pregnancy'.

Mr Brohier: That's not quite putting what the legislation does—section 41 makes an obligation not to discriminate, hence sections 37 and 38 give an exemption to that for religious schools. It says, 'You're not part of that regime, because we recognise religious freedom.' That's how religious freedom is recognised.

Senator RICE: That's right. And that subsection 38(3) allows you to discriminate with the provision of education or training on the grounds of sexual orientation, gender identity, marital relationship status or pregnancy.

Mr Brohier: That is correct.

Mr Steenhof: I think that is an apt question and it just illuminates the point that I was trying to make—if the only tool you have is a hammer then everything looks like a nail. You are using exemptions to discrimination as a way of describing positive religious rights and freedoms. So to colour it in the language of 'an exemption to discrimination' is to look at it only through the prism of discrimination. So we say that exemption is not ideal, that it is better formulated in the wider consideration of positive religious rights and freedoms and how they interact with another right, which is antidiscrimination; it is not an exemption.

Senator RICE: And maybe we agree in that the way to move forward would be to have a comprehensive charter of rights, which would enable us to do that balancing of the various rights. But in the meantime, we have got the Sex Discrimination Act that retains this exemption. I hear the argument is you want that exemption to be maintained.
Mr Steenhof: If there had been a targeted amendment to those exemptions that covered admissions and expulsions, the use of a delicate surgeon's knife, then maybe there would be grounds to talk but that it is not exactly what the amendment does.

Senator RICE: What I want to go then go to is exactly what are the activities that you want to be able to continue to discriminate? We talked about some examples during this inquiry and previous inquiries, for example, schools allowing same-sex attracted teenagers being allowed to bring their same-sex partner to a school event. Is that the sort of activity that the schools you are associated with would want to have the ability to say 'no that's not appropriate'?

Mr Brohier: With respect, we would not use the language discrimination. In my submission, the law should provide for faith based schools to be able to conduct their activities in accordance with their faith based system. For example, a school should be allowed to teach scripture in a classroom situation and expressly state their view on sexuality and gender identity, and that should be whether it is a Koranic view or a biblical view. We say that one amendment will impinge on that. That is one fundamental issue.

The second issue that comes to mind might be the uniform issue according to the example I gave. That would impact not just in Christian faith based schools but in Islamic faith based schools with respect to the hijab. So you are touching on very deeply held issues here. The community and the parliament must not rush into this. This is the wrong way to deal with it. It is an inappropriate amendment.

Senator RICE: We have two different types of issues there. One is the ability of a school to be able to teach according to their doctrines and beliefs, and that is where there is a difference of opinion between you and, for example, the Human Rights Commission, who feel that this by removing this exemption it would not affect the ability of schools to teach according to their doctrine. We have had a variety of evidence about that.

What I want to go to is not teaching but direct discrimination against same-sex attracted or gender diverse young people in schools. Is it to enable a school, for example, for a same-sex attracted young person to be able to bring their partner to the school formal? Is that the sort of thing that schools wish to be able to do?

Mr Brohier: I hate to be technical but direct discrimination under the act includes the teaching issue because of the detriment point that Mr Steenhof made. It is not just the sort of example that you gave. Another level to respond to this sort of issue you are addressing is Australian law and the leading authority, CYC in Cobaw, does not recognise the difference between attribute and conduct. It says: if you are discriminating on the basis of conduct, you are discriminating on the basis of attribute. European law recognises that difference and American law also does now. What we have is a student—and this is hypothetical—who might be same-sex attracted in school, and there could be no difficulty with that, but if the student wants to manifest their attraction in some sort of behaviour in the school that might contravene the school's policies or faith based ethos. It's not just same-sex attracted students; it's heterosexual students who want to manifest a certain sexual conduct in the school—

Senator RICE: Which is why I was using the example of, say, taking your partner to the school formal where it's acceptable for those heterosexual students to take their partner to the school formal.

Mr Brohier: But this is much broader than the example you're giving, and so if I could continue with my answer. Unfortunately, because Australian law doesn't recognise the difference between attribute and conduct, if the school says, 'No, you can't do this activity on campus,' you are discriminating on the basis of attribute and so you've got a problem under the legislation if it's amended.

Senator RICE: You only have a problem if you are allowing your heterosexual students to take their partner to the school formal and you're not allowing your same-sex students. That differential—

Mr Brohier: You'll be very clear that I didn't use that example; I talked about the broader issue of conduct on campus.

Senator RICE: This is the point I'm getting to. What I want to know is: what types of activities do the schools that you are supporting wish to be able to continue? Can I go to Mrs Kelleher in terms of, say, transgender students because she spoke a lot about transgender students in her evidence to us today. I've seen some policies from a number of Christian schools—one which I have in front of me at the moment from the Ballarat Christian College. I just want to know whether you would support their position on transgender which states:

Transgender is a social construct which denies our God-given biological sex.

Mrs Kelleher: My opinion on that is neither here nor there, but most faith based schools—Christian, Jewish and Muslim—would adhere to the biological worldview of sexual identity and it would be contrary to it to accept that people can have a gender that's other than their biological sex.

Senator RICE: It sounds like that statement then from the Ballarat Christian College—
CHAIR: You've got an answer.

Senator RICE: Yes.

CHAIR: Don't interpret—

Senator RICE: So, Mrs Kelleher, in terms of the behaviour that you would wish to be able to continue to discriminate against—and I think you talked a lot about toilets—

Mrs Kelleher: Yes. That's a grave concern to parents. Could I please say that I agree with the comments by the other witnesses, or presenters, that we're not talking about discrimination here but rather the protection of the right for faith based schools—and I'm talking about the rights of parents—in relation to not being presented with worldviews. It's being presented as though it is acceptable in the school that is contrary to their convictions.

Senator RICE: So, if you have a child who is transgendered, whose gender identity is at odds with their biological sex, you would feel that the school should, however, be able to insist that they wear the uniforms appropriate to their biological sex and use the toilets that align with their biological sex.

Mrs Kelleher: Our position is that the current protections should remain so that the school can make decisions—they have to make the decisions; I can't make them for them. They have to make decisions as to the operation of the school and the way in which they will handle it. If those exemptions or protections are removed, the school will not have the freedom or liberty to be able to do that. I can't give you a specific example of what the school would decide. I've given you examples of where parents and quite a number of parents were concerned. They did not want, say, gender neutral toilets. I also have heard from another parent that her child was very confused because a small child—and this is not any comment on the child, who has these feelings that he's another gender to his or her biological sex—

CHAIR: I think you have given—

Mrs Kelleher: This little girl told her mother, 'Well, girls can have penises,' and the mother was very concerned about that because her child had been confused. So these sorts of situations arise.

CHAIR: Can I just—

Senator RICE: Could I clarify, Mrs Kelleher—

CHAIR: Order! Can I interrupt. This is not a debate. We ask witnesses for their views, whether we like them or not, listen to their answers and assess them as we will.

Senator RICE: I wanted to clarify, Mrs Kelleher. You say, yes, it's the view of the school, but essentially you want the school to have the option to say that a child should wear the uniform and use the toilets that are associated with their biological sex, even in circumstances—

Senator O'NEILL: If that aligns with the religious—

Senator RICE: Yes, because of the religious beliefs, even if that child or that family feel that it'd be more appropriate for them to wear the uniform and use the toilets associated with their affirmed agenda.

CHAIR: Mrs Kelleher has given her views on all of those issues before. As I say, we're not entering into a debate. That's your interpretation of her views.

Senator RICE: I just wanted a yes or no from her, Chair.

CHAIR: No. You attribute to her a number of different views, to which I'm sure she will say, 'No, that's not'—

Senator RICE: I wasn't attributing views; I was genuinely seeking a response.

CHAIR: She's already answered that and we are running out of time. We've all had a fairly good go, except me—I had very few questions. I will finish off by following up on Senator O'Neill's point. Mr Brohier, I think you mentioned, as did Professor Quinlan yesterday, that this all arose from a leak of a very small section of the Ruddock report. An act of parliament has been in place for 20 or 30 years, and suddenly it becomes super urgent that it has to be dealt with in the last dying days of parliament, with the government putting forward on-the-cuff amendments and others putting forward amendments. Do you see any particular urgency in dealing with this issue in what some witnesses have said is a rushed way? Clearly, Mr Ruddock spent quite a long time putting together a report. I don't know; I can't speak for the—

Senator O'NEILL: Chair, we don't have legislation from that report. We've got one bill we're supposed to be debating—sorry, considering.

CHAIR: I was just going to make that point—not make the point but ask the question. Senator O'Neill rightly mentioned that the government hadn't dealt with the report. I can't speak for the government, but I suspect they are having the same sorts of complex thoughts about this whole situation as we are and all of our witnesses are.
I'm just wondering if Mr Brohier sees any particular urgency in amending an act of parliament that has already been in place for at least 20 years.

**Mr Brohier:** There can't be, and you can test that. The evidence of urgency put forward by the Human Rights Commissioner was that the term is about to start. The term's been about to start for 20 years and nothing's happened, so there can't be urgency. The issue of complexity has also got to take into account section 116 of the Constitution. The commissioner dismissed that, but no legislation in Australia has yet gone to affecting teaching of a religious doctrine. This legislation does and section 116 could well come into play because the commissioner said that it's prohibition in the terms of 'banning' rather than 'burdening'. There's dictum from Justice Gaudron in the case of Alec Kruger & Ors v The Commonwealth of Australia—[1997] HCA 27; (1997) 190 CLR 1. Justice Gaudron said that, because section 116 concerns free exercise, she believed it's more than banning, in the sense of preventing or burdening. So there are complex issues here which at some time might be tested by the High Court. With respect to the Human Rights Commissioner, it wasn't fair just to dismiss the point about 116.

**CHAIR:** A number of academics and practising lawyers have made the same point. However, that's everyone's view.

**Senator O'NEILL:** I ask Mr Brohier to take on notice to give his view of the section on page 6 of the submission from Christian Schools Australia and Adventist Schools Australia about section 116. Thank you.

**Mr Brohier:** Chair, when will the transcript be up so that we can make sure we get all the questions you've asked us?

**CHAIR:** This committee is supposed to report to parliament by Tuesday. We do have to prepare a report, which the secretariat assists in. They'll be working all weekend. We have set tomorrow as the day, but if you can try to get it to us by Monday morning.

**Mr Brohier:** But when will the Hansard be up so we can see—

**CHAIR:** That's also a problem because, unfortunately, obviously Hansard take two or three days.

**Mrs Kelleher:** Was the Australian Family Association to provide an answer to that as well? Could the question please be repeated?

**Senator O'NEILL:** In the submission from Christian Schools Australia and Adventist Schools Australia, which is available to everyone, there is a short three-paragraph section on page 6 titled 'Existing protections for religious freedom in Australia'. It makes a number of points there about section 116 of the Constitution. I'm interested in your view in response to that. I'm certainly interested in Mr Brohier's view.

**Mrs Kelleher:** Thank you.

**CHAIR:** I think we'll call it quits there. I'm just laughing, Mr Brohier, because this committee often takes advantage of lawyers giving legal opinions that we don't have to pay for. In the event that you're going to do that, thank you in advance. We have no money to pay.

**Mr Brohier:** The hardest thing for a lawyer to do is to do something without charging for it!

**CHAIR:** We got behind with the first witness and this has carried on. I apologise to the other witnesses waiting. We'll just have a break for morning tea, mainly for our Hansard people and others. That will allow us to make the one or two phone calls we have to.

**Mr Brohier:** Thank you.

**Mrs Kelleher:** Thank you.

**Mr Wyld:** Thank you.

Proceedings suspended from 10:57 to 11:07
HOFINK, Mr Erik, Public Advocate, Australian Association of Christian Schools

SPENCER, Mr Mark, Executive Officer, Policy, Governance and Staff Relations, Christian Schools Australia

CHAIR: Welcome. We have your submissions. You are aware of all the rules of our hearing, so I won't repeat those. Over to you for a short opening statement and then you can answer some questions.

Mr Hofink: Thank you, Chairman and senators, for the opportunity to speak to you today. I will make an opening statement and talk to our submission. I am a part-time public advocate for the Australian Association of Christian Schools. I'm also acting executive officer, and our previous EO, Annette Pereira, spoke to a previous committee hearing. I'm also principal of Emmaus Christian School in Canberra. Our association has over 110 member schools across Australia. The vast majority are low-fee-paying schools established by parents or churches and play an important role in their broader community. Our schools have a great history of working with government and embracing positive cultural expectations about education, so they are strong implementers of the Australian curriculum. They have excellent engagement with parents, higher rates of students with disabilities and are typically known for the safe and caring environments that they provide.

Our schools, because of their independence and their values, have been able to pioneer initiatives that have pushed the broader education sector forward. For example, one of our schools in an urban centre on the east coast has been teaching their local Indigenous language for a decade, one of the first schools in the country to do so. Another was established specifically for young parents who would otherwise drop out of schooling. A number of our schools exist to cater for special needs children alongside mainstream classes, giving them unique care while ensuring they remain integrated.

I might also add, as a moment of indulgence, that as the principal of a small, low-fee-paying school in the heart of our nation's capital, and on a campus with average facilities, I'm proud of our own track record of topping the nation's consistent gains in NAPLAN scores for the last three consecutive years. And now, with many families of religious and non-religious convictions, as well as many different cultures and ethnic backgrounds, basically, we receive a near-perfect score each year in students feeling happy and safe, and they experience a great sense of belonging. And we have overwhelming parent satisfaction.

I think this speaks of great partnerships and a strong community that makes 'multidenominationalism'—if that is a word—and diversity work well. Our school is just one of many which can say the same thing. Our schools are not places of prejudice and exclusion, but are vibrant communities that love and educate the diverse children in their care.

But there are also things that make our Christian schools unique. Everyone has beliefs; for a Christian school, Christian beliefs will underpin the activity and teaching of the school. Christian faith is modelled by staff and embedded through our teaching, and it influences the way schools understand what it means to encourage students towards their fulfilment and flourishing. This doesn't mean that there isn't discussion or disagreement. On the contrary, discussion and disagreement sharpen our views. Schools are places of robust debate; no student is compelled to agree with a school, but everyone who participates in a Christian school understands what it is to be a Christian school.

With all this in mind, we are very concerned about the impact of legislative changes and what effect they may have on the viability of faith based schools and their ability to operate in a way that is consistent with the faith that they hold. Legislation in response to media coverage of false claims about the expulsion of students from faith based schools could compromise the ability of our schools to continue being the unique educational option that they are for those who choose to be part of them. The problem is that the exemptions that could theoretically allow a school to exclude a child because of their sexual orientation are also what allow schools to operate in accordance with common Christian beliefs regarding sexuality and relationships.

Without adequate protection for religious beliefs in schools, schools and places like educational institutions could be forced to teach in ways that contradict what they genuinely believe—we've heard some of that discussion already this morning: to act against their conscience and beliefs in the ways that they handle behaviour; and to employ staff who do not share in and meaningfully uphold the beliefs of the school. While we recognise that exemptions may not be the best way to balance the various rights that are held in tension here, if they are removed and adequate protection is not given to schools to hold to a commonly-held biblical view of, particularly, sexuality and relationships in what is taught, in managing school life and who the school employs, then you will be carving out an area of faith and deeming it impermissible. You will be deciding that those long-held beliefs of many Christians cannot be expressed in education at all. This is a serious step for government to take.
Our schools are not asking for any other schools to hold the beliefs that they hold, and they are not even insisting that their students agree with them, but they're asking for genuine agreement from staff who work at these schools and they're asking that they be allowed to manage their schools in ways that are consistent with their faith convictions.

We have served the Australian people in our schools by teaching. I have personally taught in public schools, as well as leading independent Christian schools for almost 20 years now, and I am deeply rewarded by the high sense of community that I experience, high levels of success and positive outcomes for thousands of students from all walks of life. I've never heard of anyone in our schools ever expelling a student, or even contemplating expelling a student, based merely on their sexual orientation. I am therefore quite confused about how we even got here when there is or was no evidence of any of our schools acting against students based solely on their sexual orientation.

Senator PRATT: It is against the law in the ACT to do so.

Mr Hofsink: Yep. So I ask that you take very seriously the threat that changing the Sex Discrimination Act could bring to hundreds of schools in Australia, including the one that I am proud to be principal of, and how a false notion of discrimination against us could damage the existence of many Christian schools and maybe even diminish the valuable contribution they make within our rich and diverse society.

Mr Spencer: I would echo many of my colleague's comments about the nature of our schools and their contribution to Australian society. We have 140 member schools across Australia educating about 65,000 students. Internationally we are part of the Association of Christian Schools International, with 5.5 million students in 108 countries around the world. I will keep my comments brief. As we have said on numerous occasions, our schools have never expelled a student solely on the basis of their same-sex attraction. They never have, they never will and they don't want the right to. That isn't to say that our schools are perfect and it is not to say there won't be claims made about the nature and conduct of our schools. However, we have established in early hearings that these claims are not always true.

This is not, however, what this bill is about. This bill is entirely about who gets to decide what people can believe and whether they can teach and act upon those beliefs. Christian Schools hold a view of human flourishing consistent with traditional orthodox Christian beliefs and views all people with innate dignity and also recognises biological reality. In genuinely caring for students we want to assist them in understanding God's plan and purpose for their life and help them to live in accordance with God's word, including in areas of sexuality and sexual conduct. What became clear in the debate around this bill last year is that those wanting to change are seeking to stop us from teaching or acting on these beliefs—or 'that rubbish' as the Greens leader expressed it.

As amendments relating to teaching were debated, it became painfully clear that what is sought is a total acceptance of a particular and contested view of sexuality and sexual conduct across all schools without any opportunity for diversity or alternative use to be debated. Any divergent interviews would not be tolerated. This is a very chilling prospect that threatens not only the freedom of Christians and those of faith in our community but all Australians. The bill, without amendment, will fundamentally and irreversibly undermine religious freedom in this country in the current cultural context. It will eliminate the religious freedoms of parents and others who have over many years, and at great personal sacrifice, built our Christian schools.

The Joint Standing Committee on Foreign Affairs, Defence and Trade, in their interim report in 2017, made clear that freedom of religion is not adequately protected in Australia. The Expert Panel on Religious Freedom, after reviewing more than 15½ thousand submissions and extensively consulting across the country, indicated that these exemptions should not be removed. The extension of the consideration of this bill and the proposed amendments provides clear evidence of the complexity of this issue. We want to thank and acknowledge the Senate for their wisdom in not rushing this through last year and for setting up this committee to review the bill and amendments.

This rushed bill and amendments are not an adequate resolution to this issue. We either need a considered, principled, bipartisan solution or, as the government proposed, through a referral to the ALRC, a more considered and principled consideration of the full issues and a comprehensive and complete response.

Senator PRATT: Mr Hofsink, very briefly, what does your school teach about gender and sexuality?

Mr Hofsink: What any other school would teach. I'm not exactly sure what you mean—in relation to what?

Senator PRATT: For example, you might say a particular thing in a health setting and you might say a different thing in a religious instruction setting, where you might talk about marriage being between a man and woman. Could you give us a very quick overview of that.
Mr Hofsink: We uphold the Australian Curriculum as a school, so healthwise we will teach what the curriculum determines. In a biblical sense we will teach that marriage is between a man and a woman.

Senator PRATT: Have you been challenged at all by anyone currently on your curriculum, or do you feel strongly that the current system enables you to uphold the ethos of your school?

Mr Hofsink: I think so. Aiming to act with the utmost integrity, we make it very clear to the parents who choose to join our school, through a well-designed parent induction course, what the Bible teaches and what we will therefore hold as a worldview within our schools. Have we had a challenge? I personally haven't had in the years that I've been teaching. Minor challenges, but a major one—people who would say, 'Wouldn't the Bible allow to teach for marriage between a man and a man?'—no. We would reject that based on our understanding of the scriptures. So in that sense, when people come with an argument, we see it as an opportunity to speak with each other and not to go against each other. Mostly people accept that they've come to our school under no false pretences. They knew exactly what we were teaching and therefore they may choose to withdraw their children. I haven't had any pain occur through that.

Senator PRATT: Are you aware, though, that the ACT does already have antidiscrimination laws that protect LGBTI people, and that that applies to an education setting?

Mr Hofsink: Yes.

Senator PRATT: Essentially what we're seeking to do at a Commonwealth level is no different.

Mr Spencer: Those laws in the ACT haven't come into effect yet. They've been passed by the territory assembly but don't come into effect until—I think they're talking about later this year.

Senator PRATT: I know they're about to. Did you raise objection to those laws? What preparations are you making for those laws being applied?

Mr Spencer: Yes, we raised objections with the territory assembly, both ourselves and AACS. We proposed some amendments to that legislation, which weren't accepted. There have been some assurances and some opinions including in the explanatory statement to that legislation that purport to provide some comfort to us around what we can teach. Of course that will be determined in the fullness of time if there are challenges.

Senator PRATT: Have you made any changes at your school, Mr Hofsink, or do you think you need to make any changes in relation to the changes in the ACT?

Mr Hofsink: No.

Senator PRATT: I wouldn't envisage that you do, either.

Mr Spencer: Can I add that we are talking with all the Christian schools, and we are meeting together in a couple of weeks time to look at how we make sure that our policies are clear and that parents and others within the school communities have a very full understanding of the totality of our faith and belief and how it affects marriage and family.

Senator PRATT: I assume you are also working through ensuring that you meet you obligations under the ACT's new antidiscrimination act, as you would as well.

Mr Spencer: Yes.

Senator PRATT: So schools are actively preparing for that new law, quite successfully. Thank you.

Mr Spencer: I'm not sure about 'quite successfully', but actively preparing at this stage.

Senator FIERRAVANTI-WELLS: You've been sitting here and listening to some of the evidence that's been given. It's very clear that the Wong bill goes far beyond the very limited political objective relating to the expulsion of children from schools. In your view, what amendment if any would be required to afford that limited protection?

Mr Spencer: If you look at our submission, what we've indicated is that the Wong bill, with three of the government amendments, would be the very bare minimum to even come close to protecting religious freedom in a sufficient way. The bill as it stands, as we understand it with the advice we've received, as you said, does go well beyond that mere expulsion provision. A number of people talked about the protections because we were talking about indirect discrimination rather than direct discrimination, which, we heard earlier today, is not such a clear boundary as some people would portray. We think the bill is particularly egregious in its breadth of coverage as an unattended consequence.

Senator FIERRAVANTI-WELLS: So in other words, leaving aside what the government may or may not have proposed, what is your view as to what a simple amendment would look like—a clean slate?
Mr Spencer: If we had a simple amendment to the current Sex Discrimination Act, it would seem there might be a way of simply amending it to deal with the issue of expulsion or admission of students, but the lawyers are saying it's not quite that easy and that's why we having this discussion we are having today. It seems to be nowhere near as simple as it seems.

Senator FIERRAVANTI-WELLS: Could you assist us with an alternative very simple amendment? I would be happy for you to take that on notice.

Mr Spencer: I would be happy to take it on notice. We are not lawyers. We do not claim to be lawyers. We are merely an association of schools. Of course we would be subject to legal advice on whether that was going to achieve—and only achieve—the objectives of that amendment.

Senator FIERRAVANTI-WELLS: Mr Hofsink, you made comments in relation to the test of reasonableness. Of course the government amendments go to that test of reasonableness. Obviously you have taken legal advice about this but how confident are you in the current climate—bearing in mind what has happened, not just cases but circumstances—that you won't be hauled up before the Anti-Discrimination Board and the Australian Law Reform Commission for potentially doing what Senator Patrick asked in the question before? If you stood up and said marriage is between a man and woman, in effect doing simply what Bishop Porteous was doing in Tasmania, how confident are you that you would not be hauled up before the Anti-Discrimination Board simply for saying and stating what is obvious in the Bible or, for that matter, another religion, whether it be our Judaism or Islam or another religion?

Mr Spencer: If I can just take step back, there has been much discussion around the efficacy—so-called—of the Tasmanian legislation or the Queensland legislation that has been in place for some time in the hearings yesterday and in some submissions. That historical look at what has happened, I don't think, is necessarily going to be a good indicator of what's going to happen in the future. We are in a very changed cultural context. We've seen in the press in recent days what seems to be an orchestrated series of complaints to the Press Council about the use of the word 'transgender' in relation to some media coverage. We are living in a different world to what we have been in the past. Anecdotally, from some of our schools around the Australian marriage law postal survey last year and some of the division that caused, in some of the responses from staff from Christian schools and professional development days and other events, there has been a sense of division that has been introduced into our society as a result of that debate and discussion that wasn't there previously, where, because they simply teach in a Christian school, there has been some sense of being treated differently.

Senator FIERRAVANTI-WELLS: I haven't read the article but in The Australian today I saw a headline where English teachers were whingeing because the curriculum is not sufficiently teaching about the issues that we are discussing here at the moment.

Mr Spencer: Our concern is that we are living in a very different cultural context. You will hear from Equality Australia this afternoon, which came out of the marriage law postal survey and is a very cashed-up, well-resourced advocacy and activist group. There's a different climate. We're living in a different world. That's what our concern is.

Senator FIERRAVANTI-WELLS: I have two questions, if I may. One is: what do you think the ultimate agenda here is? We know that many of the people who have been pushing this agenda have the view that faith-based schools potentially should be lessened and ultimately eradicated, and we keep seeing all these submissions about government schooling and funding to Christian and non-government schools. This is the thin edge of the wedge—do you agree with that assessment?

Mr Hofsink: It sometimes feels like death by a thousand cuts, so there's nervousness, there's 'unsettledness', if things aren't clear. The concern is also if governments rush legislation through. If the issues are so controversial and so deep in their nature then we ought to take our time, because we aren't yet. Schools like our association's schools are definitely nervous about all this, yes.

Mr Spencer: We're seeing a very intolerant form of tolerance being introduced into our country.

Senator FIERRAVANTI-WELLS: Can I take you back, Mr Spencer, to the point that you made. The fact that Bishop Porteous was hauled up before the discrimination board for simply stating what is in biblical text—in Tasmania!—actually makes the very point that we're concerned about, and that is: if that's going to happen in Tasmania, imagine what can likely happen elsewhere.

Mr Spencer: And there's been much made about the lack of complaints due to the lack of a formal complaints mechanism. I'd also point out to the committee that there has been a significant degree of self-censorship. Teachers in classrooms are wondering what they can say now following the Porteous matter and following other discussion around these issues in the media.
Senator FIERRAVANTI-WELLS: Could I ask you to restate the situation. It's very clear that the framework that currently exists in the SDA has actually provided a management framework for you to deal with, in schools, the very complex issues that arise—and Senator Rice will probably ask you about taking a partner to the school dance. The reality is that the existing framework has actually enabled you and assisted you to manage those very sensitive issues, and therefore the potential removal of those exemptions will then codify a system that may well lead to greater discrimination than what you are actually seeing at the moment—is that a fair assessment?

Mr Spencer: Can I give you a concrete example of an issue relating to the pregnancy of a staff member. It's a similar issue but slightly off the narrow focus of students. A staff member out of wedlock became pregnant in one of our schools. The legal advice was that unless they terminated that staff member, because of the nature of the exemptions under discrimination they'd be hard-pressed in the future to take any action against a staff member on the basis of pregnancy. The school ended up ignoring that legal advice and pastorally responding to that issue, pastorally caring for that single mum—the father had bolted once he found out about the pregnancy. They pastorally cared for that employee. That's what they wanted to do. That was the heart of their school and the heart of their community.

In that case they were able to do it well. The staff member concerned acknowledged that their behaviour had been inconsistent with the values and teachings of the school. They were repentant. They wanted to work with the school and sought to work cooperatively with the school. If that staff member had responded quite differently and had been very aggressive and challenged the ability of the school to engage with that view of sexuality and sexual conduct, there may have needed to be a different response. The law allows those things to be dealt with at the moment at that school level, pastorally and sensitively, by the people involved, knowing the context.

CHAIR: Senator Rice.

Senator RICE: Thanks, Mr Spencer and Mr Hofsink. I want to continue to explore whether there are differences in what your schools are able to teach in the states where there is antidiscrimination legislation in place; in particular, Tasmania, where it's been in place for 20 years, and Queensland, where it's been in place for a decade. We've already discussed how in the ACT it hasn't yet come into force. Are there differences in what your independent Christian schools teach in different states?

Mr Spencer: The overwhelming desire of our schools is to be Christian schools—to teach our views, values and beliefs as we understand them. They will do that, regardless of what the law says, or they will shut down. In jurisdictions like Queensland and Tasmania, they are cautious about what they teach. There have been disputes around these matters and they've been settled. They generally don't get to litigation. No-one wants that. It's disruptive for parents, for staff, for schools—for the whole community. There have been fights and they have been seldom and it's been expensive.

Senator RICE: Can I explore more what you mean by saying that they've been 'cautious'?

Mr Spencer: They will be thinking about how they nuance language—how they try to present the biblical truth as they understand it in a way that is going to make sure that they minimise the opportunity for litigation. They will be trying to deal with parents and students privately around issues of concern and negotiate settlements where it's not in the best interests of either that student or that family to be part of that school community. And they know they are exposed, and legal advice has been, in some cases, that they are exposed—they'll run that risk.

Senator RICE: As well as minimising the chance of litigation, could it also be that you are minimising harm to LGBTI students and families?

Mr Spencer: Well, we won't get into a debate about 'harm' and the potential harm, because there is some contest around there—

Senator RICE: Certainly a lot of evidence has been presented to the committee about the harm done to students and families by discrimination.

CHAIR: You've asked the question. Let Mr Spencer answer it.

Mr Spencer: When we've had opportunity and had concrete facts, we've been able to refute a number of those. But we'll move on from that particular issue.

We've always tried to act sensibly, carefully and cautiously, and pastorally in the best interests of students. We are talking about teachers who care about students. That's why they go into teaching. That's why they're looking for the best interests of the child, as we see it, as we understand it, with a biblical view of sexuality and sexual conduct.

Senator RICE: As to teaching: the schools in Tasmania and Queensland, you say, have been acting with caution, but are still able to teach their beliefs?
**Mr Spencer:** Possibly not as effectively as in other states. It's a hard—

**Senator RICE:** Could you give me an example of the difference? You've probably got teachers who have taught in different schools in different states. Have they had to change what they are saying?

**Mr Spencer:** The situation in all of our states and all of our schools is that we're pretty clear about who we are, and there is some self-selection going on with students and parents coming into our schools. That's what we're aiming to do. We're aiming to be clear up-front about who we are and what we teach and how we teach it. As I said earlier, in response to the question from Senator Fierravanti-Wells: to date, we haven't had litigation around this. Our concern is that, moving forward, in a different cultural climate, we will have that litigation, and that's our concern.

**Senator RICE:** Are there differences in what are considered acceptable behaviours, in terms of same-sex-attracted students or gender diverse students, in your schools in Tasmania and Queensland, compared with the other states?

**Mr Spencer:** I'd say our behavioural standards are consistent across Australia and don't seek to distinguish on the basis of those attributes particularly but are behavioural standards that are consistent with our beliefs and our faith and values and doctrines and tenets.

**Senator RICE:** So you're able to uphold those behavioural standards in Tasmania and Queensland?

**Mr Spencer:** At present—again, subject to the changing cultural climate.

**Senator RICE:** We've got the changing cultural climate that's happening. That's independent of the potential change in law.

**Mr Spencer:** It is, and, if we were having this discussion in five years time, I suspect we'd be providing very different evidence about quite a different range of assaults being made upon our schools in those jurisdictions, and we've already heard earlier from some of the other witnesses about the situation in Victoria in a case there.

**Mr Hofsink:** Senator, may I go back to the unpopular topic of the partners at the school dance—hopefully, with an educator's hat on and a little bit of the voice of reason. I think those questions are being asked of schools when it's not the aim of the school to celebrate relationships at the end of the year, even heterosexual relationships. Schools have dating policies and things like that. However, we celebrate the end of a significant time of learning at school. At the schools that I've been principal of, we totally steer away from taking your partner to the dinner, because that's not what it's about; it's about celebrating your partnership with the school and your time of learning there. So I would suggest we don't really bring that kind of thing in, because I think many schools will simply say, 'That's not our focus; our focus is to just celebrate what we've been together as a school.' The way we've always done it is that we have a bus of year 9s and 10s going to the formal, they arrive together and we try to do away with the pomp and parade of these days and celebrate the rite of passage.

**Senator RICE:** With regard to transgender students, can you give me the outlines of what the approach of the schools that you represent to transgender students is.

**Mr Spencer:** Again, you're asking a broad question which is hard to do justice to. A number of our schools have transgender students. I think that in Melbourne last year we discussed a claim made about a particular school and its lack of a suitable response. That school, I think, now has three or four transgender students who are transitioning. They work closely with them and mirror the government guidelines. That works in their particular school context and school community. We've had other schools who may have, shall we say, a more conservative parent population, sometimes an ethnic parent population, where it's been less applicable to have transitioning students and they have not been a good fit for that school community. That's part of the diversity we're looking for in Australia. There are other schools that students can attend. There are other governments schools or schools of faith with different beliefs. The committee talked earlier about the range of LGBTI students who are people of faith. There are other schools where they can fit in.

**Senator RICE:** So you want a school to be able to make the choice to say, 'This trans student does not fit in the school,' and you would prefer, and that school would like, to be able to advise that student and family that they would be better off at a different school?

**Mr Spencer:** We want the ability for the people on the ground, closer to the situation, to make the informed, pastorally sensitive, caring decisions that they believe are in the best interests of the school, yes.

**Senator RICE:** Which could include—

**Senator PRATT:** What about the best interests of the child, who might have been there for 10 years?

**CHAIR:** Hang on. You ask the question and you get the answer. You may not like it, but that's the answer.
Senator RICE: Yes.
Senator PRATT: I'll be quiet.
Mr Spencer: We'd argue—sorry, Senator Pratt—that that is in the best interests of the child.
Senator RICE: To clarify, they would be able to make those choices, which could include asking the family to remove their child from the school?
Mr Spencer: Yes.
Senator RICE: Thank you.
Senator O'NEILL: Mr Spencer and Mr Hofsink, thank you for your contributions so far. You've noticed I've asked a couple of questions in response to your submission. I just wanted to give you the opportunity to expand on the paragraph where you indicated concerns about section 116 of the Australian Constitution and its intersection with the debate that's live. I would also like to put on the record that the debate seems to be very far from the actual legislation, which I think reflects Australians' concerns that children should not be discriminated against in school. We're going way out to sea from there. Seeing that we're out and we're swimming in the deep water, I'd like to hear what you think about section 116.
Mr Spencer: I would suggest that the better response would be the one you'll get from—
Senator O'NEILL: Mr Brohier?
Mr Spencer: Mr Brohier. But what we've indicated there reflects the advice we've received from a number of legal academics who specialise in this area. Some of them have made submissions. You might hear later on this afternoon from some of them who may also expand upon this area. We're not lawyers, and we're not seeking to be experts in this area, but it's been put to us that this is a live issue, as the committee has heard separately.
Senator O'NEILL: Are you familiar with the piece in Eureka Street recently by Father Frank Brennan?
Mr Spencer: Not that particular piece, but I've read some of Father Brennan's works more generally.
Senator O'NEILL: I might just put a question on notice to ask you if you could have a look at that. Perhaps the secretariat might be able to send you a link. There's a suggestion there by Father Brennan about a way to move forward. I'd be interested in your view on that.
Were you here this morning for the Human Rights Commission's evidence?
Mr Spencer: Yes.
Senator O'NEILL: They expressed a view that there was the need for one amendment and one amendment only. I know that Senator Patrick will probably prosecute this more fully, because it is his amendment. I am interested in your view of the Human Rights Commission's evidence and the degree of protection that they continue to assert is afforded you, and your view of the amendment that they recommended.
Mr Spencer: That really goes to the heart of one of our concerns around this area of law. The regulator in the area, the Human Rights Commission, seems to be putting a view that this is simplistic and can be done quite easily. They seem to be presenting a view of international law which is inconsistent with the views being put to us by a number of legal academics.
Senator O'NEILL: Could you go to the international law, because it is quite a substantive part of your submission. I again note that it is not related to the exclusion of young people of transgender or LGBTI identity or any other position that might be different from a theological-held view. It has got nothing to do with that. We are not talking about that now, even though that is the legislation we are supposed to be discussing. We are talking about a much broader principle here, aren't we?
Mr Spencer: In terms of the legislation, the way the exemptions work is that they are the only protection we have for religious freedom in Australia. It has not been our position of that being the best approach. We would much rather have 'discrimination' defined better at the point of definition, and that has been covered in our submissions to the Ruddock review and various other inquiries.
Again, our understanding of what has been put to us in terms of the way international law works around particularly article 18 of the international covenant and the Siracusa principles, the general comment 22, which we refer to, is that they provide a very high bar on the constraints that can be placed generally on religious freedom. We understand that they would provide adequate protections. The Andrews committee review, the Joint Standing Committee on Foreign Affairs, Defence and Trade, covered this extensively in their interim report in 2017, where they looked at the requirements and expectations under international law. That has simply not been reflected in Australian law to date, as we understand it, in the way that the exemptions are working at present.
However, I would be more than happy to have that international law level of protection applied in a domestic context.

**Senator O'NEILL:** The reason we are having this discussion, which has sort of telegraphed out from the bill from Senator Wong, which seeks to achieve, and I will restate: confidence that a young person—

**CHAIR:** Senator, we are running short of time. If there is a question—

**Senator O'NEILL:** will not be discriminated against if they seek to participate in a school of a Christian, Jewish, Islamic or other faith. Can I take you to Senator Patrick's amendment and the comfort that it gives according to the Human Rights Commission. Why in your view is that not adequate?

**Mr Spencer:** With respect to Senator Patrick and his amendment—so we are talking about the amendment that changes the definition in section 37—it tries to narrow that to merely 'educational institutions', which are, as we understand them, schools and universities—those sorts of bodies. Again, the advice that we have received is that, because of a broad definition of 'education institution' earlier in the act—I think it is in section 4, from memory—the amendment proposed by Senator Patrick wouldn't actually achieve its outcome of limiting the section 37 amendments to merely schools and those similar bodies.

**CHAIR:** Perhaps it might be a good segue to pass to Senator Patrick.

**Mr Spencer:** I am happy to take it on notice if you want more information on that.

**Senator O'NEILL:** Yes, thank you.

**Senator FIERRAVANTI-WELLS:** Can I just help Senator O'Neil: the definition of 'educational institution' means school, college, university or other institution at which education or training is provided. I think that is where Senator Patrick has got his amendment from to go from 'education or training'. Sorry, I just thought that was useful.

**Senator PATRICK:** I was going to take a slightly different line. Going back to the detail—that's where the devil lies; excuse me for saying that!

**CHAIR:** No devils in this room this morning!

**Senator PATRICK:** These are some questions I didn't get to ask some of the previous witnesses. I'm just trying to work out how things work in the classroom, where some of these issues may arise, not in a playground where it's much harder to deal with children with legislation—that probably has to be tackled in another way. This goes to how you as a school operate and deal with particular situations. You're trying to protect the rights of children to make sure that they are not discriminated against. I'll use the same example I used earlier: if you have a teacher who puts forward a proposition to students that marriage is between a man and woman and then goes on to say, 'but it is lawful to have same-sex marriage' or says in accordance with the faith, 'it's a sin to have marriage that is not between a man and a woman', clearly someone could be offended, particularly by that last remark. How do you balance that requirement to not discriminate or cause offence against the rights of 30 other children to be taught a faith? How do you do that in practice?

**CHAIR:** While you're getting the answer in your head: I know you had some urgent business outside, Senator Patrick, but your questions were put by other senators in your absence to other witnesses.

**Senator PATRICK:** I will read the Hansard. Thank you.

**Mr Hofsink:** I'm not suggesting that this is conclusive or that I speak on behalf of large volumes of people, but just reflecting on your question—

**Senator PATRICK:** As a coalface.

**Mr Hofsink:** Correct. It's not whether those questions may arise in a class; they will. That's the reality of where we are. A simple thing like a picture of your family could bring those issues up. I think that the matter of sin, the fact that it's called sin in a biblical sense, is the interpretation of the Bible. But that's not where it stops; that's only the beginning of many, many other things. In fact, sin is something that affects our whole lives. A teacher would be unwise to zoom into that particular sin because that could cause harm. It's very wise for schools, and that's what Christian schools would want to do and not necessarily be taken to task for it, to simply teach that sin has affected mankind—it's affected all of us, not just you, you and you—and that, for sin, there is a solution called Jesus Christ. That's the gospel that we believe and hold onto. There's the good news that comes with the talk about sin.

Again, it's so easy for us to focus on marriage and sexuality as the issue here. For us, as Christian schools, it just provides a pathway to teach the broader picture of mankind and the authority of God in this world. For someone who doesn't believe in God as the supreme authority, this will not be relevant. In a Christian school
classroom, we will certainly teach sin but we won't zoom in on certain sins as being worse than others or higher or more punishable. It would be unthinkable to do that.

**Senator PATRICK:** You say that that would cause apprehension. As things currently stand, how would you guide a teacher to deal with a circumstance like that and how would that change if this legislation were implemented?

**Mr Spencer:** As I said in my opening comments, we talk about what we believe and understand to be God's best plan for people; what the path to human flourishing is. In relation to marriage, we believe that the path to human flourishing is a man and woman joining together and creating a family. That's the traditional orthodox view. That's the ideal. That's what we're promoting. We acknowledge that in our world there are other variations around that. There is divorce and there are single parents for a range of reasons. We don't deny the reality of the world we live in. It's the nature of our, as we said, full-on world.

**Senator O'NEILL:** Do you teach about ethics and business too?

**Mr Spencer:** Yes, we aim to.

**Senator O'NEILL:** Particularly to the bankers?

**Mr Spencer:** I'm not sure they always listen, but that's—

**CHAIR:** We'll leave that to Anna Bligh—

**Mr Spencer:** We teach about those things at present. The advice that we've had—and you heard this from earlier evidence—is that, under the bill, as is proposed and without amendment, if we put forward a proposition that there is a better way of living, a better path for human flourishing, and that this particular situation might reflect your reality, it's a lesser way, by implication, than causing a potential detriment to the child and the family, which is potentially actionable. That's the advice we're receiving and that's the concern we have.

**Senator PATRICK:** Even though that advice conflicts with what we heard from the Human Rights Commissioner this morning?

**Mr Spencer:** Yes. And you heard Mr Brohier saying that that is the case. You'll hear from others, and other submissions have made the same point.

**Senator RICE:** And you are currently teaching that in Tasmania and Queensland as well?

**Mr Spencer:** At the moment, we haven't been challenged on that—as I said before, about the different cultural climate that we're anticipating moving into.

**CHAIR:** But you're worried—

**Mr Spencer:** We are worried about it.

**CHAIR:** about Mr Brohier called the 'activists' who might take it on?

**Mr Spencer:** We have what we would describe as a 'genuine apprehension' to that change.

**CHAIR:** I thank you both for your submissions and for your help here today. I think it was you, Mr Hofsink, who mentioned earlier in your evidence that parents know what your schools are about and, if they don't agree with the philosophy, the theology of your school or your principal, they won't go there. What do you say to those who say, 'Yes, but these children want a Christian education and perhaps want the discipline that private Christian schools are renowned for providing and other schools perhaps don't'? What do you say to people who say, 'Yes, but they want that sort of thing. It's just that they feel uncomfortable with some of the teachings'? How do you address those issues?

**Mr Hofsink:** As I said earlier, we do a new-parent induction course. At my school I call it 'Emmaus 101'. It's a further step to the enrolment process. I certainly get that a lot. People say, 'Are you saying to me that I'm not a good fit for the school?' and I would answer that with, 'No, not at all. I'm just really trying to explain to you what the school is about and what the world view of the school is. If that unsettles you, this may not be the school for you.' Yes, there were definitely parents who would then, with integrity, a smile and a handshake, walk away from our school. We lament that because we want partnerships and we don't necessarily want them to leave, but that could happen and it has happened.

**CHAIR:** But you're frightened now that, if this legislation goes through, even suggesting what you have suggested may end you up in court?

**Mr Hofsink:** Certainly. Recently we were subjected to phone calls. We don't know who they were from because the person at the other side of the line would call the enrolment officer with questions such as: 'What would you teach on marriage?' It was only later that we suspected that it was from an activist group. That's already happened, and my school was one targeted by that. It makes us nervous; it makes us unsettled. I would
want the same integrity in saying, 'We have a Christian school. We base our teaching here on the gospel and thehope that Jesus offers. If you want to be part of that, it's your choice. Please feel free.' If you're in our school—andthere are students who struggle with their identity or their sexual orientation—we welcome you and we will doeverything we can to support you. We do.

**Senator PRATT:** Why should they struggle?

**Mr Hofsink:** Pardon?

**Senator PRATT:** It's all right. I'm not going to interject anymore.

**Mr Hofsink:** I didn't hear what you said, Senator Pratt.

**Senator PRATT:** It need not be a struggle when people have good support. That's all.

**Mr Hofsink:** I agree with you there.

**Mr Spencer:** They make decisions about education for a number of reasons, be it the curriculum, the faith,values and beliefs, the facilities, the subject choices, the disciplinary policy. We have students leave our schoolsbecause they don't like the firm discipline. So those decisions are made now on a variety of reasons. What we'reoffering is a particular faith based education that no-one is forced to choose. They have the ability to choose.They have a government school alternative. There are a number of other non-government school alternatives inmost cases as well.

**CHAIR:** From your broad knowledge, are there any places where you have schools where there are notalternative schools available—that is, state schools?

**Mr Spencer:** There are a couple of remote locations where they have an Indigenous school. There is generallya distance ed provision by the government, but there may not be a school on the ground.

**CHAIR:** Sure.

**Mr Hofsink:** I just want to put Senator Pratt at ease by saying that I agree with her statement that studentsshouldn't struggle with these issues, but again that's when we zoom in on one aspect, because our students acrossthe board struggle with many things—mental health, difficulties in relationships with their parents, friendshipsand things like that. At schools we aim to provide an education. As Christian schools we do that from within aview that says we are broken but there is a solution and there's hope. Generally, as I said in my opening statement,we find that our families are very happy and safe—and they would give you that feedback themselves if theywere here today, both those of a religious and a non-religious background. Thank you for the opportunity to saythat.

**CHAIR:** Thank you very much. We very much appreciate that. Thanks a lot.

**Mr Hofsink:** Thank you.
DAVIES, Most Reverend Dr Glenn, Archbishop of Sydney, Anglican Church Diocese of Sydney

STEAD, Right Reverend Dr Michael, Bishop of South Sydney, Anglican Church Diocese of Sydney

TAN, Dr Carolyn, Chairperson, Public Affairs Commission of the Anglican Church of Australia

[12:01]

CHAIR: I welcome Dr Tan of the Public Affairs Commission of the Anglican Church, the Most Reverend Dr Glenn Davies and the Right Reverend Dr Michael Stead of the Anglican Church Dioceses of Sydney. I understand some of you may have to leave early, so feel free to excuse yourselves when you need to. I think you've been given information on parliamentary privilege and the protection of witnesses. We ask you to make an opening statement and then we'll ask you some questions. All of this is being recorded on Hansard.

Dr Tan: The Public Affairs Commission of the Anglican Church is a commission appointed by the primate on the recommendation of the Standing Committee of the national Anglican Church of Australia. At the moment it's made up of 10 people from across the country. The PAC speaks in its own name and not on behalf of the Anglican Church as a whole. There will be many different Anglican views on the issue of exemptions. The dioceses of Sydney is represented here today. However, I have collected a few statements by Anglican bishops in other dioceses that they made last year to make it clear that they did believe that their Anglican schools should not discriminate against students or staff in relation to the SDA exemptions and that their schools need to be places where all people are safe and need to be inclusive environments. I have provided to the secretariat copies of those letters. If I may, I request to table these. They are from the Archbishop of Perth, the Archbishop of Brisbane, the Archbishop of Melbourne and the Bishop of Wangaratta.

As outlined in our submission, the PAC strongly supports both freedom of religion and freedom from discrimination as basic human rights pertaining to the dignity of all human beings. It's unfortunate if they're ever pitted against each other. Both of these should be protected to the fullest extent possible and, if they conflict, solutions need to be found that minimise interference with those rights. In our submission to the religious freedom review we said that it was appropriate in the circumstances to consider who will suffer the greatest harm.

In relation to the exemptions in the SDA, we do not believe that there is any justification for religious educational institutions to discriminate against students or staff on the basis of the protected attributes. We know how vital it is to respect the dignity and value of all people and the real harm that discrimination causes to young LGBTQI people in particular. We would therefore support the removal of the whole of section 38 and support an amendment to section 37(1)(d) to carve out educational institutions from that general exception. In relation to educational institutions we are talking about schools and tertiary institutions, not general education by religious bodies. I will leave it to the drafters to work out a definition of that, but I know that some concern has been raised in some of the submissions about specific theological colleges and there may be ways of excluding those from the definition of educational institutions for this exemption.

However, there does need to be some protection of freedom of religious expression to enable religious educational institutions to maintain the right to teach their beliefs and to give preferences to employing staff who will support the mission and beliefs of the school and to require all employees and contractors to support the mission of the school in carrying out their employment or contracting duties. If religious schools can't teach their beliefs then their reason for being will be diminished and their right to freedom of expression a belief would be clearly curtailed.

It may be that none of these will actually be affected by removing the exemptions but, given the substantial amount of controversy and fear about this, I would submit that it would be best to clarify these matters in the act to avoid—or minimise, at least—the cost and stress of test cases over the issue, especially in relation to what is reasonable. So the government amendments in the proposed sections 7E and 7F may be starting points but they do lack some of the additional requirements that we have argued for in our submissions and we wouldn't support them in their current form.

Basically, we have argued for the need to have conditions and requirements generally applicable and consistently applied so as not to indirectly enable people to be singled out on the basis of any of the protected attributes. Secondly, there should be warnings given, perhaps in the form of formal policies, to enable people to know what is going to be taught and what is going to be required by way of conditions so they have an informed choice about schools. Thirdly, in relation to teaching activity, we would be looking for a 'no additional detriment' requirement beyond receiving the teaching. This would be to enable the religious freedom to teach and maintain a religious ethos in the school but not in a way that penalises people for their protected attributes and certainly not in a way that they weren't warned about beforehand.
In relation to the 'no detriment' issue, we have said a student should be free to disagree with the religious teachings, because they too have religious freedom and freedom to express their views, and there should be no pressure to, for instance, hide or change their sexual identity. But we do believe it is safer to have specific provisions to allow for teaching and for general requirements about upholding the ethos of the school so as to give guidance to decision-makers and tribunals. But there are some additional qualifications, I suppose, that we would like to see to the proposed sections 7E and 7F. Maybe I could just outline some of those. We haven't drafted them; there isn't a Formal Public Affairs Commission position on the precise form of words, because I suppose that would largely depend on whether you are or aren't going to include staff in the amendments. For instance, in section 7F, the teaching activity requirement doesn't pick up the policy requirement that appears in 7E. We think that is important. It needs to be generally applicable to students and staff so that teaching is not targeted to particular students on the basis of their protected attributes, and there needs to be that additional no detriment clause—no additional detriment beyond, I suppose, having to suffer the upset of hearing the teachings. Beyond that, there shouldn't be any form of penalty.

In relation to 7E, I think part of the concern is the wording of 'injury to religious susceptibilities of adherents'. That, unfortunately, does appear also in 37(1)(d). The real issue should be the ability to teach and comply with the doctrines of the religion rather than about upsetting some people. I think the formulation of the words in 7F are better than those in 7E. Also, 7E is a deeming provision as to reasonableness, so it takes out that proportionality analysis. A way between might be to list the 7E requirements but say that these 'may be' a reasonable condition. So there is still this opportunity to look at the proportionality issues in addition to that, but it does give guidance. So it gives guidance but it isn't totally descriptive. Those are some of the suggestions that could be worth considering. Those are my submissions; I'm happy to answer questions.

CHAIR: Thank you very much. Dr Davies, do you want to add anything?

Archbishop Davies: Yes. Thank you for the opportunity to appear before this inquiry. My name is Glenn Davies. I am the Archbishop of Sydney, and I'm accompanied by Dr Michael Stead, the Bishop of South Sydney. We appear today on behalf of the Anglican Church in the Diocese of Sydney. I'd like to make a brief opening statement and then we'd be happy to answer questions.

The thrust of our submission is that the major parties are not very far apart on this issue, and that a mutually acceptable outcome is very achievable. Both parties agree that section 38(3) of the Sex Discrimination Act needs to be repealed. Both parties agree with the principle that it is reasonable for religious schools to set rules for students in accordance with the school's particular doctrines. Both parties—and more than two parties, obviously—agree with the principle that religious schools should be able to teach in accordance with their doctrine. The only real issue dividing the debate is whether these principles are already sufficiently covered or whether they need to be enacted explicitly in the act.

We urge both houses of parliament to work in a bipartisan way to resolve this issue as a matter of urgency. The urgency is not because religious schools across the country are expelling or mistreating LGBTI students. The urgency is because the misconceived public debate on this matter has created the deep division in the community and has been deeply distressing students and staff—LGBTI and otherwise, Christian and otherwise—at our Anglican schools.

We support the removal of section 38(3) to reassure our school communities what has been true all along: Anglican schools don't expel students because they are gay, and we do not tolerate discrimination against or bullying of any student, LGBTI or otherwise. Furthermore, we do not support this matter being referred to the Australian Law Reform Commission because this would leave it unresolved for months, if not years.

When section 38(3) is removed, the onus falls on the parliament to fill the policy void that will be created—a policy void that would continue the uncertainty and division in the community. Despite claims to the contrary, this is not sufficiently covered by the current 'reasonableness' test in section 7B. A number of the submissions rely on the implicit assertion in the bill's explanatory memorandum that section 7B already makes it reasonable for a school to impose conditions, requirements or practices on students in accordance with its doctrines. However, this is by no means settled law. There is nothing presently in section 7B(2) that makes any reference to doctrine, tenets and beliefs. This has not been tested in the courts because section 38(3) has precluded the question from being asked. If the inference of the explanatory memorandum is correct, then there is no harm—indeed, there is great public benefit—in making explicit what is already implicit. The simplest way to do this is what we propose on page 8 of our submission, adding a new subsection (d) to section 7B(2). This wording is, effectively, a paraphrase of the explanatory memorandum to the bill.

In addition to a new section 7B(2)(d), we also recommend an explicit recognition that it is lawful for faith based schools to teach the doctrines of their faith. Religious schools cannot retain their religious character unless
they can teach in accordance with doctrine. They cannot do this if they are under threat of antidiscrimination complaints—for example, teaching a Christian view of life, of marriage or of family in class, or, as in the case of Archbishop Julian Porteous, distributing a pastoral letter to a school community which contains faith based perspectives on marriage and sexuality. Whether or not the complaint against Archbishop Julian Porteous would have been upheld, it demonstrates the ways in which ambiguity in antidiscrimination law creates social division.

We have suggested a reworded version of the government's proposed section 7F, which also echoes the wording of the motion tabled by Senator Jacinta Collins. This is not a Trojan horse to permit discrimination by another means, as some submissions argue based on the legal advice obtained by the Labor Party. We believe that this legal advice is flawed because it fundamentally misunderstands the nature of doctrines, tenets, beliefs and teachings of religious groups in Australia.

Our submission is primarily addressed to student discrimination rather than teachers. However, we are supportive of legislating changes to the Sex Discrimination Act and the Fair Work Act to remove the current exemptions but to replace them with a positive statement that it is lawful for a religious institution to require teachers and other employees to adhere to the religious doctrines or the religious purpose of the institution.

Thank you for the opportunity of making this opening statement.

CHAIR: Thank you, Archbishop. Bishop, you have nothing further?

Bishop Stead: Nothing further.

CHAIR: Thank you all very much, and thank you for your written submissions. Archbishop, you mention that you oppose the ALRC looking at it because it would go unresolved for months. Of course, it's been unresolved for the 20 or so years that this legislation allowing the discrimination has been in place. I think you and others have also said that this legislation arose out of a leak of a small section of the Ruddock report, which took months to do. I don't know, but I guess the government was carefully considering and coming across—

Senator O'NEILL: They were sitting on it, Chair.

CHAIR: Thank you. You know more about the government than I do, then, Senator O'Neill.

Senator O'NEILL: I'm not surprised. You guys aren't talking to one another.

CHAIR: I'm interested that you can't let the politics go for five minutes, can you? Just continuing, I assume the government is struggling with what to do in the same way as, dare I say, all the witnesses who've appeared before us have done. You yourself, Archbishop, have given several suggestions as to how the law should be amended. Many others, both academics and practising lawyers, have given different views. As one academic said to us yesterday, it really needs to be done in a holistic way across the board so there are no unintended consequences. I'm just wondering why, after 20 years, you don't think it's important to do it properly and not do it on the run, in the way that this bill was done in response to a leak. The government responses were done on the run, and you've clearly said they are not appropriate, and others have said they're not appropriate as well. It's just a legal minefield that really needs consideration. I'm just wondering what the urgency is.

Archbishop Davies: Thank you, Senator. I appreciate the import of your question. I'm not opposed in principle, obviously, to getting the very best legislation on this very delicate and sensitive matter. If I may say so, in the debates we had nationally the year before last with regard to the postal survey, I raised this question on a number of occasions: this was about more than just the marriage of two persons or love between two persons of the same sex. We called for reform at the level of the implications and consequences of that. If I may respectfully say so, that has been before the parliament for a number of years now. The 2013 amendments to the 1984 act were uncontroversial at the time. I think that, because of the energy in the national debate through the postal survey, for example, and then the leaking of the Ruddock report—

CHAIR: A section of that.

Archbishop Davies: A section of that report—out of context in a sense too, of course, as you clearly implied. It has brought such outrage in the media—ill-informed, misinformed and mischievous on some occasions—that the urgency is actually settling our community with regard to the fact that, when you read the act, it looks like schools have a right to discriminate against—a most unfortunate set of words in my view. Perhaps they were unfortunate in 1984 but they are even more so in 2013 and now in 2019. I think that's the concern.

I would have thought it was important for the parliament, because there's been a national consciousness on this issue, to address the issue. By all means refer it to the Law Reform Commission, because there may be further amendments that need to be addressed. But I do believe there are significant aspects of the current law which need to be addressed, and that's why we recommend the removal of 38(3). But that cannot be done in a vacuum to leave that policy void. I have sought advice of eminent lawyers to construct the kinds of things which Patrick
Parkinson and Father Brennan have there—and picking up on Senator Patrick's improving of it slightly, if I may say, with the concerns expressed in his amendment. I think the parliament has a responsibility to Australian society to address this matter. You are constrained by your sitting days; I recognise that. There are political realities there which appear even within your own committee. I'm aware of all those things. That's the reason why I've answered in that way.

CHAIR: I appreciate that. The difficulty that this committee and, of course, the parliament are going to have is: do we accept your amendment? Do we accept the legal academics' amendment? Do we accept Mr Brohier's amendment? The thought of leaving it to politicians on the floor of the Senate to determine which is the right thing fills me with horror, and I say that after having been in parliament for a long period of time and having seen the mistakes that are made, which we're trying to address now. Dr Tan, do I detect that you're a lawyer?

Dr Tan: Yes.

CHAIR: I do! My interpretation of all the church groups, if I can broadly say that, is that all agree that discrimination is not appropriate but all agree that it needs to be replaced with something else that does guarantee religious freedom—so that's a very broad church. How do you do that, Dr Tan, with this committee making a recommendation within the next three days and parliament dealing with it in the next 1½ days after that?

Dr Tan: I accept the timing is very tight, and you do want to get those right. I've raised some concerns with particular amendments that are before the parliament. Some work needs to be done on that. I think it'd be good to have the matter resolved quickly, but maybe not within the next few days.

CHAIR: You might have heard other witnesses—and Senator Patrick started this with a very perceptive question yesterday—say that, currently, church schools will counsel people and say: 'This is what our church believes. This is what our school's faith based approach is. Perhaps you should rethink.' A lot of the previous witnesses have been concerned that that would, if this bill is passed, expose them to litigation for breaching what's there now. Do you have a view on that?

Dr Tan: The first thing I want to comment on is that not all church schools will take that view. There are a wide variety of interpretations. The Anglican schools, and those bishops that I've indicated, have said: 'We do not consider sexual orientation as a factor at all. We want the schools to be inclusive and safe for everybody.' So there will be many Christian schools that will say that that's not an issue.

CHAIR: But somewhere along the line—Senator Patrick used the issue that it may not be relevant to Anglican schools; I hope I'm not verballing him—if some child talked about 'my two fathers', other children in the school might be a bit offended by that or concerned about that. The school might then give a comment, which could, if this bill is passed, expose them to litigation for breaching what's there now. Do you have a view on that?

Dr Tan: That's one of the reasons why we've recommended that the teaching activity be specifically addressed. If it's simply teaching activity about what the beliefs of the school are, if that's covered and protected that issue will be dealt with. I think we also need to bear in mind—and this is one of the things we said in our submission—that religious freedom is the freedom to believe and manifest belief. It's not freedom from ever being offended. That's one of the things. So it may be that in those circumstances it's worse for a child to have to hide their parentage than for other students to simply learn what happens in society as a whole.

CHAIR: Even though that's against the faith based teaching at the school?

Dr Tan: If the particular school comes from a religion that says that that's not appropriate then they can teach that, as long as it's taught in a way that doesn't single out that particular student—if it's generally taught, as part of chapel or Bible classes or something.

CHAIR: But do you share the concern that some have raised that, if they explain that, activists could take them on in court and say—

Senator PRATT: I think most people know gay dads exist these days, you know.

CHAIR: Sorry?

Senator RICE: There are some people who are worried about learning about it.

CHAIR: No, that wasn't what Dr Tan said, and it's not what I said either.

Dr Tan: I think the protection would be there—

CHAIR: And, please, we are trying to address a serious issue. Could we leave the snide remarks and political comments for another time. Sorry, Dr Tan.

Dr Tan: I think that the teaching-activity provision, with the protections that I've described around it, would give schools the opportunity to say that this sort of marriage is right or isn't right. It's part of their general teaching
in religious education classes or chapel or the equivalent in other religions. But I still say that I think it's important that students are free to disagree.

**Senator O'NEILL:** Chair, can I just ask a question there about implicit and explicit education?

**CHAIR:** No. I'll come to you later. I will conclude by asking this question, which you may not be in a position to answer at this stage. Would you support the passing of the bill by itself, without amendments, in the parliament? That's not what your submission said, but I'm just trying to be clear.

**Dr Tan:** I'll have to stick to the submission. But I think the difficulty is—there may be no effect because of the indirect-discrimination provisions that allow reasonable conditions. People have submitted that that will be sufficient to cover the situation of religious teachings on doctrines, because you would expect that of religious schools. I just think that because it's a grey area it would be better to make that explicit.

**CHAIR:** Correct me if I'm verballing you, but you think that the bill should be passed, but with amendments to provide what I broadly call 'religious freedoms' in school?

**Dr Tan:** Yes.

**CHAIR:** And you've put forward a suggestion on how that's to be done. If those amendments are not carried—well, I won't ask that, because I think you've already answered that. I'll leave it there and go on to the deputy chair.

**Senator PRATT:** Thank you. I'm keen for my colleague to have some time too, so I'll try to be brief. Thank you, Dr Tan, for your excellent submissions and setting a path forward. You seem to have also done quite a lot of work internally as part of being able to move forward on this issue. What's at stake if this issue continues to be politicised, leading up to an election, rather than focusing on an outcome where we can actually address the substantive issues?

**CHAIR:** I almost wouldn't allow the question about politicising.

**Senator PRATT:** I've asked the question. It's up to Reverend Davies to answer it or not.

**Archbishop Davies:** I've spoken with the Leader of the Opposition and also the Prime Minister's office, and that was just last year. There's been a lot of water under the bridge since then—

**Senator PATRICK:** Not in the Murray-Darling!

**Archbishop Davies:** That's certainly true.

**CHAIR:** But plenty in the Burdekin, where I come from!

**Archbishop Davies:** They did not want this to be an election issue, because we've seen how divisive the postal survey on same-sex marriage was in our society. No-one wants to revisit that, and I can say that there were faults on both sides in that debate. But this is clearly electrified. I know that the banking royal commission seems to have taken over electrification at the moment, but this has electrified the community—with misinformation, I believe, as we referred to from the Chairman's remarks about the selective leaking. I therefore do believe that the parliament has the responsibility for addressing the urgency of the appearance that—or the empowerment, if you like—schools can discriminate against LGBTI students, which is not something that we ever asked for as schools.

**Senator PRATT:** No.

**Archbishop Davies:** We were not consulted in 2013 when these matters came up. The additional attributes were added from 1984 and the act itself has been amended 30 times in 30 years, which demonstrates that we haven't got the discrimination act right yet. We're still working on it.

That's why I believe there is an urgency now. I'm very happy for the Law Reform Commission to continue to work on that, because there will be unintended consequences. There is a sense of rush for the legislation—I think that's true. If I were to answer the Chairman's question to Dr Tan: if the explanatory memorandum and the comments of Senator Collins in Senator Wong's bill were actually incorporated that wouldn't make much of a difference. As I said my opening statement, that is the disparity between what you think is already protected there, which is just not clear because it hasn't been tested in the courts because 38(3) exists. The reality is that there are activists: Julian Porteous was in a very serious situation when the law was that marriage was only between a man and a woman. This was before the law was changed, and that was seen as offensive because he was merely establishing what the current law of the Commonwealth was.

**Senator PRATT:** But they're not merely activists, are they? They're also people within your own faith communities who also have these debates about the attributes within the Sex Discrimination Act—that's very true, isn't it?
Archbishop Davies: We certainly have debates in the Anglican Church and in our schools. I think that different schools will take different views. I represent the Diocese of Sydney; we've got 40 Anglican schools in our diocese and there would be varying views there along those lines. But we don't want the state dictating to schools about how they're going to teach. That, I think, is the nub of the issue here. We want that freedom to teach in accordance with our tenets, practices and beliefs.

Senator PRATT: Yes.

Archbishop Davies: We advertise that, and people know that. We allow the freedom of choice in our society to choose to come to one of our schools or not to come to one of our schools if they don't want that kind of teaching.

Senator PRATT: Yes. That seems like an appropriate statement. In that context, I'm attracted to the proposition that Dr Tan has put forward in her submission:… students cannot be penalised for debating or disagreeing with the doctrines taught and cannot be pressured into hiding or changing their sexual orientation, or, subject to paragraph 16 below, their gender identity or inter-sex status.

Now, you recognise, of course, that there are differing opinions on school policies et cetera. Clearly, people will still be required to conform to a school policy even if they debate it or disagree with it. I remember my days in an Anglican girls school and sitting down to my religious education instruction. We did actively debate whether, for example, women should be ordained or not. It's actually a very important thing, academically, to be able to discuss in a theological sense; you want to attract children to debating et cetera—

Archbishop Davies: I concur with that proposition. We want to educate our children in an understanding of the world. The Socratic method is that you actually need to challenge, and debating is one way of doing it.

Senator PRATT: Yes.

Archbishop Davies: There were rules at school when I was there which I disagreed with too. I opposed them vehemently; I went to the headmaster and was ticked off!

Senator PRATT: And it should appropriately be the same on gender and sexuality issues.

Archbishop Davies: Of course. That is not up for debate. We are inclusive in our schools in that regard and I think that has not been properly understood.

Senator PRATT: And this is a principle that could and should be applied to all schools.

Archbishop Davies: Absolutely.

Senator FIERRAVANTI-WELLS: Dr Tan, picking up your point in both the submissions about the issue of reasonableness, when you start bringing in lawyers you start bringing in the concept of reasonableness. Are we then in effect going to subcontract what is reasonable in doctrine to a body like the Australian Law Reform Commission rather than keeping what is reasonable within the parameters of doctrine, whether it is in the Anglican faith, the Presbyterian faith or the Catholic faith? That is the concern that I have—that it is in effect going to subcontract that out.

Dr Tan: I would say that what is being tested is not the reasonableness of the doctrine—I can't get into those sorts of issues. It is the balancing issue; it is the proportionality issue, in terms of how the child is treated. So, it is not the doctrine that is being tested, it is the circumstances of how the child or teacher is being treated.

Senator FIERRAVANTI-WELLS: But in the context of what happened to Archbishop Porteous, in that point in time can you imagine what will happen in the current situation, if there is a change of legislation. That is the real concern that people have addressed us.

Dr Tan: That's why we want to maintain the ability to teach—

Senator FIERRAVANTI-WELLS: That's right—

Dr Tan: as to what the religion is.

Senator FIERRAVANTI-WELLS: I have a couple of things. Leave aside what is before us at the moment and the proposals that have been put by either party. If you simply had to address the point that you mentioned, Archbishop, which is the political issue, which is basically the expulsion of students from schools, and that is a very narrow issue that goes to school students less than 18 years of age—that's really the concept of where the political issue is here—in your view what should be done, leaving aside what the proposals are, to just address that very narrow issue? And, do you believe that the Wong bill goes way beyond the expulsion of students? That is the other concern that has been raised with us. That is certainly my concern: that the Wong bill goes way beyond the expulsion of students.
Dr Tan: I would agree that it does go beyond expulsion of students, but discrimination is not only expulsion. A student could be made to feel terrible. There could be a whole range of conditions applied to students that would alienate and discriminate against them, without being the pointy end of expulsion—

Senator Fierravanti-Wells: I appreciate that, Dr Tan, but I go back to the point that you mentioned, Archbishop, about the public issue out there. It goes to the urgency that you have described, Archbishop. The urgency in your mind is created by the misinformation about a particular issue and then we are now moving on to the matter—and I agree with you wholeheartedly—that these issues should have been decided at the time of the same-sex marriage issue. So, are we in effect rushing to deal with an issue that really is going to take a lot more time?

Archbishop Davies: I think the answer is yes, and the question is: what is the wise thing to do given those circumstances? I think it is quite like what Dr Tan has said—that expulsion is a narrow window and it is very clear that Senator Wong's bill is much broader than expulsion. One proposition that the Senate might consider is including a line in the act saying that it is discrimination to expel a student on the basis of these attributes. So, if you want to do the narrow window and then send the rest of it to the Law Reform Commission, that won't address the concern that there may be discrimination of people being felt to be marginalised in schools. I don't believe there is a large body of evidence to indicate that is the case, and there is absolutely no evidence on the expulsion of students because of those attributes, that I'm aware of, certainly in Anglican schools.

So I'll throw that back to the Senate if I may. If you want to do the narrow window, which is where all the media went in their hysterical flurry, with regard to the expelling of gay students and sacking gay teachers, that may be one way of doing it and then having them for the longer time. I recognise that, whatever changes in the law the Senate may approve next week or even in April, it's more than likely it'll need further refinement. But the question is: does the parliament do nothing or does it do something to indicate that we recognise there is a problem here with 38(3).

Senator Fierravanti-Wells: To distil from what you've just said—and I know that you've done a lot of work in this space—to simply deal with that very narrow point, in your view, you only need one small amendment which effectively clarifies the existing law to say that this section does not permit expulsion of students for A, B, C and D. Do I understand that? Or can you take that on notice, if you don't mind, Archbishop, so that you can come back to us? Leave aside what's been proposed. Take a white sheet of paper. If you had to fix that issue of the very narrow problem, how would you do it based on the legal advice that you've been provided?

Archbishop Davies: Certainly. I'm not a lawyer, as many witnesses have indicated, present company included. I think that's one way of doing it. I don't think that would resolve the whole issue. Although that narrow window is where the media went, it actually opens up into a vista when in actual fact there are all kinds of things here which need to be addressed.

Senator Fierravanti-Wells: My question presupposes—yes.

Archbishop Davies: The Senate may well say, 'There are so many things that need to be addressed here, we really can't do it in the space of 2½ days of sitting—if I've got your timetable right—in which case address the most pertinent, urgent matter with regard to expulsion so that then the Australian society can say the Senate has done something to address the concerns that have been raised. If then you said, 'We're going to consider this further down the track,' that may well be a better way forward, but I'll take that on advice. I'll talk to some of my legal friends and see if that's possible.

Senator Pratt: If it wouldn't be a good idea to keep a child in a school and prevent them being expelled if they were subject to systemic discrimination while there, would it? Dr Tan?

Dr Tan: That was the point I made earlier.

Archbishop Davies: And I agree with that. I just don't know what the evidence is there with regard to this systemic bullying or all that from the school. I mean, we know bullying takes place at a peer level, of course, and that's a different matter. In terms of the institution, our schools are here to educate people. There's a brokenness in everybody, and we bring a gospel to bear which actually brings healing, love and care, and our schools seek to do that. We don't do it perfectly—I don't do it perfectly in my own life—but we aspire to that, and that's part of the tenets and practices of our faith.

Senator Fierravanti-Wells: I have one last question—I'm happy to give my last question to Senator Patrick.

Chair: I'll go to you now, Senator Patrick, but, before I do, I will just say that, due to poor chairmanship by the chairman, we're running about an hour late. There are some other witnesses following this who have to leave by two, so my proposal at this stage is that we postpone lunch from 12.40 till two o'clock and then have a 30-
minute lunch break only and deal with the next two groups of witnesses before two, allowing, if possible, around half an hour for each, which was the original thing. If everyone's happy with that, we'll do that. Senator Patrick.

**Senator PATRICK:** I will have to leave for a short period of time, having planned something around lunch, but I have just one question: have you socialised your proposed amendments with other church bodies outside of the Anglican Church?

**Archbishop Davies:** We have. There's a group called the religious freedom group, which has various denominations in it, and we've certainly canvassed with that group. Patrick Parkinson is not an Anglican, for example, and neither is Frank Brennan. So we've had broader conversations than just the Anglican Church and the Diocese of Sydney. Does that answer your question

**Senator PATRICK:** Yes. Thank you.

**CHAIR:** Senator Rice.

**Senator RICE:** Thank you for your evidence today. Dr Tan, I have a question about your position on ending discrimination against staff as well as students, and the position of the Public Affairs Commission.

**Dr Tan:** The Public Affairs Commission believes that the whole of section 38 should go, and that includes staff. There's no real basis for a distinction, we would say.

**Senator RICE:** Regarding the support for students, do you have a position as to whether there is importance in ending discrimination against students to end discrimination against staff?

**Dr Tan:** I suppose LGBTQI students could see what would happen—if staff are being discriminated against, that will reflect on the students, obviously, and make them feel uncomfortable.

**Senator RICE:** Dr Davies, I want to go to your support for amendments to allow teaching activity undertaken in good faith, where you reject the advice that was given to Labor by Mark Gibian SC. I want to put to you the concerns that were expressed to us by Rainbow Families Victoria, who felt, along with the position that Mark Gibian and the Labor Party and the Greens take, that that would actually allow a lot of discrimination in the guise of teaching activity. They state in their submission:

We are very concerned about day-to-day situations where, for example, a Grade 2 primary school student talks about their rainbow family in a class or mentions that they have a donor or a surrogate who helped make their family, and are then told to stop discussing this in class.

We are concerned that LGBTQI parents and carers will be asked to ensure their children self-censor themselves when talking about who is in their family, when writing about what they did on the school holidays or what sort of family celebrations they commemorate … We believe that the amendment immediately creates a 'second class' of students in a faith-based schools who are told, directly and indirectly, overtly and covertly, that their family is not 'normal', not wanted and unacceptable or that their very sense of self, their sexuality or gender, is a problem or something to be ashamed about.

**Archbishop Davies:** I may ask Bishop Stead to answer that.

**Bishop Stead:** That issue doesn't really go to the concern of the 7F issue, which is about teaching. You're raising issues about what children might be required to say or not say in the classrooms of themselves. The issue around 7F is about the actual teaching of Christian doctrine. What we're trying to preserve is for the teacher to be able to say, 'From a Christian world view, we believe X.' Yes, there will be children in the class whose own life experiences are not entirely consistent with that, but that's not what this section is getting at.

**Senator RICE:** I think it goes to the definition of teaching activity, which is being defined as 'any kind of instruction of a student by a person employed or otherwise engaged by an educational institution'. So an instruction by a teacher to say, 'Stop talking about your rainbow family,' is a teaching activity.

**Bishop Stead:** Again, I think it's taking an overly broad understanding, because the rest of the clause says that it has to be in accordance with the doctrines, tenets and beliefs of a religion. I don't know of any tenet of the Christian religion that says, 'We're going to tell children to shut up in class,' to be able to justify that kind of a command. I don't see how this, as currently drafted, would give permission for that, but, if that is the case, some rewording of the section would be all that's necessary. What we're trying to describe is the freedom for traditional, in our case Christian, doctrine to be taught without it being subject to antidiscrimination claims. If these words aren't the words that achieve that, we will find a form of words that will, but we seek some positive protection around the activity of teaching faith based doctrine.

**Senator RICE:** Getting to that is the difficult bit. I think there is general acceptance of the ability of religious schools to teach their doctrines and for that to continue to be permitted, but the way it's currently defined is very broad. For example, I've already quoted from the statement of faith of the Ballarat Christian College, where it says, 'Transgender is a social construct which denies our God-given biological sex.' I can imagine that you could...
have a trans child in a school who is affirming their gender and the teaching activity would be to discriminate against that child and to deny their affirmed gender. That would still be permissible under the way that those clauses are currently being proposed. Do you agree that that's the case?

**Bishop Stead:** I don't agree that it would permit discrimination. I believe it would permit the teacher to assert, from a Christian point of view, that we believe gender is biologically determined. And it would allow the school to teach that without being taken to task for it.

**Senator RICE:** But I think it would also allow other instructional activities that were discriminatory against that transgender student to be undertaken.

**Bishop Stead:** Only if they were directed at that student in particular. If they were broad based, if they said this is what we believe for all the students at the school—

**Senator RICE:** But that's the point. This exemption would actually allow teaching activities—

**CHAIR:** Senator Rice, this is not a debate, it is for you to ask questions to get the views of the witnesses.

**Archbishop Davies:** One of the tenets of the Christian faith is love and recognising that everyone is made in the image of God. It would be improper for a teacher to override that fundamental tenet in addressing a child. If we take away the issue of transgender, which is the significant issue today, with regard to divorce, when divorce became more common in our society—children might be from a broken family or they might have two fathers and two mothers in terms of step-parents. We have been handling that for years in a careful, loving, pastoral way so that we care for those children. The fact that things are different for them than for the ordinary person who has a mother and father—that may not be a happy marriage anyway. We recognise that there is a whole gamut of experiences there and we teach the children with the respect they deserve and require having been made in God's image. That is how we handle them whatever their sexual orientation or transgender status.

**Senator RICE:** I am very pleased to hear that. Sadly, I don't think that is necessarily the case across all of the faith based schools in the country.

**Senator O'NEILL:** All schools, in fact.

**Archbishop Davies:** I understand that. I can only speak for Anglican schools, of course.

**Senator RICE:** We heard evidence this morning from Christian Schools, who said they want to retain the right to be able to ask a transgender student to leave the school.

**CHAIR:** Senator Rice, we are short of time. Could you ask a question, not give your views.

**Dr Tan:** Perhaps I could add to that point. That is why I suggested there be other conditions placed on the teaching activity provision in section 7F—perhaps to say it is not unlawful if it is provided in a manner that doesn't treat a person any less favourably on the grounds of one of the protected attributes, that questioning it or disagreeing with it does not result in any detriment or disadvantage, and that there is no compulsion to comply with the said teaching activity.

**Bishop Stead:** And we've been supportive of that.

**Senator O'NEILL:** Chair, when you asked your questions, we were talking about the definition of teaching. We haven't addressed the issue of the implicit and the explicit curriculum and what actually constitutes teaching. Every interaction in a school is actually teaching, so we are in very deep water straightaway when we try to define teaching. Dr Tan, I want to go to your specific and, in my view, helpful evidence around 7E and 7F and no detriment. That is a bit fuller than what was in your written submission. I wonder if you have any written documents around your evidence that you have just given us, just for timeliness.

**Dr Tan:** No. I could provide—

**Senator O'NEILL:** Could you talk through 7E and 7F and the no detriment matter that you put on the record in your opening statement.

**Dr Tan:** Certainly the no detriment part is part of our submission, because I said it should be worded in such a way that there is no detriment. The Public Affairs Commission hasn't got a position on the precise wording, but it would be along the lines of what I said just now to Senator Rice. It could say that nothing renders teaching activity unlawful if that activity—A, B, C or D—does not result in any detriment or disadvantageous treatment for a student for questioning or disagreeing with a teaching or teaching activity nor in any compulsion to comply with the said teaching or teaching activity. It has also put a proviso to say that it has provided in a manner that does not treat any person less favourably on the grounds of that person's sex or sexual orientation et cetera—the rest of the protected attributes. That could be one way of doing it.
In the case of making 7E generally applicable, I suppose there could be a provision to say that the condition is applied to basically all students and the equivalent educational position or, in the case of staff, in the equivalent employment situation so that it is not something that singles people out on the basis of the protected attributes but is a condition that applies across the board—the ethos of the school, for instance.

Senator O'NEILL: In your written submission you make some comments about the difficulty, in my view, of applying that same standard to students who are in care, in loco parentis, as opposed to that requirement on teachers who are in a contractual engagement with their employer. I am referring to your comments in part 15 of your submission.

Dr Tan: That was in relation to—

Senator O'NEILL: staff.

Dr Tan: Yes. To say that students should be free to disagree et cetera is one thing in a class. It would be difficult to allow staff, generally, to completely disagree with the teachings of the school. For instance, they could be subject to a condition that they have to uphold the ethos of the school, which would mean that they couldn't be rubbing the doctrines of the religion, for instance, at the same time. Our submission was that it should be across the board, a generally applicable thing, so it would apply not specifically to the protected attributes. I gave the examples of prohibiting teachers under that general condition from rubbing beliefs in God or saying that all students should become atheists. So there is a generally applicable and generally applied condition that does not single out people on the basis of the protected attributes. I think that could be way of doing it. It may come within the reasonableness provisions already in the indirect discrimination provisions, but it would be safer to make that clear. And 7E sort of does that, but we commented that there may be some additional wording needed around that.

Senator O'NEILL: Can I go to you, Archbishop Davies. I am sorry that I had to leave just as you were speaking about Senator Collins foreshadowing our second reading amendment to give more confidence about protections for you. I think it might have related to 7E. I would like to ask you about your addition of point (d) there and how confident you are that would with resolve your concerns.

Bishop Stead: The addition of section (d)—we're on page 8 of our submission—is not really to do with the Senator Collins proposed amendment. This is really picking up the language of the explanatory memorandum to the bill and actually incorporating it into act. This is, in our view, the absolute minimum that would be needed in order to give some confidence around that whole question of reasonableness. There have been lots of assertions that this is what 7B(2) will mean for faith based schools, but it has never been tested because it has never had to be tested, because we have never got that far. All we are attempting to do here is to make explicit what everybody seems to assume is implicit. What this does then is it still flicks it back to the tribunals or the courts to be the final arbiters. This is why it is different to the government's 7E.

The government's 7E is essentially a tick-a-box. Once you can tick all their clauses then you know that you have done what is reasonable. All we are suggesting is: let's put it on the record that it is reasonable for a faith based school to act in accordance with its doctrine. I personally would like to have a little more certainty but at the very least to have that made explicit. If you are only left with A, B and C is to have no guidance around this; there is nothing in there about doctrines. You are not giving a whole lot of guidance to any tribunal or court about even whether it is relevant to bring in the question of doctrine. Everybody assumes that it is. Let's make that explicit. That is why that is there.

Archbishop Davies: As Bishop Stead said, we agree with what is in the explanatory memorandum to Senator Wong's bill. All we need to see is that in the text of the act. That, I think, is the issue and that is why in my opening statement the major parties are not that far apart. It's just recognising that if in actual fact that is what we believe then there's no harm. There's actually benefit in putting that, or words to that effect, in the act.

CHAIR: This is not about this bill, and so I hesitate to raise it, but you did answer a question from Senator Rice about teaching, and knowing how the place I work works your comments will be used. I want to make it clear, Dr Tan, Mr Ruddock accepted that there was quite a different issue involved between students and teachers. Would you agree that the issue with teachers requires a lot more thought, because if teachers teach in a way that's not part of the doctrine of the particular church school that becomes a real issue. That's not a very well put question but I think you know what I'm getting at.

Dr Tan: Yes. I think that could be addressed in the ways that we've suggested along the lines of a sort of 7E - type of provision. It'll come within the general conditions, and the general conditions would be such things as you're required to uphold the ethos of the school and not denigrate the doctrines of the school in your teaching or in whatever work you're doing at the school in the course of your duties. That would be a general condition that
would be reasonable. And if there's a specific provision that actually addresses that it's done in accordance with
the doctrines of the religion that would make it a reasonable condition.

CHAIR: How would the church handle it if a male teacher turned up wearing a dress and lipstick? Again—

Senator PRATT: They wouldn't be protected by this act because they're not transgender.

CHAIR: That's a bad example. But if he did something else that was clearly contrary to the discipline of the
school but then, perhaps, could not be dismissed because of claims about discrimination on gender basis?

Dr Tan: That comes back to the reasonableness of the conditions. If there are generally applicable conditions
about dress standards for teachers—there probably are, for instance they couldn't turn up in thongs and shorts—
you could deal with that in that way.

CHAIR: As a not terribly good Anglican I should know this, you did sort of briefly mention this, but what's
the position of the Public Affairs Commission?

Dr Tan: It's a body that's appointed by the primate of the Anglican Church on the recommendation of the
standing committee of the Anglican Church. It's a mixture of clergy and lay people from right across the country.

CHAIR: As I say, not a terribly good Anglican—

Senator FIERRAVANTI-WELLS: It's an advisory body.

Dr Tan: It's an advisory body, yes.

CHAIR: I know the Anglican Church within its forums is almost as political as ours in its own way.

Dr Tan: That's why I stress the—

Archbishop Davies: Mr Chairman, how could you possibly!

Dr Tan: We're only talking on our own behalf but I think it's reflective of views across various dioceses.

Archbishop Davies: Geographically it's diverse across the country. It does a lot of good work shall I say,
because there's some expertise in that committee and they give themselves to the various issues of a public affair
matter.

CHAIR: Again, thanks very much for your written submissions and for how you've helped the committee
today. It's all been very, very useful and we appreciate your time.
DUKE, Rev. Chris, Member of Church and Nation Committee, Presbyterian Church of Australia
MELLER, Rev. Bruce, Clerk of Assembly, Presbyterian Church of Australia
SARKOEZY, Mrs Sheryl, Member of Church and Nation Committee, Presbyterian Church of Australia
WORKER, Pastor Michael, General Secretary, Seventh-day Adventist Church in Australia

[13:04]

CHAIR: Welcome. You've had information on parliamentary privilege and protection of witnesses. You're probably also aware by now that we're being recorded for posterity. This is being broadcast live as well. We will ask you to make a short opening address and we will then ask you some questions. Who should start? Reverend Duke, over to you.

Rev. Duke: Thank you for the opportunity to be able to speak concerning the 2018 bill for the removal of sex discrimination against students. I have a background in the establishment of a Christian school commencing about 37 years ago in regional Victoria as a board member and board chair for many of those years. I have personal knowledge of a number of Christian schools that belong to our church denomination, especially in Victoria. I know personally the time and financial sacrifice of many people in the establishment of Christian schools over the past 40 years. Christian schools are varied and unique and contribute enormously to the social and moral fabric of Australian society in the education of students. The PCA has over 13,000 students enrolled in its schools, numbering around 17. Many Christian schools are not elitist and have low fees that allow for the inclusion of students and families from all social stratas. Our schools teach the Australian Curriculum in an environment where a Christian world view is espoused, where doctrinal beliefs are those from either the religious denomination or a united local faith community of many denominations.

The proposed changes to the act aim to ensure that students are not refused enrolment based on sexual orientation. However, Christian schools have not sought to do this. In my time in school governance as a board member and chair, I've never known of or heard of a student being expelled due to their sexual orientation or gender identity. Our own Presbyterians schools are not seeking to refuse enrolment or to expel students on the basis of sexual orientation or gender identity. In fact, our teachers are loving and compassionate. All bullying is frowned upon. When parents enrol their students, there is full disclosure on what the school believes and teaches in relation to faith. In our own Presbyterians schools, we are guided and bound by Scripture and our confessional heritage. As an example, in the area of marriage we hold to the traditional scriptural views as codified in the Westminster Confession of Faith section 24.1. Marriage is between one man and one woman. Neither is it lawful for any man to have more than one wife, nor any woman to have more than one husband at the same time. Parents are encouraged to evaluate whether our aims and objectives both academic and doctrinal and in other areas as well—social—are the right fit for their family at enrolment. Although the marriage act has changed, the PCA is not turning and will hold to its scriptural position.

Our desire is that, if changes are made to the act, consideration will also be given to those who hold religious convictions to be able to live and act true to their conscience. In our pluralistic, postmodern society, we now have a clash of culture. In relation to human rights, religious freedom is meant to be equal and indivisible from other human rights. Further, there should be no hierarchy of human rights. This means that occasionally there will be an intersection of rights, so there is a need to respect others' views without using legal posturing. We have concerns about the removal of section 38(3) will do more than remove the right for educational institutions to discriminate with respect to enrolment and section 21, where it says 'subjecting the student to any other detriment', could open a can of worms. Complaints could be raised for policies relating to student behaviour tagged back to sexual expression or the compulsion to attend chapel where the traditional scriptural view of marriage may be taught. The proposed addition of section 37(3) potentially removes protections for our theological colleges as well as churches, opening them to face complaints of teaching our doctrine. If complaints come, there will be time-consuming legal battles and extensive cost.

In light of the above concerns, we would recommend that no changes to the act be made without wider community consultation and the heated political context at the end of 2018 removed. We note that the proposal to add section 7B(2)(d), 7E and 7F provide some protection for religious institutions but these are not sufficient. We recommended that consideration be given to insert in law a positive affirmation protection of religious freedom in Australia at the same time if changes are made to the Sex Discrimination Act. The provision should clearly affirm the liberty of religious organisations such as schools and colleges to employ staff that adhere to the doctrine and live out the doctrine and the moral code of the institution as they teach their students.
Rev. Meller: I wish to make some very simple points, and thank you for the privilege of doing so. The first point I want to make is that, in my opinion, this bill is misguided. The bill appears to imagine that bodies established for religious purposes will continue to operate when their reason for being is eliminated. That should not be assumed. The animating spirit by which people have established schools for religious purposes is extinguished when it is denied expression. Religious faith is not something held only in the mind or in the heart; it is something that necessarily has expression. And that is why from the commencement of colonial Australia it was the churches that established schools, and the state got into the game only in the late 19th century.

The churches ran the schools and that seemed to be an acceptable movement for quite some time. And they did that on the understanding that they would teach according to their own doctrinal precepts. Should this bill become law, the operators of faith based schools will, it seems to me, have just three alternatives and none of them is palatable. The choices to me seem to be: to surrender to the dictates of law and, by that, their consciences; to close down the schools that they have been involved with; or to operate in violation of the law and face criminal consequences for doing things which heretofore have not only been tolerated but have been commended. I just wonder if the parliament has considered the implications of the second or third of those prospects.

Is any government in a position to replace the schools that are currently operated by faith based organisations? This bill, it seems to me—I am going to take up a phrase used earlier by Senator O'Neill—forsakes the ancient dictum that it belongs to parents to educate their children so that teachers stand in loco parentis. The government cannot produce children nor can the government usurp the prerogatives of parents in teaching those children. What does the government expect to happen if it enacts this bill and parents unwilling to forsake their children and the future of their families to belief systems with which they fundamentally disagree then withdraw their children from institutional education and establish systems of homeschooling? I know of a family that has done just that, not in Australia but in America, when certain changes were made to education in the state of Washington. This family withdrew its child and now its children from the public education system in favour of homeschooling.

I myself withdrew my first child from the high school in which he was enrolled when certain things were being taught that were utterly offensive to me. I will give you an example. My son was told to learn by rote a song called The Ballad of MP Snow and it included the words: 'They pulled down my pants and looked up my bottom so boom shalala boom shalala boom shalala.' That was supposed to be an acceptable song for a child to learn. At the same time, he had to learn by rote in his music class a song called Love is a woman. It included the words: 'Quench my desire, I am burning with fire, don't try to talk to me, your words don't make sense, just give me what I want when I want it, love is a woman.' I find that utterly offensive and on that basis I withdrew my own son.

What is to happen if the government or the opposition or whoever it may be, if the parliament as a whole presses forward with an ill-conceived and misguided bill that may seek to protect the privileges of some and violate the privileges of many? I am not saying that I tolerate in any form bullying or abuse. The Presbyterian Church has a clear standard written into its doctrinal formulations that says we disown persecuting and intolerant principles and we do not regard our office bearers as being bound to organisations that require these things. That is our stance on liberty of conscience and liberty of opinion.

But this is about pressing forward with a bill that basically takes away the right to not only teach, as an expressive formulation of words, but to live. Again, I agree with what Dr O'Neill said when she said words to the effect that teaching cannot be constrained to oral instruction—and I'm paraphrasing; it occurs in community by direction and demonstration. It's crass paraphrasing, I accept. My concern then is the implications of this bill, which, in its present form, seems to be thoroughly misguided. Some of the amendments may tend to make it more palatable, but I think that it is too soon, too fast and too rushed, and it needs much wider consultation. The last thing I'll say is: I speak as somebody who was, like my colleague, involved in the foundation of a Christian school in 1993. It took five years to get it off the ground with 13 students; it now has 218. I've been involved in four other schools, from a very large school of 1,300 pupils—it has 1,800 pupils now—through to schools of 400 and 200.

CHAIR: Thanks very much, Reverend Meller. We will stay with the Presbyterians before we go to Pastor Worker.

Mrs Sarkoezy: For the sake of brevity, I'm happy to let my colleagues introduce and I'll take questions.

Pastor Worker: Chair and senators, thank you for your time to present today. The Seventh-day Adventist Church is a global church of around 20 million members operating globally in more than 8½ thousand schools, with more than 1.9 million students. In Australia we have 47 schools and over 14,000 students. Christian Schools Australia have partnered with us in presenting a submission as well. You have heard from them today. We'd like
to endorse what they have shared. However, we, as the Seventh-day Adventist Church, would like to add some statements and comments.

Again, we would contend that the bill, together with its amendments, is too rushed and it has ramifications that could well extend far beyond our schools. We believe that the bill, as it stands, has the potential to threaten religious freedom in this country due to these far-reaching implications and therefore should not proceed. We have no issue with the removal of the ability of schools to discriminate against students who are enrolling or enrolled in our schools on the basis of gender identity. Our schools have an open enrolment policy and we welcome students of all faiths and of no faith at all. Many of our students come from Muslim, Sikh and Buddhist backgrounds, as well as those who have no faith. We also have students from LGBTIQ-plus who happily grow and learn within our schools. Many students who enrol in our schools do so because of bullying and harassment in other schools for a whole raft of reasons. They come to us as a place of safe haven where they receive compassionate pastoral care and a safe and nurturing environment in the context of values-based education. Enrolment policy, of course, is subject to students and their families respecting and abiding by the student handbook, which includes respect for the values, ethos, beliefs and doctrines of the Seventh-day Adventist Church.

Beyond the direct risk to the church's school system, there are unintended consequences, including the potential flow-on impact on our ability to recruit and retain in employment staff who are willing to operate in harmony with the beliefs, doctrines and tenets of the church. Without the ability to recruit and retain staff who are willing to uphold the ethos that has created the culture and environment that currently exists in the school systems, our school systems would no longer reflect the religious purpose for which they were established to espouse. Thus, as a nation, we would lose the healthy choice and diversity that currently exists in our educational landscape and we would become very generic and vanilla in our educational offerings.

The bill, specifically among its amendments, raises the potential to negatively impact the work of local churches and a range of other community service initiatives of the church. These impacts include the operation of classes and groups operated by congregations designed to communicate biblical teachings, principles and values of the church. We should be alarmed at the prospect of the state directing the church in the practice of its beliefs, doctrines and tenets of faith. In harmony with our commitments to ICCPR, there is a need to ensure that Australian law positively protects the expression of religious faith and belief.

There is also the risk that the same issues will impact the faith-based tertiary educational institutions, such as our own Avondale College of Higher Education and Mamarapha Indigenous training college. The submission by the Australian Christian Higher Education Alliance addresses these concerns more fully, and I trust you have had a chance to read that submission.

The faith-based schooling sector, inclusive of Adventist schools, by the very evidence of its growing enrolment base, is meeting a very real and genuine need within Australia by providing a values and faith-based educational experience. These schools complement the education provided by government schools, and parents are confirming their value by enrolling their children in them. As indicated earlier, statistics from 2017 indicate that more than 30 per cent of students are enrolled in Catholic and independent schools. Parents are willingly paying money to enrol their students in these schools. If the schools were not meeting their needs or were espousing an ethos that they did not resonate with, then they would vote with their feet and their wallets and the schooling sector would be in decline. That is not the case.

It is therefore essential that the government, through an appropriate legislative and policy framework, inclusive of positive protections, allow these schools to continue to espouse their ethos, beliefs and doctrines, which have enabled them to become the desired institutions that they have become. This diversity in the educational landscape of Australia enriches the diverse and rich fabric of our society, and we would contend that this should continue.

In response to these matters, the Seventh-day Adventist Church believes that the bill does not adequately address the competing rights that are at play. As it stands, to only change the Sex Discrimination Act as proposed in the bill could radically and perhaps unintentionally change the landscape of faith-based organisations in this country. In the Ruddock inquiry report, it was recommended that positive protections be established for freedom of religion and belief. We would concur with these recommendations and appeal to you that the government take time to give a considered and broad response to these recommendations and bring forward a balanced and considered set of policies and legislative amendments, and, further, that positive protections be established for the freedom of religion and belief at the same time as amendments, including the removal of any unfair discrimination, are made to the Sex Discrimination Act. We recommend this course of action to ensure adequate protections not only for faith-based schooling but to ensure that Australia continues to be a genuinely pluralist,
liberal society which operates in a harmonious, peaceful, diverse and multicultural manner so that we can continue to be the Lucky Country and remain a desirable and tolerant place to live. Thank you.

CHAIR: Thanks, Pastor, and thank you all. I'll pass first to the deputy chair, Senator Pratt.

Senator PRATT: Thank you very much. I want to ask about the manner in which schools should appropriately deal with issues that might come up in relation to discrimination and what the role of government and oversight might be in ensuring that standards are met in terms of prevention of bullying and discrimination. There was one example from an independent Christian school in Sydney that was in the submission of Equal Voices, which is the group of LGBTI Christians. I'm sure some of Equal Voices' members might be members of your faith communities. The example is: a primary-age student submitted a creative-writing fiction exercise in which he imagined falling in love with another boy. After reading the boy's story, the teacher ordered the boy to tear out and throw away the story because it was shameful. The boy was distraught at the teacher's actions. When his classmates heard of the incident, sexuality based bullying followed, which caused the boy severe distress. I understand the outcome of that was that the boy ultimately left the school. Can I ask you what you would do in that situation?

Rev. Duke: Who?

Senator PRATT: Any of your school communities.

Rev. Duke: Personally, I think that that was handled very insensitively. The response of the teacher—that's very unfortunate. I would hope that, in our professional development, our people don't do that, that there's more love, compassion and understanding. At the same time, all these students in our faith based schools will be confronted with what we feel is the biblical or scriptural view on marriage and sexuality at some stage. My understanding is that that particular situation was a young—

Senator PRATT: A primary school student, yes.

Rev. Duke: Was it a young boy?

Senator PRATT: Yes, a young boy in primary school. That's all I know.

Rev. Duke: I think it's a sad situation. Personally, I haven't heard of any of those events in the schools that I've been dealing with.

Pastor Worker: I would concur with that view. It was certainly an unfortunate reaction, and it is certainly not a reaction that we would condone or encourage. Certainly, as has been indicated earlier today, people enter the teaching profession because they want to help. They love, they care and they want to nurture and support children in their growing-up experience and their learning about life. In fact, in our schools we would seek the opposite. We have enrolled students who have felt victimised or bullied in other schools whose parents have withdrawn them from schooling because of that victimisation, who then have tentatively come forward and said: 'Look, homeschooling is only good for our child for a certain period of time. We want them to have the socialisation of school. Would you be prepared to have our child in your school?' We have worked closely with many parents to reintroduce students who have been victimised and bullied back into a nurturing classroom environment.

Rev. Meller: Can I add, Senator Pratt, that I also agree that the treatment that you've described is very unsatisfactory. I would trust that it would not happen—I'm not aware of it happening in any of the schools I've been associated with over 38 years, or anything like it. My personal view—and I've been the chairman of many schools—would be that the teachers would seize that as a wonderful learning opportunity and explore with the child what led him or her to write such a thing. The implications of that sort of relationship and how that would work out in society as a whole—I think it's a wonderful learning opportunity and it shouldn't have been trashed like that.

Senator PRATT: But, in the absence of a school culture that does address an issue, surely there should be an onus on a school, be that through antidiscrimination law or universally mandated antibullying policies that put an onus on a school, to make sure they intervene appropriately?

Rev. Meller: But there is an onus on the school to make sure that it intervenes appropriately, because that child was withdrawn. Private schools don't exist on the basis of government largesse. There is no private school of which I'm aware that's fully funded by the government, and therefore the private school is in the marketplace. If a child doesn't like that experience, they can go somewhere else. That's not to condone the experience, which I've already condemned, but there is pressure not to foolishly reject enrolments like that. And there is a Christian endeavour, a Christian perspective, that ought to be saying, 'How can I do best for this child?' That's what we want to see. 'How can I do well for this little one and help him or her to grow up into a mature, sentient, self-informed individual?'
Senator PRATT: Many members of this committee have argued very strongly that parents should have the choice to be able to send children to a school of their choice of faith and to have the values that come with it. I'm sure that's something with which you agree. Noting that there are, I think, some three million children in Australia attending independent schools, and that nearly 60 per cent of the country voted for marriage equality, what are you seeing in terms of the trends in school communities in relation to the values of your school communities and the kinds of parents and children that might be part of those communities?

Rev. Meller: I can only say for myself: I've not been involved at the coalface of schools for two years now and it would be irresponsible for me to answer.

Mrs Sarkoezy: That would be a question we would need to take on notice. Senator Pratt, would it be okay if I say something about your previous question. Prior to taking this role with the Presbyterian church, I had probably 15 years connection with a Christian school as a parent and also as an employee. When I hear stories like that, it saddens me because I know that all schools have grievance policies and so there actually is a way for the parent of a child who's been treated like that to have some action taken, some reconciliation, between them and the child and the teacher that's involved. So, there are codes of conduct in place. All schools are required to have codes of conduct with how teachers behave. That story saddens me, but I can assure you that from my experience and from the school's that we deal with there is a process, there is a mechanism, for parents bringing grievances and having those grievances resolved.

Pastor Worker: As an attempt to give a pastoral response to your question, Senator Pratt, I think something that we wrestle with as churches constantly is: how do we demonstrate the love of Christ? How do we be inclusive and welcoming of all people, regardless of where they're at in life and juxtapose that with our beliefs based on the Bible and uphold our fundamental principles and teachings? We continue to strive towards that goal, and our publications seek to wrestle with those two competing challenges. I'd say in response to that: we've endeavoured to be welcoming and accepting of all people whilst upholding what we believe to be a biblical view. The evidence has been we haven't seen a major exodus of enrolments from our schools based on the way we conduct ourselves.

In our Adventist schooling system in Australia, only 35 per cent of the enrolments are Seventh-day Adventist families. Sixty-five per cent of the enrolments are from the wider community, and so those people have not sensed from us a behaviour, an attitude or a way of operation that has been offensive to them where they've felt as though they need to withdraw enrolments en masse. So, I think the evidence would suggest that we're continuing to wrestle with and to manage those tensions in a constructive fashion.

Senator PRATT: And indeed many schools are changing their school culture to be more pro LGBTI-inclusive because of those community trends—not all, but some.

CHAIR: Is that a question?

Senator PRATT: No, it's a comment. I've finished my questions.

Senator FIERRAVANTI-WELLS: Is that a question or is that based on some evidence?

CHAIR: Senator Fierravanti-Wells, it's your turn for questions now, if you have any.

Senator FIERRAVANTI-WELLS: Thanks. Following on from that, can I just pick up on a number of points. Firstly, if I can start with you, Pastor Worker. It's clear that your enrolments are increasing, and they're obviously increasing because you're, to borrow what Reverend Meller said, in the marketplace, so therefore the people who are coming to your schools and the parents who are putting their children in your schools are putting them there because they agree with what you want to do. I know because of the breadth of what the Seventh-day Adventists do, the implications of these amendments, especially the interaction between section 21 and of course sections 37 and 38 and the impact that those can likely have on your broader activities, particularly in terms of the youth workers—that broader range of people that are involved—as part of the education institution.

Pastor Worker: I think one of the things that we are continually wrestling with, continually challenged by, is: how do we respond? I think Reverend Meller summed it up very well with the three options that he proposed. We are forced to consider: what would we do?

Are we able to remain in the marketplace? Are we able to continue to provide Adventist education if we end up in an environment where we cannot employ and retain in employment people who are willing to uphold our ethos and values?

To me, that would be a tragedy, because the education offering that we have in place is being valued not only by our own members but also, clearly, by the wider community, as demonstrated by almost two-thirds of our enrolments. There are also significant consequences to employment of people who want to live out their faith by
educating children in that belief system and that world view as well as through showing love and inclusiveness within that structured environment. So the repercussions are very significant.

If I can step a little bit outside of the remit of this bill, we are finding that this decreasing tolerance and rigidity of the environment is impacting our compassionate ministries, our health and retirement living ministries and our school ministries. So we are finding that pressure coming on on all sides.

**Senator FIERRAVANTI-WELLS:** So, in other words, the activism—if I can put it that way—is actually having the opposite effect. So, where previously there was a degree of flexibility and the framework of these exemptions enabled you to take an approach that resolved the issue in question, now you are looking over your shoulder a lot more thinking, 'Is this action going to result in me being hauled up before the discrimination board or court?'

**Pastor Worker:** Absolutely. There is far more nervousness. There is a hesitation to confidently express what we believe is a biblical teaching and a world view that we want to convey to our constituents, to those who enrol in our schools, and interact with various other facets of the ministry. So, in addition to a nervousness to speak with confidence, there's an increasing time and financial consequence of moving from a society where we have felt an approach to live and let live. We all don't agree and we don't all believe the same thing, but we are not imposing it on each other, but we feel that that goodwill, that DNA, is being challenged and eroded, which concerns us.

**Senator FIERRAVANTI-WELLS:** If I can put it in numerical terms, we know, just on census figures, that there are approximately 10,000 children in Rainbow families. So compare that with 1.3 million children who are sitting in Catholic or independent schools. So we are effectively changing the law to accommodate an eventuality that may or may not exist for, effectively, 10½ thousand children and we are putting greater constraints on what is being afforded to 1.3 million. That is it in a nutshell, isn't it?

**Mrs Sarkoezy:** I think you are asking about the unintended consequences of the legislation. The definition of education is very important here. The intent of the bill is to do the right thing by children. My understanding is that, at the moment, a theological college would be protected for teaching people who are training for the pastoral ministry. So they are being taught the doctrines and tenets of their faith. The reality is that theological colleges teach not only candidates for the ministry but many people. As an ex-colleague student myself, I can say that in any classroom there will be candidates for the ministry and people who are our lawyers, teachers and doctors who are all there for the same purpose, because theological education is good for all of life. An unintended consequence is that teachers may actually be looking over their shoulder. They know that they are protected for teaching people who are candidates for the ministry, but are they restrained when they are teaching other people? I think that would be a concern.

**Senator FIERRAVANTI-WELLS:** Well, that takes my point even further. So, we're not just talking about the 1.3 million students who—taking further what you said, Pastor Worker—in effect are going to be affected by the extent to which the teachings that are done in the classroom are going to be potentially constrained as a consequence of meeting this so-called threat to what is in effect a small number of 10,000 versus 1.3 million. Put on top of that the broader implications and the greater number of people who are actually going to be affected as a consequence of the unintended consequences. So, you are talking about millions of people who could potentially be affected. Do you agree with my analysis that we are talking about potentially millions of people to be affected by these changes?

**Rev. Duke:** The last thing any of us wants—

**Senator FIERRAVANTI-WELLS:** Is that a yes or a no?

**Rev. Duke:** Yes, and the last thing any of us wants is to be before the courts fighting out lengthy and costly litigation because of disagreement. We've said that if you're going to make changes then make sure that both parties are looked after, because, as my associate has said, if you take away what we can teach then we may as well not exist.

**Senator FIERRAVANTI-WELLS:** And one last question to you, Reverend Meller: taking your point even further and your synopsis of assuming that the religious schools continue and assuming your scenario—which I think is a very realistic one—the effect of that down the track is that you're going to have thousands of students who potentially may be open to parents who don't want to send their kids to a government school. They can't send them to a private school, so what are they going to do?

**Rev. Meller:** I can only see that parents will do as I have done, as others I know have done, including my next-door neighbour—that the children will be withdrawn and taught at home. And that, I might say, is not such a prejudicial outcome. My eldest son did very, very well at home and was better equipped when he then went back
into a faith based school. But that is not I think optimal for the whole of society, where schools have an important role to play. If I insulate my son within my own family—or any of my children—and never let them have contact with the diverse representation of Australian society, including LGBTQIA-plus—then how do I equip them to leave the family nest and interact compassionately, kindly and well with people they might work with? We need to equip people for all manner of ministry. And I may at this point make the point that this impacts differently on Catholic churches and on Protestant churches as it will also on Islamic mosques and organisations. For instance, in a Catholic system, ministry is undertaken by the religious, and it's the priests and the nuns who are particularly trained in seminaries or convents for their vocational ministries. But from a Protestant perspective, the Bible says that the Lord Jesus gave gifts to people and his gifts were given so that he could equip the people for their works of service. So, from a Protestant perspective, Sheryl's ministries are equally as valid as mine. And the ministries with our nurses in the Presbyterian Children's Hospital—which, I might say, receives no government funding, and admits all who come to it, children in the greatest, most profound need—that hospital does not discriminate in any way. But there is a difference—and I think this goes back to your prior question, Senator—between operating a facility as a ministry of compassion and operating an educational institution. It is the educational institution that most deeply cuts to the very heart and core of what religious faith is about.

Now, if someone wants to read the Bhagavad Gita and make that their basis of life, may they be blessed. If someone wants to guide themselves by some other religious text, may they be blessed. But we are compelled by the Christian faith to demonstrate compassion and mercy. We grieve desperately at the betrayal of that compassion that has been so widely known in recent years. But that is our mission and, at this point, when it comes to education we cannot surrender.

**Senator PATRICK:** I have one question in relation to your comments, Reverend Duke. I think pretty much everyone is attuned to the idea of what we are trying to achieve here—to not discriminate against children. It is clear there are concerns about the rights of the religious entities. One can be incredibly prescriptive—and I don't think that is going to happen in the next week. Alternatively, there can be some middle ground. The Anglican Church proposed some middle ground before. The government has some amendments that have some middle ground. You said you do not want to be in court—that you don't want to be dragged into a court. Is it actually possible with any of these amendments and/or the bill, in its current form, for there not to be the need for judicial determination? You are trying to fight against something for which I am looking at saying it doesn't matter which way you go because there is still going to be subjectiveness.

**Rev. Duke:** What I'm after is for the parliament to actually consider both parties. When you talk about rights—and other people today have spoken about rights, too—there are religion freedom rights and there are also LGBT rights. They are all meant to be equal, but we have a clash. They intersect where there is disagreement in certain areas. In the area of our teaching, we want to still have that right and our preference is that we also want to be able to retain people who not only adhere to the tenets of our doctrines and statements of faith but also live it out in their personal lives, because that is the best testimony—

**Senator PATRICK:** Do you think it is possible for us to legislate in that complex environment you just described—

**Rev. Duke:** I think the previous speaker, in just a very simple statement, talked initially about enrolments. That would at least solve some of that issue. Some of the other issues that come out as a result of the initial bill that was presented I think need a lot more massaging.

**Senator RICE:** Do you have Presbyterian and Adventist schools in Tasmania and in Queensland?

**Rev. Duke:** None in Tasmania.

**Mrs Sarkoezy:** Queensland, yes.

**Rev. Duke:** We have some in Queensland.

**Senator RICE:** With the state legislation that is in place, and that this legislation effectively mirrors, do your schools have to teach differently in Queensland to the way they do in other states?

**Mrs Sarkoezy:** No to my knowledge.

**Pastor Worker:** At this stage there have been no marked changes in how those schools operate, but neither have there been challenges raised, so it is really an untested area at this point.

**Senator RICE:** But for the last decade we have had the legislation in Queensland that has meant there is not allowed to be discrimination against students and staff on the basis of gender and sexuality.

**Rev. Meller:** It's one thing to have legislation in place and it is another thing to see it activated. One remembers, for example, the long duration in which the illegalisation of homosexual activity in Tasmania was on
the books, but it was not activated for about 80 years. So, there are always sleepers behind the legislation. We would do well to reserve clarity in all of these things so that people know exactly where they are. Speaking as a Presbyterian I'm committed to a world view where the Lord Jesus Christ establishes government and says to his people, 'Submit to the government.' He establishes churches and says, 'Now, you do your thing and you care for my people and train them to be my disciples.' So, there are two areas of authority, both of which must be respected and they should not be forced. The more we have clarity around the responsibilities that each carries the better off we will be.

Senator RICE: Nonetheless, you have schools in Queensland that have operated under the Queensland legislation without problems—

CHAIR: Is this a question, or a debate?

Senator RICE: It began as a question. Why have they continued to operate and been able to teach the doctrines of your faith?

Rev. Meller: Because they have not yet been challenged.

Senator RICE: In the evidence from Rainbow Families Victoria and Rainbow Families Queensland, testimony was given that referred to experiences at Presbyterian schools. I wonder whether you would be willing to take on notice a response to those.

Mrs Sarkoezy: Yes.

Rev. Meller: Absolutely. I am not aware of them because I have not read the submission. I read as many as I could in the time available, but I have not read that one. We'll answer the question.

CHAIR: Could you identify the submissions.

Senator RICE: Rainbow Families Victoria and Rainbow Families Queensland.

Senator O'NEILL: Do you have any thoughts, either from reading submissions or from hearing evidence today from the Anglican Church of Sydney and also the Public Affairs Commission, about the suggestions they made regarding amendments that needed to be implemented? Do any of you have a view about those amendments that were proposed?

Mrs Sarkoezy: We would oppose the striking out of section 38 because that raises the prospect that schools might be subject to complaints if there is a lack of clarity there.

Senator O'NEILL: Which is the same—indicating that you are concerned about the reasonableness test.

Mrs Sarkoezy: Yes, that's right. So I would repeat that concerns are there. I found Archbishop Davies' suggestion about a single line to deal with the pressing concern about enrolments and expelling students interesting.

Senator O'NEILL: 'Interesting' is a very interesting word!

Mrs Sarkoezy: That's right. I feel the weight of that because there is a community concern about the issue. Some might argue that that has been stirred up by the press leaking and publishing the Ruddock review—

CHAIR: Parts of the Ruddock review.

Mrs Sarkoezy: Parts of the Ruddock review. There is a social concern there that needs to be responded to. If that is the specific concern—Christian Schools and the Presbyterian Church are not asking for the right to expel students simply on the basis of their sexuality or their family's sexuality—that might be a way forward. And then the larger debate should be referred for careful consideration.

Rev. Duke: I think I stated that that was not an issue. We have no intent in endeavouring to do it, and hopefully we haven't done it. But, according to this Rainbow Families submission, maybe we have. We need to investigate that. But I don't believe that is necessarily the view of our people at this point in time. So I think a simple thing that deals with that particular issue as a starting point is more than likely acceptable. But I am not a lawyer. I suppose I need to examine the fine print. Hopefully, it is not a big document.

Mrs Sarkoezy: And, of course, we were also answering on the fly, without consulting.

Senator O'NEILL: Yes, absolutely. Could you have a look at those submissions. And, if you have time to give critical reflection on their testimony today, I would be really interested in your views about what was proposed by both of those submitters today. Thank you.

Mrs Sarkoezy: Senator Rice, are you wanting to hear a response from us in the time frame before your report—over the weekend?

Senator RICE: Not necessarily.
Mrs Sarkoezy: Okay, but we can read them this afternoon.

Senator RICE: It would be good to be able to share with people.

CHAIR: Some of the complaints are relatively brief, and perhaps it would be useful to have a brief response. I don't have any questions. I appreciated your opening statement, which reflects the views of a lot of people in my constituency, which is the state of Queensland. Thanks very much for coming along.

Mrs Sarkoezy: Thank you for hearing us.
KENNEDY, Dr Simon, Research Analyst, Institute for Civil Society

SNEDDON, Prof. Mark, Executive Director, Institute for Civil Society

[13:55]

CHAIR: Welcome. We have your submission which we have numbered No. 702. You're aware about protection of witnesses and parliamentary privilege. You're aware this is being recorded live via the web. Over to you for some opening statements and then we'll ask you some questions.

Prof. Sneddon: I am appearing with my colleague Dr Kennedy. We both have university affiliations but obviously we're not speaking on behalf of our universities here. You have our submission. The issues that are involved in this bill are sufficiently complex and require a nuanced balancing between what in this context are competing human rights, but they are not going to be aptly dealt with in this bill, or in an amended form of this bill, in any satisfactory way I think. They should be referred to the Australian Law Reform Commission and taken into account in the context of all of the aspects of the Ruddock inquiry, which was not available at the time that the bill was introduced—that's understood—but is now available.

The bill was prepared in December 2018. It has some hallmarks of having been hastily prepared. We now have the Ruddock report and I think it needs to be considered carefully in addition to, or in the context of, all of the issues raised in this bill. On the one hand, we have the freedom of religious parents to have their children educated in the moral and religious tradition in which the family operates; and the freedom of religion and association of religious parents, students and teachers at the school to choose to associate in voluntary religious bodies and voluntary religious educational institutions. On the other hand, we have the human rights of lesbian, gay, bisexual transgender and intersex students not to be discriminated against on the basis of those attributes. And the balancing provisions currently contained in sections 38 and 37 are the attempt to try to balance those two types of human rights. The amendments which have been put forward are an attempt to rebalance that balance.

The careful balancing that is required in this case and the sensitivity, in our view, is not achieved by this bill, which simply abolishes the longstanding religious balancing provisions in section 38(3)—contrary I should say to the Ruddock recommendations—and then goes beyond that to get rid of some of the balancing provisions in section 37(1), which deal with religious bodies not religious educational institutions. So it's our submission that rather than to try to patch up the bill with amendments in the time before the parliament rises, we would prefer a consideration in a cooler forum that can take full account of the Ruddock report and all the related and cognate issues of religious freedom that are involved in that. We, therefore, agree with the government's proposal to send this to the Australian Law Reform Commission.

Having said that, I have heard what Archbishop Davies said before, that there might be something that could be done quickly and shortly about expulsions, if that were an agreed position, and leave some of the more complex parts to consideration of the ALRC. I wouldn't say that that should not be considered.

There are five broad problem areas with the bill. What I thought I would do is briefly outline them and then take questions from the senators. The first is the application of this bill way beyond schools. Although its proponents, certainly in the media, have put it forward as being focused entirely on students in religious schools and particularly the issue of expulsion of students from religious schools, the bill also applies to all religious adult education institutions, including those for training religious missionaries, religious youth workers and religious chaplains. In that context, we're talking about a widely different context, which I think the last speaker, from the Presbyterian Church, addressed, which is the interest that a religion has in the training and the conformity of its future ambassadors as missionaries, chaplains, youth workers et cetera to not just the doctrine but also the lifestyle and the values of the religion. That seems to me to be quite a different set of policy contexts to the education of students generally within schools. So, I'm wondering why this bill goes that far and starts to take away all the religion exemptions in what I think is a different policy context of adult religious education.

But then the bill goes even further in its amendment of section 37 and removes exemptions for educational activities of all religious bodies—not religious educational institutions but all religious bodies. That's churches, temples, mosques and synagogues. And if you think, what is an act or practice connected with education?—well, Sunday school comes to mind, Torah classes come to mind, Koran classes come to mind, Bible classes come to mind. I wonder whether the proponents of this bill have really thought about the wisdom of trying to regulate the heart of religious freedom and religious institutions, which is the teaching of its own members about the doctrines, the lifestyle and the values of the religion within the context of the religious body. I know Senator Patrick has put up an amendment to try to deal with this particular issue, but I make this point in relation to the breadth of the bill.
The second main point is that I think the bill fails to differentiate—and this is in all contexts, the school context and outside the school context—between reasonable and justifiable discrimination by religious schools and unreasonable discrimination. It’s not the case that every differentiation is unreasonable discrimination. Some is reasonable, and some is unreasonable. Simon and I have spoken with five principals of religious schools, all from different streams of Christianity, who all want to keep the balancing provisions in the Sex Discrimination Act, or at least an equivalent provision to them. We’ve done that to try to understand in practice what freedoms they say they need to maintain their religious ethos. We don’t claim that that’s representative; we don’t claim that it’s a statistically significant sample. We’re simply trying to get some practical insights for ourselves as to where the rubber really hits the road here—what are the real issues that are involved?

I’ll just report to you what they said. All of them said that they treat their students with love, respect and sensitivity if they’re exploring their sexuality or coming out or gender transitioning; all of them said that they would never expel a student because of the student’s sexual orientation or gender identity; and all of them said that parents and students were expressly informed through the website, through the school tours and through their enrolment agreements that the school would operate and deal with all these issues and every other issue in accordance with the religious ethos of the school. And they said that they needed the religious balancing provisions in sections 38(3) and 37 to be able to teach from their religious world view and to foster and model a community life based on the tenets of the religion and to stop student conduct that would be opposed to the values of religion—for example, a student who wants to opt out of a religion class because it teaches a view of marriage or sexuality that the student disagrees with, or students who want to start a club to celebrate gay or multi-partner hetero lifestyles, or students who want to put up posters in the hall or on the school bulletin board celebrating Gay Pride Week.

They’re at least the fears, or the issues, that these school principals told us that they had and that they wanted some ability to deal with. They all said that they would deal with those things sensitively and discuss with the students whether they think that is consistent with the school’s religious ethos and work through that discussion as a learning opportunity. But if push came to shove they wanted to have the right to be able to say, ‘No, you can’t do that, because that’s inconsistent with the school’s ethos and it would break down that ethos and lead to dissenion and disorder within the school. They also felt that it would break faith with the religious students who wanted that ethos and with the parents who had said that they wanted it and had paid fees for it.

The difficulty here is that all of the examples I’ve just given—prohibiting the club or putting up the posters et cetera—are examples of discrimination under the Sex Discrimination Act because of the very broad definition of that term. In section 38 the act defines discrimination by educational institutions to include a number of things. There’s compelling a student, which makes sense, and determining whether to admit a student. But then it goes on to say ‘denying the student access, or limiting the student’s access, to any benefit provided by the educational authority’—that could be running a club or access to a bulletin board—or subjecting the student to any other detriment.’ Those words ‘any benefit’ ‘or any other detriment’ are very broad and they are discrimination. So the schools are concerned that, because of the breadth of those words, they will be left open to a range of antidiscrimination complaints if 38(3) is removed and 37(1) is amended. So, this is not, for them, about expulsion; it’s about these other more practical examples.

I know that Senator Wong, in her explanatory memorandum, has said that there’s no need to worry—and I am being colloquial here—about this because there is the reasonableness test which applies in the case of indirect discrimination. The government’s amendments have tried to bolster the reasonableness test for indirect discrimination in their proposed section 17. But the fallacy that underlies both of those positions is that they assume that these cases will always present as cases of indirect discrimination—that is, there will always be a general policy that says, ‘You may not have those posters,’ or ‘You may not have that club,’ or you may not do this or that and so on and so forth. But it is not the case; some of these matters will arise simply as matters of first impression at a school which hasn’t actually thought about these issues yet or, if it has thought about them, it thought about them in that context but not that context. So we can’t assume that these cases will all be cases of indirect discrimination subject to a reasonableness test. Some of them will be cases of direct discrimination where there is no reasonableness defence and schools are exposed. So I think that, in that context, unless we do something more with the bill than is currently being proposed, schools have a reasonable basis for their fear that they will be subject to discrimination complaints for what we at least would consider to be reasonable practice. I am not talking expulsion there.

The third issue goes to the evidence of the problem of discrimination and harm. I’ve skimmed some of the submissions and I’ve heard some of the discussion today. There may well be harm out there, but the material which has come forward at the moment is of the nature of second- or third-hand complaints or accounts of
complaints, not as far as I can see corroborated or footnoted, and the school has not been asked for their opinion. The two sides of the story have not been heard. We do not know how big this problem is—we really don't—and I have yet to hear on the expulsion point of any student who has been expelled on these grounds. That is not to say that I am supporting the expulsion of students, but I'm yet to hear of a real case. So are we dealing with hypotheticals, or how big is the problem we are dealing with? That, to me, is another reason for saying, 'Let's refer this to the ALRC,' where that sort of evidence could be gathered and the real size of the problem could be documented, corroborated and demonstrated and the features of the problem—the way it actually presents, if problem there be—could be brought out and an appropriate solution drafted.

The fourth problem is that the bill fails to take account of the voluntary nature religious schools. It is a voluntary parental choice to enrol a student in a religious school and to keep the student there. No-one is forced to enrol or to remain in a religious school. The parent and the student are informed at the outset of the values of the school—and, if the Ruddock inquiry recommendations are enacted, they would be mandated by law to be informed of that before and during the enrolment. Often the parents are willing to pay significant fees to buy an education in that religious ethos. One of the principals that we interviewed indicated that, in this most recent round of enrolments, 12 families had moved—and this was a fairly small religious schools—stating that they were moving because the public school system did not represent the sorts of values based education that they wanted for their children. So there is a positive choice and fee based choice which involves some financial cost for parents. In our submission, the parliament and the law should respect that parental and student choice to be educated in a faith community in accordance with the values and the teachings of that faith community.

The final problem, the fifth problem, is that the bill is based on only one framing of the issue. It's a valid framing of the issue, and that framing of the issue is looking at discrimination against transgender, intersex, lesbian and gay students. But, equally, this issue could be framed as one that the bill is going to discriminate against students and parents, and attack their freedom of religion and freedom of association to associate in a voluntary educational religious community. Both those framings are valid, but only one sounds in the media. In order to sort this properly, you need to balance both those framings. You need to balance both of those sets of human rights. In our submission, this bill does not show that balance. In conclusion, we think that the bill should be sent to the ALRC.

CHAIR: Sorry, Professor Sneddon, had you finished?

Prof. Sneddon: I have finished, only to add that I'm sorry for keeping everyone through lunch!

CHAIR: No, no; we've been very delayed all day. We just happen to be in this particular spot.

Senator PRATT: I understand the issues Professor Sneddon has canvassed. They've been canvassed by others as well. I don't have any questions.

Senator FIERRAVANTI-WELLS: I'm not sure if you were here, Professor, when I had an exchange with the Human Rights Commission. I have asked the Human Rights Commission to specifically address each of the issues and the concerns that you've raised. Could you have a look at the transcript, if you wouldn't mind, Professor? In summary, the gist of the Human Rights Commission was that, on all of your concerns, they gave me categorical assurances that they would effectively not arise. I don't buy that; I don't agree with it. I would ask you, if you wouldn't mind, to have a look at their evidence and come back if you want to add anything further in relation to that.

CHAIR: Could I add to that: if you're looking at the Human Rights Commission, Professor Sneddon, you might, as a lawyer, have a look at the response the Human Rights Commission gave to a proposition I put, which was based on a question that Senator Patrick had put. They gave an answer to that question, and I cautioned them against giving an off-the-cuff decision because I think they're wrong—they're far better lawyers than me, I might say; it's a long time since I was a lawyer. You might have a look at that interchange too, if you want to make a legal comment on the same issue.

Prof. Sneddon: I will. Can I just ask: does that go to the question of whether the examples I've given amount to a detriment or a refusal of a benefit, and, therefore, whether they amount to discrimination under section 38?

Senator FIERRAVANTI-WELLS: No, it went to something much simpler than that. You've raised what I believe are very valid concerns, and, effectively, the Human Rights Commission—and I'm only paraphrasing: go and have a proper look at it—is giving us assurances that you shouldn't have the concerns that you've raised. I don't agree with them. As a lawyer myself, I was very surprised at their response—I wouldn't have given a categorical response like that. Could you please have a look at it? I think that they're wrong, but that's just my personal view.

CHAIR: Accepting, as we lawyers do, that if you have 10 lawyers in a room you get 10 different opinions!
Senator FIERRAVANTI-WELLS: Ten different answers.

Prof. Sneddon: Having heard what you've said, it sounds like the answer that was given didn't have any reasoning sitting behind it.

Senator PATRICK: Just very quickly: I gave two simple scenarios. One was of a classroom environment where a teacher may say to someone, 'In accordance with our faith, marriage is between a man and a woman,' and goes on to recognise that the law suggests that same-sex marriage is okay—so they state the faith view and then provide a balance in respect of the law. An alternate scenario is where a teacher says, 'In accordance with our faith, marriage is between a man and a woman, and any other arrangement would be a sin', and whether or not that would give rise to some form of discrimination.

Prof. Sneddon: I see. Yes.

Senator PATRICK: Or someone in the class who was perhaps sensitive to that—

Prof. Sneddon: On those issues, yes, quite so. I think the examples I have given are clear examples of discrimination because they do involve denying students access to a benefit like a club or posters or something like that, or they could be seen to be imposing a detriment. I think this is off-the-cuff, so you should take it subject to further reflection.

Senator PATRICK: Caveat accepted!

Prof. Sneddon: You would need to try and say that the type of instance you are describing there amounted to subjecting the student to some sort of detriment.

Senator PATRICK: I could clearly see how someone was LGBTQI would potentially take offence that their way of thinking is seen as a sin.

Prof. Sneddon: I can certainly see that too. But I think what I am struggling with is that just because offence is taken doesn't necessarily mean there is a detriment.

CHAIR: Let me put the question a different way. If you were one of these no-win no-fee lawyers and I came to you with the scenario that my child is aggrieved and this legislation was passed—

Prof. Sneddon: I could definitely see a claim there.

CHAIR: Could you as a lawyer mount a case for me that would not be thrown out of court at the first instance?

Prof. Sneddon: Yes. For example, there is the case in WA at the moment of the wedding photographer Justin Kay, who said he wouldn't photograph the same-sex family but felt he should tell them he was a Christian and did not agree with same-sex marriage. He said he was still happy to provide the service but he felt that they should know that in case they wanted to get another photographer. So it was not a refusal of service. He was taken to the anti-discrimination commission. I would have thought there was absolutely no case of discrimination there. Clearly, there was offence—I understand the offence—but there is no discrimination. And yet the discrimination commissioner thought there was enough there to send it to the state administrative tribunal, where it rumbled on for some months until its recent withdrawal. So yes, cases could be brought, without a doubt.

Senator FIERRAVANTI-WELLS: Were the costs paid?

Prof. Sneddon: Yes.

Senator FIERRAVANTI-WELLS: I would hope so! Professor Sneddon and Dr Kennedy, thank you very much for your submission. I would assume that the Institute for Civil Society would take a very broad view not just of the particular issues here but potentially the broader impact on society. Are we really in a situation where the potential impact of these changes, both direct and unintended, are going to affect millions of people and cause more discrimination than it is intended to allegedly rectify?

Prof. Sneddon: Could I restate your question?

Senator FIERRAVANTI-WELLS: By all means.

Prof. Sneddon: Perhaps you could put it this way. The question for the parliament is about how to deal with this balancing of rights in such a way that the valid rights of LGBTI students are looked after but without promoting a greater deal of rancour and legal warfare in our society than currently exists. That would drive more division. That is how I would conceive of it. There are rights to be vindicated and looked after here, but you don't want to take every possible instance of offence or misunderstanding and turn it into a legal action in an anti-discrimination tribunal.

Senator FIERRAVANTI-WELLS: Regrettably, that is exactly what is happening when you are starting to see—
CHAIR: No commentary, questions only.

Prof. Sneddon: I'm hoping that the parliament, perhaps with the assistance of the Law Reform Commission, can find a way through here.

Senator RICE: Thank you, Professor Sneddon and Dr Kennedy. In the examples you gave, you were worried about direct discrimination. Have there been such examples in Queensland and Tasmania, where the law has outlawed discrimination on the grounds of gender identity and sexual orientation for a decade and two decades respectively?

Prof. Sneddon: It's been outlawed in Victoria as well. I don't know the answer to this question, which is why I am asking you. I know in Victoria there are religion exemptions, the same sorts of religion exemptions as exist—

Senator RICE: No, in Queensland and Tasmania there aren't.

Prof. Sneddon: No religion exemptions at all, okay. I am not aware of any complaints to the commissions, with regard to those schools, of religious school treatment in Queensland and Tasmania, and I'm not aware, therefore, whether there are any problems occurring. That would be a fruitful area to explore—I completely agree with you.

Senator RICE: If you want to take on notice whether there is anything you know of. I note the schools that we spoke to this morning have said they've been able to teach according to their doctrine under the laws as they exist in Queensland and Tasmania without problems or concerns.

Prof. Sneddon: Senator, you will appreciate that when these issues come up in a school they're probably far better dealt with at a pastoral level carefully between the teacher, the principal and the student. One principal raised with me the question of a gay students' club, which was going to advocate for gay lifestyle and gay students' rights. Her initial response to that was to say to the students: 'I take on board why you want to do that. Could you go away and reflect on whether such a club and such advocacy would be consistent with the school's religious ethos, and can we come back and have a discussion about that?' That seems to be at least a sensible first step. I would hope you would work through a lot of things like that. I will try to have a look and see what the experience of complaints is in Tasmania and Queensland.

Senator RICE: Thank you.

CHAIR: I don't have any questions. I understand your submissions. They were very clear on your view of the issues, so thank you very much. The last question does raise something. I am asking you, Professor, as a professor of law. I'm not sure whether you do much with constitutional conflict of laws, but would you chance your hand at telling me off the cuff whether the federal legislation that says there is no discrimination would override the Queensland or Tasmanian law that says there is discrimination?

Prof. Sneddon: If I understand the question correctly, let's say in this context if the federal law provides religious schools with a right to engage in certain activity and says that is not prohibited discrimination under the Sex Discrimination Act, and a parallel state antidiscrimination law said the same actions were, under the state or territory antidiscrimination law, would the federal law render that inoperative to the extent of an inconsistency? Is that right?

CHAIR: Yes.

Prof. Sneddon: If I understand the question correctly, I think that may well be the case. The High Court has a line of doctrine in constitutional law that says that if the federal parliament leaves open an area of freedom to a body or a person and the state closes that up, then that may be a case of direct inconsistency. But, being a constitutional law question, one would be foolish to take a two-minute reflected answer, but my initial view is that I think that may well be the case.

CHAIR: I wouldn't mind a not too terribly detailed thesis on it, Professor. On notice, would it be possible to do two paragraphs? That is better than one line, I guess. Senator Rice and others have rightly made the case: has this affected schools in Queensland and Tasmania? The contrary view is that perhaps there has been a caution because of the overriding federal law that has ameliorated whichever point of view.

Senator PRATT: No. State law takes precedence over Commonwealth law.

CHAIR: Does it?

Senator FIERRAVANTI-WELLS: Go and read your Constitution.

Senator PRATT: Under discrimination law it does, unless the Sex Discrimination Act nationally were to contradict the state law.

CHAIR: I am asking a professor of law that question. I thought the federal law always overrode—
Senator PATRICK: Asking for free advice.

CHAIR: I am always asking for free advice.

Prof. Sneddon: Could I point you in the direction of some free advice. I think Professor Neil Foster, on his law and religion blog, addressed that question of inconsistency of state and federal antidiscrimination laws in this sort of context. So you'll find a longer answer than my two paragraphs on that blog.

CHAIR: I just want to know whether it is yes, no or maybe.

Prof. Sneddon: I think his answer was yes—possibly maybe. Yes, there would be an inconsistency and it would override.

CHAIR: Which is the ameliorating factor in many of these. The question asked by Senator Rice and others is valid, important and useful, but the answers may be ameliorated by that.

Senator RICE: We have the Law Council and the Attorney-General's Department appearing before us this afternoon and we could ask them—

CHAIR: We have. I will also put it on them for some free legal advice! Thank you for your attendance. We apologise for being so late and we hope we haven't interrupted your program too much. Thank you.
JONES, Dr Tiffany, ARC Research Fellow, Department of Educational Studies, Macquarie University

WATT, Mr Chris, Federal Secretary, Independent Education Union of Australia

[14:26]

CHAIR: Welcome. I think we have given information on parliamentary privilege and the protection of witnesses. You are aware that this is being broadcast live by Hansard via the web. I understand you, Mr Watt, are somewhat time constrained, so we might start with you.

Mr Watt: Thank you for the opportunity to be here this afternoon. The Independent Education Union of Australia represents staff, teachers and ancillary another staff working in non-government schools, as well as other non-government education, including early childhood and post-secondary. Whilst our purview generally would not be in relation to matters specifically about students, our concern is that the current proposed legislation does not resolve a range of pretty significant issues that exist in schools for many of our members, and that the legislation not only does not go far enough but provides for a potential hypocrisy, shall we say, in the way that we approach these matters.

I guess our statement could be summarised in the view that unless there is equality for all then there is no equality at all. If it is not appropriate to discriminate against students on the basis of their gender or sexual orientation, yet those same students are sitting in a school where the administration of the school determines that it is appropriate to discipline, get rid of or dismiss a member of staff because of their gender, or sexual orientation or other related matters, what message is that sending? When I was here earlier I heard some witnesses talk about the role of schools in modelling. Schools are big about this notion—that, as some of the speakers talked about earlier, it is not just the taught curriculum but the implicit curriculum; it is what happens in the broader context. If students sees that it is entirely appropriate in the big wide world to discriminate against their teachers, that that is fair game, what message is that sending? Are they actually feeling supported, safe and nurtured in that school environment, when the very protections that they are entitled to don't translate and somehow change. And what is it that happens magically between when they are student and at some transition point become an adult and they are not protected any longer?

I'll give you one similar example. Unfortunately, we have too many examples of where our members have been subjected to, in our view, unfair treatment, because of their gender, or sexual orientation practices—the way that they go about their daily lives. In this one instance there was a relief casual teacher at a Baptist school. That person had been a student at that school. Whilst they were a student at that school, they had come out as being gay. There was no problem. They were accepted within the school community. That student then came back as a teacher. The problem was that the teacher wouldn't 'keep quiet' about their relationship. They were in a gay relationship. They weren't proselytising it, they weren't throwing it around the place; they just would refuse to stay silent, effectively, when asked about it, so they were taken off the teaching roster. What is that magic transition point that says, 'As a student at this school, we're not going to discriminate against you, but at some point, now it's perfectly okay for us to discriminate against you'?

My last comment will be simply along the lines of the questions or propositions put by employer organisations, as I shall call them, who presented earlier, that suggest it would perhaps be difficult to manage staff unless there were this capacity to continue to discriminate against them. There are no discrimination provisions in other industries. You can't just discriminate against persons because of their gender, sexual orientation or behaviour in their bedrooms or whom they live and how they live with those people, whether it's de facto or a formalised, understood, agreed, tick the box by the particular church in terms of their marital or otherwise status, yet those other organisations seem to have no problems dealing with contract law and establishing an ethos for their organisation and the way their organisations operate and the sorts of key values that they're on about, so what is it that's so distinctly different about schools?

My suggestion would be that there is nothing, that there is capacity, and people have alluded to it. There are states and jurisdictions where there are no provisions, and in those states, nongovernment, faith based schools have flourished, just as they've flourished in other states. There hasn't been a holding back. The percentages of kids in those states going to faith based schools is not somehow magically lower. There is no problem, and I think it's a bit fatuous to suggest that there could be 80 years lag time between the point at which somebody discovers that there is no capacity to not be allowed to discriminate, and all of a sudden say, 'Now is the right time.' No, people know the ground rules. They know how to operate, and they choose not to, because they know they don't need to, and so we've had schools and systems saying, 'We don't discriminate against students, so we're relaxed about that; we don't even see what all the fuss about this is, but this might open a Pandora's Box.' I hope it does, because there are people in our community who currently are not treated equally.
I'll leave my opening comments there, thank you.

Dr Jones: These views may not necessarily reflect those of my university. I strongly urge the Senate Legal and Constitutional Affairs References Committee to support removal of the Sex Discrimination Act's exemptions. Concerns for keeping exemptions to promote, frankly, coercive religious perspectives are vastly outweighed by the legal, constitutional and research based reasons to urgently scrap them. Objectivity here is not neutrality; objectivity here is identifying the soundest position based on the most salient facts of international human rights legislation, the Australian Constitution's requirements of our laws, and quality research.

First, removing the exemptions meets our international human rights legislation obligations. In my submissions I've cited multiple, over the years, UN treaties, resolutions, UNESCO policies and the ministerial call for action, texts that Australia is signatory to, supporting the basic human right to an education, sexuality education and employment equity, free from discrimination on the bases of sexual orientation, gender identity and expression, intersex status, and marital and relationship statuses. In all these texts the human right to freedom of religion, which is there for an individual's own free religious or atheist will, in the context of institutions who might push them otherwise, does not include a right to enforce or coerce religious views on others. It does not include a right to flout education equity access and employment equity. It does not allow religious educational institutions' discrimination for religious susceptibilities, offence, doctrines, tenets, beliefs, teachings, public or hidden policies, or the best interests of the child in their religious view. These religious educational institutions are not porcelain dolls that are going to break by serving the community. The Australian government's attempt to add exemption-like addendums supporting such discrimination to the Wong draft for this bill, in KQ148-KQ151, should be eliminated.

Second, removing the exemptions meets our constitutional obligation for the separation of church and state. Section 116 of the Australian Constitution from 1900 states:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

So whilst Australians are absolutely free—and this is not in question—to follow any religious belief or otherwise in their own life, when working or studying in any Australian school, it is unconstitutional to make laws imposing any religious observances or tests, including the part of the SDA that currently allows for the imposition of religious observances and tests, in a coercive manner, on the gender-identity expression and sexual orientation of students and staff at Australian-government-funded religious educational institutions, on threat of exclusion. That is religious coercion that is being written into our law. It is unconstitutional.

This is especially so under our legal requirement that all youth remain at school. We know it's the school their parents choose for them. We keep talking about how the parents have this right to choose the school—the kids don't; it is chosen for them until they are of age. That is the law. Staying alive, for people who might suddenly realise that they're gay or same-sex attracted, usually requires staying employed, unless you're very rich. You need to pay for food. So we must urgently prevent the current religious coercion that is in the SDA as it currently stands. I celebrate this opportunity to do so and to make real the promise of our Constitution.

I'll stop soon. Third and finally, removing the exemptions reflects research showing the harm they cause. In my submission I have recounted extensive research—probably too much for you all to read, I admit; I'm a geek—repeatedly showing that LGBTIQ students and teachers experience a significantly disproportionate amount of discrimination in educational institutions. I want to draw your attention to my 2018 research on 2,500 mostly heterosexual and cis-gender, or gender aligned with that allocated at birth, Australians aged 14 plus. This showed that participants were most targeted over their bodily, gender and sexual-orientation differences in school. Across the board, the most common insult in bullying in Australian schools today is 'gay', followed closely by words like 'faggot'. Sorry to say that here, but kids have to hear it, so we should too. Those participants who are exposed to the message that gay people should become straight—and I'm not saying the message that the Catholic position is this or the Muslim position is that—as a directive, which overwhelmingly occurred in religious schools, were most likely to experience every type of negative impact from abuse that I've gone into in these reports, which you can look at, including harms to concentration, grades, facility use and access—going to the toilet—and attendance. Specifically, 82 per cent of students exposed to this conversion message thought about self-harm—82 per cent, and this is the mostly heterosexual population!—62 per cent self-harmed; 84 per cent considered suicide; and 29 per cent attempted suicide.

Protective antidiscrimination policies, approaches and actions for LGBTIQs—and my research and the research of my peers has repeatedly shown this over the last decade—conversely reduce physical abuse, reduce exclusion and dropout, reduce suicide attempts and have positive wellbeing impacts for all Australians, not just...
LGBTIQs. I thought that was a really exciting thing considering the SDA does apply to most people in Australia. So my work shows it's having good impacts.

We cannot simply rely on religious schools to determine students' best interests. That has become really clear to me through my studies. Antidiscrimination law must do it for them. I support repealing SDA section 38(3), clarifying section 37(1)(d) and abandoning KQ147 to 151. Thank you.

CHAIR: Thanks very much, Dr Jones. I don't have a lot of questions. I appreciate you have both made your views on the subject very clear, which is what we're here to do. Dr Jones, do you accept that religious schools—and people are free to attend them or not attend them as they like—should be free to teach according to their faith and the bible that they follow?

Dr Jones: That's a really broad question. Non-coercively would be my response. So they're free to teach their religion—

CHAIR: The children aren't coerced into attending that school.

Dr Jones: Although you don't know that. Actually sometimes when you're a kid your parent requires you to go to a Catholic school—

CHAIR: It depends on what age the child is able to make their own decision.

Dr Jones: Yes, but kids can't pay for their own education at certain schools. Take a step back for a second. I have to deny that point that kids choose what school they go to. I just want to be clear for the record.

CHAIR: Okay. Until they get to an age when they can make those decisions—

Dr Jones: Like at university?

CHAIR: I think there is legally a certain age, isn't there?

Dr Jones: At university sure. We choose our universities, but our schools are really chosen by our parents.

CHAIR: Anyway, that's not the point of the question.

Dr Jones: Our schools are really chosen by our parents. That's a really important thing to bring up. If you attend a school and they're teaching their religion—and I really want to take this in a positive way for religious schools—in a creative, additional way where they provide more options to express freedom of religion, so there's more happening at that school supporting that, that's wonderful, but where you're coercing people on threat of expulsion—

CHAIR: The example we've been using here is where the churches say that marriage is between a man and a woman.

Dr Jones: That's a really good example. I think of how I teach it at university.

CHAIR: My question was: do you think the schools should be able to teach their faith based understanding—

Dr Jones: There's no question that schools should be able to teach what religions endorse and don't endorse. There's no question of that. To say the Catholic Church endorses X or doesn't endorse Y is fine, and I do it at university.

CHAIR: That's fine. You've answered my question.

Mr Watt: Having heard some of the conversation earlier today, I get the sense that people generally look at this question from a fairly conservative, white, Judaeo-Christian, Western world perspective. But what if we challenged and moved beyond the question of it being related to, say, what a traditional marriage looks like and began to pick at some of the other elements that faith based schools are on about in terms of their understanding about their faith? Do we really actually support that absolute freedom, because there's a difference between this absolute freedom and the general notion that people should be free to teach their religious tenets? I'm not entirely sure that we actually do support that notion.

At a very simple level we actually don't support schools if they are in breach of a curriculum that says, 'You're supposed to teach IT,' and they say, 'Our faith, our view, our ideology, suggests that we don't want IT in our schools.' There have been active battles in this very state about the teaching of a curriculum because a particular church or religious group has said no. What about the requirement that the female is absolutely subordinate to the male in the household? What about the notions around gender mutilation?

We've got to be careful about using a simplistic example of what marriage looks like when there are much broader questions at play.

Unless we're clear that we mean 'absolute freedom to do all of that', then we want to be really careful about saying, 'Yes,' to, 'Schools should be allowed to teach whatever they want to teach within their tenets.' That's
because I don't think we're actually settled on that fundamental question at all. We've got schools, that are members, of religious traditions across the board, and these are live and testy questions within those communities. So my answer would be: I'm not entirely sure we actually accept that that absolute freedom to teach whatever would apply in the school setting.

Dr Jones: As I was trying to say, I also feel that the limits should lie in this law. The antidiscrimination law should provide the limits. So where you're not discriminating against their access to education—

CHAIR: But they're not discriminating against access to education. They're joining that school because that school has certain standards, certain principles, certain discipline things and certain faith based procedures. If they're teaching those faith based procedures, should they be allowed to continue that within the bounds that Mr Watt rightly raised? But they're at the extreme end. I'm not really talking about the extreme ones.

Dr Jones: It's not my objective to say that we shouldn't have religious schools, but it's my objective to say that they shouldn't be discriminatory.

Mr Watt: What about teaching creationism as a religious tenet versus as a scientific principle?

CHAIR: Dr Jones, do you have a legal background? Are you a lawyer?

Dr Jones: I'm not a lawyer; however, my research includes legal and policy analysis, and constitutional and international human rights law

CHAIR: I ask because your views on section 116 of the Constitution and other legal views are contrary to some that professors of law have given us. But, as I always say, 'If you have 10 lawyers in a room, you get 10 different views.' That's not a problem, but I was just wondering—

Dr Jones: That's why I was careful to actually say the words 'of the law' to you.

CHAIR: Mr Watt, you were saying in your submission that other organisations can't discriminate, so why should religious schools be able to. Would you accept that other employers don't have a faith based principle of why they exist, whereas the religious schools, I assume, do?

Mr Watt: I don't think it's that simple. Aged-care nursing-home facilities and hospitals conducted by religious organisations have very clear objects and ethoses based upon their faith, so they seem to be able to operate quite successfully.

Senator PRATT: They are actually also subject to the same exemption, but not in all states, and they do operate successfully where those exemptions don't exist.

CHAIR: We really should get you to the other side of the table, Senator Pratt, and get you to give evidence!

Mr Watt: Faith is one element of a person's life. We talk about other elements, and it doesn't have to be a faith based basis. There are ethoses that exist in other organisations. There are mission statements and commitments, and that goes to organisations that might have a particularly political activist role, for instance. So, yes, faith based is a particular dimension, but does that mean that it should and can exist outside the law, given that it's operating within all the other precedents of law and expectations? Our view is that they shouldn't be operating outside—

CHAIR: I discriminate in my employment practices in that I won't employ anyone in my office who's a card-carrying and active member of the Labor Party. Is that discrimination?

Mr Watt: I'm sure we all bring prejudices to our activities—of course we do—but the question goes to finding an appropriate mix when one undertakes an interview with people. I have to say: I don't think that's a fundamental problem, really. How long do you have to have not carried the card? I ask because there was a recent candidate for the federal election that's coming up who was a fairly significant card-carrier for a particular political party, and that didn't seem to be a problem for the new political party, who endorsed him as a candidate. So I don't think that is a problem if a person is able to undertake their work in a competent, successful, professional manner without stepping outside the ethos expectations of the organisation, which is a contractual thing rather than a faith based thing.

CHAIR: Exactly, except that, if you were a faith based school, you wouldn't employ someone who was out there actively campaigning for the devil.

Mr Watt: One assumes you would have known that before the interview.

CHAIR: You'd discriminate against that in the same way as I discriminate against people who are not of my political faith.

Mr Watt: But isn't that part of the employment process?

CHAIR: Yes.
Mr Watt: An employment process is an ongoing thing. If, at the point of employment, you employ Satan, it would seem to be a pretty odd choice.

CHAIR: Yes, exactly. I think we're in rabid agreement on that.

Mr Watt: Whether you need an exemption in the law to make a decision in relation to what fits best with your—

CHAIR: You've just raised with me whether I'm—no, it's the Sex Discrimination Act, isn't it? But do I breach other discrimination laws by actively saying I'm not going to employ anyone that's a member of my opponent's political party? Go and think about that.

Senator PRATT: Thank you, Mr Watt and Dr Jones. I'm going to ask you some quick questions that reflect on Dr Jones's statements about coercion. We've had many statements from witnesses and, indeed, from members of the committee that say schools don't expel LGBTI students. Equally, on the other side, we've also heard many stories of the way in which students might simply feel like they're forced to leave a school. Equally, in evidence at the last hearing we had, the Independent Education Union provided evidence essentially of the way teachers are also coerced to leave without being formally dismissed, because of these exemptions in the Sex Discrimination Act.

CHAIR: Your question is?

Senator PRATT: So I want to ask you both to comment on that and also the implications of failing to protect teachers. We know that's not in this legislation, but the Labor Party supports protection on both grounds. We've also had examples of teachers essentially being unable to intervene in support of LGBTI students because of the fear for their own employment—again, another form of coercion. I want to ask you, Mr Watt, if you've seen examples of that also. So there are those two sets of questions.

Dr Jones: I'll speak to some of those points. It's really important to recognise not only that schools have expelled kids for all sorts of reasons—being pregnant, being LGBTI and all sorts of different reasons—but there's a really complicated form of coercion that can occur when an institution puts out requirements of religious observances, practices and tests in a coercive way on young people who are legally required to be there, whose parents might not support them and who might have to drop out of home, not just school, if this all came to the fore. So I think the problem is much bigger than what we see. I think the numbers we have, which I have given to you, are conservative, because a lot of young people say to me that they're careful not to come out and not to make it an issue, because they're so afraid. So I think we have to think about it in that complicated way, as well as in the direct way.

What I keep hearing today is this confusion about religious educational institutions' right to impose or their right to coerce. That doesn't exist. It was so valuable and important for me to come today and clarify that there may be misreadings of human rights texts—in my work with the UN, I'm very clear on what they mean—and misreadings of the Constitution. Again, I'm very clear on what that means. It's not for the government to be pushing this coercion in its law, period. So that's a massive issue right now.

What I also want to say, in thinking about teachers, is that the issue here is that a lot more people, both students and teachers, are same-sex attracted than might necessarily see themselves as LGBTI, and people may go through different experiences in their gender preference. I remember earlier you were saying: 'What if a man wanted to wear a skirt to school?' I don't understand why this is a problem. I don't understand why we're trying to make it law that someone can't do that—that we're trying to, in law, enforce this imposition of what an adult or a kid can and can't do.

CHAIR: The question related to if you were in a church school. Is that what you want your teachers to appear like before your faith-based school students? That was the question. It's no problem if people want to wear dresses to school; that's fine. But in a faith-based situation—

Dr Jones: Where priests are wearing dresses? It just seems a really odd thing to worry about.

CHAIR: I'm not worried.

Dr Jones: I feel like people get really worried about these things that don't matter that are going on in religious organisations.

CHAIR: Don't get me wrong. I'm not worried about it; I'm simply asking questions of witnesses who are in charge of schools and getting their view. I'm not worried about it.

Dr Jones: Good, because it's odd. I want to say again that I'm really here just to emphasise that we shouldn't be enforcing that kind of coercion in law. It's unconstitutional for both the students and the teachers.

Senator RICE: That's a worthwhile point.
Mr Watt: The short answer for me is that, because we're a trade union, we deal with the teachers and staff, so our knowledge, in detail, of the impact on students is limited to what we read in the submissions, and we take at face value the statements that say 'no student has been expelled from our Catholic schools' or 'our Anglican schools'—apparently in the history of humankind. Having said that, I agree with the notion that, in fact, what happens instead is that subtler processes get undertaken and people are often made to feel uncomfortable, and that's certainly the case in relation to staff. You don't see many cases going before the industrial relations, even though that's not the—

Senator RICE: Thank you. Just finally, Mr Watt, you are a leader of the Independent Education Union of Australia, and, clearly, the viability of religious schools—and their careers and their faith—is something that's very important to your members. You don't see any contradiction between preventing discrimination against your members and their freedom, their faith and their teaching careers, do you, in that sense?

Mr Watt: Not at all, because what we know is that there has been incredible tolerance in this space. It has suited schools to keep people on their employment rosters, because they're good teachers—because they do the right thing, because they're professional, because they dress appropriately, because they get good results for their students. And the question about their lifestyle is often overlooked—which is a good thing—as is the question of what faith they belong to. There was evidence earlier about the very high percentage of not that particular faith attending that school. That's also very true for the staffing rosters in schools. Schools operate currently, in general, in a very positive and supportive way in this space, and they don't need provisions, as we've seen in other jurisdictions, to be able to flourish and to undertake their work. Yet we are very mindful, as you allude to, that we want the sector to be vibrant and healthy and we don't want it to collapse, because our members have jobs there. But, more than that, most of them actually have jobs there that they quite enjoy doing because of the particular focus and nature of those schools, and they often will self-select to work in those schools because of that particular element. They're therefore less likely to actually work to undermine the ethos of that place, because they've chosen to be there. So I think that these issues that are put up as big problems with the potential of the collapse of these faith based schools overnight are red herrings. They are at the absolute edge, and those things can be dealt with, as I said earlier, in normal contractual legal workplace arrangement practices.

Senator FIERRAVANTI-WELLS: Mr Watt, we heard evidence from your union when we undertook our first inquiry in relation to these matters. Some of the evidence that was given by Mr Anthony Odgers was very, very helpful. He took us through the framework of the contractual arrangements. I don't want to paraphrase; I'm happy if you go back to his evidence and have a look at it. But the impression I was left with is that in the independent school systems, particularly where you've got religious schools, there's a clear understanding, a clear undertaking and a clear outline of the parameters of the requirements of teaching at that school and that, inevitably, if there is an issue it actually comes out of some form of breach of contract, not necessarily to do with the sorts of issues at hand. The second point from his evidence was that it is managed and it is a managed issue. I wonder, Mr Watt, would you kindly go and have a look at his evidence—I assume that that evidence is still current—and see if there's anything that Mr Odgers has said that doesn't necessarily conform with some of the things that you said today? I sense that there might have been—

Senator PRATT: I thought they were consistent.

Senator FIERRAVANTI-WELLS: Anyway, my understanding was, in short, that there isn't a real issue with independent teachers in relation to expulsions of teachers and those sorts of things, even though that's not the subject of the bill at hand.

Mr Watt: Perhaps I've been misunderstood, and I accept that I perhaps haven't phrased it well enough. I thought what I was saying was entirely consistent with Mr Odgers's previous evidence, and that is that schools do not require exemptions under the Sex Discrimination Act, because they can operate, as other workplaces operate, in terms of contractual law in relation to ethos. But what we see is happening is some subterfuge—it often happens with students, potentially, in relation to their place in schools—the big stick is kept in the cupboard but there's an allusion to it and other reasons are found, often, for moving people on: taking away promotion positions or requiring a range of things to happen that are just impractical or unreasonable. I said earlier on, if you check my transcript, that these things rarely finish up in the industrial relations commission, because there are settlements that are reached because people just want to get on with their lives collectively. So you don't need the exemption if the approach that's taken is in relation to contractual and ethos issues that are present in those.
arrangements of employment. So if we're inconsistent, it may well be because of the way that I've expressed it, but I would say that he and I share the same views in relation to those matters in relation to staff in schools.

Senator FIERRAVANTI-WELLS: Thank you. Dr Jones, you're not a lawyer by training and you don't have a constitutional legal background?

Dr Jones: Policy analysis is my main mode of research as well as surveys.

Senator FIERRAVANTI-WELLS: But you're not a constitutional lawyer?

Dr Jones: I'm not saying I'm a constitutional lawyer.

Senator PRATT: But you're an education academic?

Senator FIERRAVANTI-WELLS: I didn't ask you, Senator Pratt.

Senator PRATT: You should listen to the witness.

Senator FIERRAVANTI-WELLS: I did. She is pronouncing on constitutional legal issues and I'm asking her if she's a constitutional lawyer and if she's had training. That's what I'm asking her.

CHAIR: I asked her that and she said no, so we can move on.

Senator FIERRAVANTI-WELLS: Good. Thank you. You also professed a detailed understanding of the UN system. Can you explain to me, on that basis, why your submission makes absolutely no reference to the International Covenant on Civil and Political Rights, in particular to article 18.4, and no reference, for that matter, to the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief?

Your submission doesn't make any reference whatsoever to that, and I ask that particularly in the context that I would have thought that your submission would at least make some reference to what's raised in the expert panel review about the hierarchy of rights and the notion that one right doesn't take precedence over another. I would appreciate it if you could take that on notice. I'm surprised that somebody who professes to come here with expertise in UN matters didn't include anything of that nature in their submission.

Dr Jones: Do you want me to respond to that now?

Senator FIERRAVANTI-WELLS: If you want to take it on notice—

Dr Jones: Or do you just want to say it to me as a reprimand?

Senator FIERRAVANTI-WELLS: No. I'm happy for you to take it on notice. I would have thought that you might want to give us a detailed response to it.

Dr Jones: I'd like to respond now, thank you. I wanted to draw your attention to things that I didn't think you were taking into consideration, such as UN human rights leaderships including Navi Pillay, Ban Ki-moon and others over the years I've been doing this, and bring to your attention interpretations of existing treaties and resolutions that I felt were being ignored. What I'm trying to do in my submission is not list everything that exists that was ever done by the UN but bring forth to you things that I think you're overlooking in the interest of identifying religious tests and religious coercion in the law. I'm trying to bring forward things that I think are really important and I encourage everyone to have another look at my submissions if they're confused.

Senator FIERRAVANTI-WELLS: So you're not saying that those two things are not relevant. Are you saying that the things that you're bringing in are more relevant for us to consider?

Dr Jones: I'm bringing in things that I think are the most urgent that haven't been considered.

Senator FIERRAVANTI-WELLS: That take precedence over things like article 18 of the International Covenant on Civil and Political Rights and the UN declaration on the elimination—

Dr Jones: That are the most relevant here to this debate, in my view.

Senator FIERRAVANTI-WELLS: Sorry, let me get this correct. The things that you've put forward in your submission you think are much more relevant to our considerations than the International Covenant on Civil and Political Rights?

Dr Jones: Oh, gosh!

Senator FIERRAVANTI-WELLS: I'm just asking you.

Dr Jones: I understand what you're doing.

Senator FIERRAVANTI-WELLS: A simple yes or no would be good.

Dr Jones: What I'm trying to do in my submission is bring forth really important things that I think people would rather ignore.
Senator FIERRAVANTI-WELLS: Thank you, Chair. I don't think I can take that any further.

Senator PATRICK: Dr Jones, I heard you say that there had been some students expelled from schools. The committee's been looking for some evidence of that. Do you know of instances where that's occurred? I don't doubt for a moment that some people may have left a school, but are there instances where someone's actually been expelled?

Dr Jones: In our research over the years, we have submitted to you examples. I can submit more research if needed. What is more prevalent are the examples of coercion, where people have felt that they've had to leave because they were unsafe.

Senator PATRICK: I get that. We've been searching for specific examples of people having been expelled from religious schools on the basis of sexuality.

Dr Jones: I can't bring forth a particular person to you, and—do you know what?—I wouldn't expose them to this kind of debate and critique.

Senator PATRICK: It was just that you made that statement.

Senator PRATT: And the evidence is in her report.

Dr Jones: And my previous reports since the SDA has been debated. I've been making submissions of this kind with this evidence.

Senator PATRICK: I have to make a decision as to how I vote on this legislation. I'm mindful that Australia is a representative democracy. I'm not religious, but there are a lot of people who have a religious belief and might feel they have a right to send a child to a religious school. As parents, they are entitled to make those decisions for children who are not yet of a particular age. I'm just trying to clarify. In your evidence, are you suggesting that the expectations of some of the people that I represent shouldn't be met and that, in all circumstances, some of these international obligations override the desires of the constituents that I represent?

Dr Jones: I can hear your concern about the fragility of the option for parents to ensure a religious education for their young ones. I am not saying that that shouldn't happen or that we should outlaw that at all. What I am saying is it shouldn't come on the basis of discrimination and coercion; that can't occur.

Senator PATRICK: I have talked to a number of people in South Australia who might have a view that there is an entitlement to religious freedom and that it shouldn't be fettered by the laws that are being passed or that the Senate may be passing.

Dr Jones: You have to think about the child's right to religious freedom. Every time I hear religious freedom cited or discussed here, it is about an institution's right to promote itself or it is about parents' rights.

Senator PATRICK: In the context of a representative democracy, which is what our Constitution tries to set up, I have an obligation to listen to all members of the community. I am trying to find the balance. If a small group of people feel a discrimination, how do I make that decision, noting I have got to make decisions based on what my constituents may want?

Dr Jones: And freedom of religion doesn't require coercing other people. It just doesn't. I think we're going off a different definition of freedom of religion for those people.

Senator PATRICK: Maybe I've misunderstood the coercion you are referring to. Who is being coerced?

Dr Jones: Presenting the school's religious view is X or the religion's view is X is very different to saying: you must X or you can't come here, or you must X or you get marked down. Do you know what I mean? It is a different thing. I'm saying discrimination is the problem. It's great that there are different options for schooling that provide additive rather than punitive environments for the freedom of religion to be expressed.

Senator PATRICK: So you don't have a problem with the school that says: in our faith, marriage is between a man and woman? You have no problem with that?

Dr Jones: No. It is true. That is something I teach my students when we are talking about the different kinds of schools that exist and the different faiths that might inform them and the different faiths that may occur there. We talk about how some of the beliefs may include this—it is always interpretive—but that is the position taken. That is just a fact but it is not coercing anyone into anything or making them feel like they are going to have to leave if they don't comply with that in their own life.

Senator PATRICK: So it is only when people are forced to conform to a particular view that you have a problem?

Dr Jones: Yes.
CHAIR: I don't understand that, Dr Jones. If the school teacher says, 'Marriage is between a man and woman,' the child with the same-sex couple parents, would they not feel they had been discriminated against?

Dr Jones: If the school teacher says that the religious position in question, the religion posits that marriage is between a man or woman, they are just saying what the religion's privilege is. I'm not trying to change religions.

CHAIR: Even though the student said, 'Gee, my parents are the same sex so am I a bit strange?'

Dr Jones: What is really important is that the children are also taught about what is legal Australia and about the discrimination laws in Australia. For example, sometimes religious teachers come to me and say, 'What do I do when a kid comes out to me?' A lot of my research has talked about how, when a teacher does not support the kid when they come out, it greatly increases their risk for all kinds of wellbeing and harm so what I often say is, 'If you cannot endorse their sexual orientation or their gender identity, that's fine.' But you might say something like: 'You have the right within Australia under our laws to a non-discriminatory education.' That is all you have to say.

CHAIR: The witnesses have given evidence on how their teachers deal with that in a fair and loving way.

Dr Jones: Yes. It's just as an example. I'm just trying to come up with ideas for you to help.

Senator RICE: Thank you very much, Dr Jones and Mr Watt, for your evidence today and your support for LGBTIQ students and staff in religious schools. Given the interests of time, I've got one question, Mr Watt. Is there a difference between independent schools in Queensland and Tasmania and other states? Laws in Queensland and Tasmanina do not allow discrimination in schools.

Mr Watt: Apparently Queensland have a better rugby league team!

CHAIR: That part is uncontroversial.

Mr Watt: Our view would be that there is no difference in the way those schools operate—the way they go about their business. We have the same issues. We have the same struggles and the same challenges. We see the same sorts of enrolment patterns across those jurisdictions as we do elsewhere in the country, which is why our proposition is that those schools do not need these instruments to be able to operate in other jurisdictions when they clearly can operate successfully and flourish. It was alluded to before—and I love the expression 'porcelain dolls'—and we have taken the view that, in most instances, these religions are in fact quite old religions. They have an incredible resilience about them. They don't need a protection, which most employers seem to suggest that they don't need at any rate, to continue to flourish over the centuries. There is a resilience within their structures and organisations, and that is all they need to rely upon. They don't need exemptions from the SDA.

Senator RICE: Do the staff that you represent in Queensland and Tasmania feel more supported and more comfortable in their jobs when they do express their sexuality or their gender identity?

Mr Watt: Not necessarily, because it doesn't so much relate to the law but to the way in which the collegial community environment operates within schools and irrespective of jurisdiction. Some communities are much more supportive of teachers who might come out or have a particular interest, a particular orientation, and that can just be even within the same faith, within the same city, within the same religious hierarchy of schools or a particular structures of schools. It is the local cultural issue that will impact more. It is a bit like the old adage about the difference within schools probably being greater than the difference between schools.

We see things played out industrially that just shouldn't be played out, and yet on other occasions, as I alluded to, people are happy to 'ignore' what would otherwise be seen as transgressions against the ethos or faith of the school, because it suits them to have that particular teacher because they are just a very, very good teacher. It is a bit like: why do you need it? Or, if you're going to have it then maybe it should be compulsory that you exclude all of these people as soon as you find one. Nobody is promoting that, of course, because they don't want to lose teachers who are amongst some of their best teachers and their best staff. They want to be inclusive. I don't know that we know there is any more difference between Tassie and Queensland and the rest of the country than there is between schools within different jurisdictions.

Senator O'NEILL: Thank you for the data that you put into your submission, Dr Jones, with regard to negative wellbeing impacts, including, sadly, suicidality amongst young people. I would put on the record concerns about the delay in the Ruddock report release—it's a conversation that we have had—and the context in which this piece of legislation has arisen and that, rather than dealing with a single issue that I think was clearly intended in Senator Wong's moving of the private member's bill, much has been attached to this that deals with latent questions that have not been able to be aired and carefully discussed as a result of the failure to advance the Ruddock report in the public place. So, thank you for putting the risk to young people on the record.
My concern with what we have heard today is that there are a series of unintended consequences that are very live in our community, which does support freedom of religious practice and gathering, as well the rights of individuals to be who they are. The balancing of all of that is quite a complex reality. Is there an imperative for legislators to deal with the core matter of young people in schools and their health and wellbeing separately from the other complex issues that have been aired today that you have been hearing about, as I have been?

**Dr Jones:** That's an interesting question. Some of the points that Mr Chris Watt made about how there is an interrelationship at times between the treatment of teachers and students, that there is a level of crossover, suggest to me, and in my thinking on human rights, that it's human rights; it's not just students' rights or just teachers' rights or just adults' rights. So what I would really like to see is that we just get rid of the exemptions and we get in place really quality detailed education policy looking at those juicy complexities. I'd really love to see that at the national level, now that we have a national curriculum. I think that is really important.

It is true that religious educational institutions will have lots of questions about what is required and what is not required of them, and I think that needs to take time and be looked at. But what is most urgent now is dealing with the fact that the law as it currently stands is unconstitutional and not in keeping with human rights legislation and is problematic in—

**Senator O'NEILL:** And it is not only not in keeping with community sentiment; based on what we've been hearing, it's also not in keeping with the proclaimed practice of the religious institutions that have had the opportunity to discriminate thrust upon them. My question is: is it important that, if we do anything, we really look after the young people captured into care in our schooling institutions if we cannot get agreement on the more complex matters in that very short period of time? Is it an imperative for us to act on this? Should we hive it off or should we delay the whole thing?

**Dr Jones:** Different people will think differently to me, but in my view you take the steps you can. I would love to protect as many people as possible in the given environment. I understand that laws change over time and policies change over time. So, for me, we should do as much as we can as urgently as we can.

**Senator O'NEILL:** So protect as many people as urgently as we can?

**Dr Jones:** Yes; I encourage it. I know that other people might say to hold off, but I just feel that these children don't have a choice about where they are put and they don't have a choice to leave school—and, if they do, that has incredible deficits for the rest of their life. Many of these kids are resilient—don't get me wrong—but, unless they have—

**Senator O'NEILL:** And if they can make an effective transition it could be okay but it may be not—the risk is there.

**Dr Jones:** Yes.

**Senator O'NEILL:** Mr Watt, do you have a view?

**Mr Watt:** It's a difficult question, and I concur with the comments of Dr Jones. Yes, at one level, let's get something done, but I'm also very mindful that it's not just this legislation; there are proposed amendments to it, and some of those would assist in dealing with some of the concerns we have raised. So, yes, let's push on but not just with the legislation but with proper consideration and inclusion of the amendments also, because they will go a long way further to dealing with some of the issues that I highlighted in my opening comments.

**CHAIR:** Thank you, Dr Jones and Mr Watt, for your evidence. We very much appreciate it.

**Dr Jones:** Thank you. I very much appreciated the chance to talk today. I know these are complex and awkward conversations—so thank you.

*Proceedings suspended from 15:24 to 16:01*
CHAIR: I declare resumed this hearing of the Senate Legal and Constitutional Affairs Legislation Committee in its inquiry into the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018. I welcome to the table representatives of the National LGBTI Health Alliance, Intersex Human Rights Australia and Australian Transgender Support Organisation. I understand you’ve all been given information about parliamentary privilege and the protection of witnesses. These proceedings are being recorded live via the web and will, of course, be reduced to Hansard print copies later on. With that, we ask you all, if you could, to make a short opening statement, and then we’ll ask some questions. I apologise again to you all for the delay. We are running two hours late, and I apologise for that. So far as the committee is concerned, we’re prepared to stay as long as is necessary to finish the program. But I do apologise for others that that may inconvenience, because of our lateness. With that, who will start? Ms Bath, over to you.

Ms Bath: I’d like to acknowledge the traditional owners of the land on which we’re meeting today, the Gadigal people of the Iora nation, and pay my respect to elders, present and emerging. I thank the committee very much for inviting us to be here today. I think it’s useful to quickly contextualise our contribution today. We’re not legal experts or human rights experts, but we come to you with a health background. We note that there has been evidence and submissions presented to this committee about how religious freedoms will not be eroded with the removal of discrimination against LGBT students in faith based schools. We acknowledge that the current exemptions relate solely to LGBT students. However, we note that the proposed amendments would be broader, introducing religious consideration in respect of all attributes, including intersex status. Our focus today is to highlight the impact of discrimination on our health and, in particular, the health of our young LGBT people.

The alliance’s aim, as the national peak health organisation in Australia, is to provide a national focus to improve health outcomes for LGBT people through policy, advocacy, representation, research evidence and capacity building. This is no easy task. We know that despite legislative reforms and advances in our human rights, we are not seeing parallel improvements in our health. Acknowledging our elders is an important task to undertake here today. Their work and sacrifices have enabled us to have a more equal life, a safer life, a life that is freer of discrimination than it was for them.

This inquiry, this hearing today and the very fact that we find ourselves again under public scrutiny and in a position of defence shows that our work is not yet done. The ongoing public debate and negative critique of our lives and who we are is harmful and detrimental to our communities. It is from this place of defending, from constantly trying to wipe off the discrimination that we experience in our daily lives and from the impact of not being treated equally under the law that, as a community, we live with poorer health outcomes compared to the general community. This includes disproportionate rates of suicide, self-harm and mental health issues as well as higher rates of alcohol and other drug use, higher rates of smoking and an array of other health issues. These poorer health outcomes can be attributed to the impact of minority stress; in other words, the chronic stresses that we are uniquely exposed to for simply being who we are. This includes experiences of stigma, prejudice, social exclusion, harassment and physical violence.

We recognise that, to improve our health, we need to increase our resilience, remove discrimination and stigma, rise our heads above shame and remove the unique stresses that cause minority stress, and foster less harmful environments for our communities. This is multifaceted and will take time. Where we can make a marked and important contribution to reducing and eradicating minority stress is with our young people, making sure that our young people are given the respect, support and encouragement to be who they are and live happy and fulfilling lives.

The disparities in our health are evident. The SWASH survey, a biannual study of lesbian, bisexual and queer women, shows that 42 per cent of 16- to 24-year-old LBQ women smoke. This is 2½ times higher than the rate reported of 18- to 24-year-old women by the National Drug Strategy Household Survey. Additionally, a recent international meta-analysis of 18 studies of sexual orientation and adolescent substance use found that prevalence of substance use by young LBQ women was four times higher than that of young heterosexual women. The Trans pathways report, released in 2017, which was the largest study ever conducted on the mental health and care
Research tells us that young people experience minority stress in different ways to older LGBT people. For example, some young LGBT people face rejection from their parents when disclosing their sexuality or gender identity, placing them at greater risk of homelessness. Therefore, fostering a safe and supportive school environment is incredibly important, as, for some young LGBT people, teachers can be their only support network. School environments are known to act as incubators for bullying, which is a key contributor to the minority stress of young LGBT people. The *Growing up queer* report, released in 2014, showed that schooling for many sexuality and gender diverse young people was generally an unsupportive environment. More frequently, school was a place where they were largely forced to hide their sexuality and gender identity so as not to be harassed. Schooling, for others, meant enduring daily physical, verbal and emotional harassment and alienation from both our peers and teachers. Some indicated that teachers were often the main perpetrators responsible for the harassment that they experienced.

Fundamentally, the young people surveyed who had experienced homophobia or transphobia at school pointed out that it impacted on their health and wellbeing, the equity and quality of the educational experiences, and their learning generally. It is, then, vital for all schools to provide supportive and inclusive environments for our young people regardless of their sexuality or gender identity. Research is telling us that schools need to step up and make their environments safe and conducive to learning and development. Research from the US has shown that unsupportive environments—for example, non-protective school policies—result in LGBT young people having higher suicide rates than if they were in supportive environments. If, then, we do not change the status quo, we are saying that only some schools will be expected to change and better support LGBT students whilst others are mandated to do the exact opposite.

It is important to note here that in some families the decision on what school a child or young person will attend is made by their parents, guardians and carers. Publicly funded schools have a duty to foster the development of all of their students, including LGBT students. If current exemptions are removed, we will know that, regardless of which school they attend, LGBT students will be nurtured and encouraged to be who they are. Removing discriminatory exemptions from the Sex Discrimination Act will have the effect of assuring LGBT students that they can talk to their teachers without fear of being disciplined or expelled and that they will be affirmed, respected and protected. And it is by fostering these environments in all schools and ensuring that the best interests of the child are of primary consideration that we have a chance of reducing minority stress and improving the overall health and wellbeing of LGBT people.

**Mr Low:** Intersex people are born with sex characteristics that differ from the medical norms for male or female bodies. The Sex Discrimination Act does not permit exemptions allowing faith based schools to discriminate on the grounds of intersex status. The Religious Freedom Review panel took the same position, bracketing intersex status with disability, race and pregnancy rather than sexual orientation and gender identity. This is appropriate, and we are here to support this position. Amendments should not change this.

Our population is often nominally associated with LGBT populations, and our issues confused. But our population is distinct, and we hope to clarify this. We are a very diverse population, with at least 40 different intersex variations known. Most are genetic or chromosomal. These variations may be diagnosed prenatally, at birth, in early childhood, in adolescence or in adulthood, such as when trying to conceive a child. Intersex people use many different terms to describe themselves and their bodies, including ‘variations of sex characteristics’, 'being intersex', 'having an intersex variation' or diagnostic language such as Klinefelter’s syndrome, partial androgen insensitivity syndrome and 5-alpha reductase deficiency, to name a few. Historically, the word 'hermaphrodite' was used.

Many intersex people may not even know themselves as intersex. The terms used are partly determined by stigma and misconceptions. A large 2015 study found that almost half of adult respondents born with atypical sex characteristics identified as heterosexual. Misconceptions included assumptions that we identify as something other than male or female. Australian research on 272 people born with atypical sex characteristics suggests that about one in five respondents do, but all available research shows that most intersex people grow up to identify with the sex we are assigned at birth. It is our view that laws and policies need to reflect an accurate understanding of who we are, acknowledge our diversity and innate characteristics, and not be grounded in misunderstandings about identity.

Intersex people and LGBT people share in common an experience of stigma because we don't fit sex and gender norms. But this relationship is complex. Often we are tokenised or misrepresented as a sexuality or gender
identity. Historical records show that Christian canon law has long recognised the rights of intersex people. In Christianity hermaphrodites were treated as female or male depending on our predominant characteristics. We had the right to marry someone of the other sex. Intersex men could witness a testament and be ordained. There is no basis in Christian scripture for discrimination on grounds of intersex status. Different treatment of men and women by religious institutions on grounds of sex means that, regrettably, we expect institutions to treat people with intersex variations differently on the basis of sex. For example, only intersex men have been ordained according to canon law. However, the growth of an LGBT movement and the development in the twentieth century of invasive surgical approaches to intersex people that seek to eliminate the existence of intersex variation means that this historical understanding of our place has been lost. Many policymakers and some contemporary religious and LGBT institutions have only considered the meaning of intersex people within the context of LGBT issues.

Intersex Human Rights Australia takes the view that no-one, including students, teachers and other staff, should suffer discrimination on grounds of sexual orientation or gender identity in publicly funded educational institutions. However, increasing polarisation on issues of sexual orientation and gender identity creates risks to intersex people, including infants and children, arising from a conflation of LGBT and intersex issues. We want to draw your attention to this risk and reiterate and support the position that the Sex Discrimination Act does not permit, nor does the religious freedoms review recommend, exemptions allowing faith based schools to discriminate on grounds of intersex status. However, we don't face discrimination from religious institutions for being intersex, but we do face other forms of stigma and discrimination. A 2015 Australian study found that one in five respondents failed to complete secondary school. Reasons included impact of medical interventions in puberty, stigmatisation based on physical characteristics or imputed identity, developmental delays and cognitive issues that affect physical development and learning. Children with intersex variations need protection from discrimination. These issues don't fit well with an LGBT framework, though they have lessons for the protection of sexuality and gender-diverse children. They will remain to be addressed after this inquiry.

CHAIR: Thanks very much for that, Mr Low. Ms Johnson, over to you for your opening statement.

Ms Johnson: I'm from the Australian Transgender Support Association of Queensland. I haven't actually prepared an opening statement on behalf of our group. We have very many LGBTI children here in Queensland that go to schools where their education is the most important thing that needs to be covered in this. For any school, whether it's religious, private or independent, to actually have the right to remove them because of who they identify with is absolutely abhorrent and also comes under a certain phrase under the genocide legislation, which includes:

Serious discriminatory practices, for instance, the compulsory identification of members of a particular group, imposition of taxes/fines, permission required for social activities such as marriage, compulsory birth-control, the systematic exclusion of groups from positions of power, employment in State institutions and/or key professions. There is also another part under that genocide legislation which refers to creating harm and mental health issues for people not of a particular group.

That is my say, and I really think this whole thing is unnecessary. Nobody has the right to discriminate against anybody. These children that are going to school now are better protected for the future. I'm 55 years old. I had to quit—I was asked to leave—Macquarie Boys' High School in Sydney when I was 15. People knew something was wrong with me, but nobody actually knew what was going on. At the same time, I would just say: let the kids be kids. Let them go through. Stop treating the children as second-class and third-class children in this country. Children are children. Let them play. Let them explore. Let them learn. Let them be who they are. There is no place for discrimination against any child in any faith based school, state school or independent school, ever.

CHAIR: Ms Johnson, thank you so much for that opening statement. We have limited time, and we have six senators who need to ask some questions, so we might move on to that now if that's okay with everybody.

Ms Johnson: Thank you.

CHAIR: Could I just start with all of you, perhaps starting with Mr Low or Ms Bath. What you say is very useful and valuable in the broader context. How does it relate specifically to this bill? Can I just get you to draw the connection together—whoever would like to answer that. Mr Low, perhaps.

Mr Low: I think Morgan would like to say something about this.

CHAIR: Okay, Mr Carpenter.

Mr Carpenter: Thank you very much. How does what Peter has described relate to this bill? Even though the summary of this bill includes the words 'intersex status', the bill itself does not propose to change the way that the current Sex Discrimination Act relates to people with intersex variations on grounds of intersex status. However,
some of the amendments to the bill propose what seem to be fairly open-ended exemptions that will allow religious institutions to discriminate on whatever grounds they see fit within the context of their scripture or beliefs. We have many concerns about how that might be seen as being relevant to people born with intersex variations, because even though intersex variations are formative embodiments, they are innate characteristics that we have, that we are born with and we are known to be born with—doctors respond to the fact that we are born with intersex variations—it can be imputed to mean issues around identification by people who are unfamiliar with the nature of intersex variations. So, we fear the application of exemptions that might unwittingly or unthinkingly have an impact on that population.

It is also the case that many intersex people, because we don't fit norms about sex and gender, might be assumed to be LGBT, even where we as children are old enough to identify as heterosexual or old enough to express an identity in line with our sex assigned at birth. Because we don't fit sex and gender norms we know that the people who are most obviously different to those norms are the people who suffer the brunt of stigma and discrimination, because of our embodiment. So, we fear the discrimination that those people will suffer. I think there are perhaps lessons from that situation to say that all children should be protected from discrimination or stigmatisation because of their formative embodiment or their identity. I hope that explains some of the reasons why it is relevant and I would be happy to take further questions.

**Ms Bath:** This is something that we attended to in our written submission. One of the things I would like to draw the committee's attention to is the way in which LGBT people experience discrimination and stigma. This happens from a young age from being within the school environment and these experiences of discrimination based on sexual orientation or gender identity then become normalised. These experiences that young people are experiencing in the school environment around being treated differently or being othered are not helpful for their overall health and wellbeing. It is a significant concern. As I said in my opening statement, despite the advances we have seen with regard to our rights and legislative change we are still seeing significant impact on our health. The very notion of what we can do for young people is to start to make this different by giving them an environment in which they are not exposed to being treated differently or othered or being told that who they are is anything other than a positive thing that we can then nurture.

**Senator PRATT:** Mr Carpenter, what might best practice look like in relation to the treatment of students with intersex characteristics in a school environment? In terms of managing issues of sex, gender and identity, for which religious schools have an obligation to uphold antidiscrimination law for children with intersex characteristics, what lessons might there be that religious schools should apply for LGBT students more broadly?

**Mr Carpenter:** I have a few different layers of response to that. Firstly, we know that, still, curricula are not inclusive. Curricula, including biology curricula, do not recognise that some people are born with characteristics that don't fit medical norms for female or male bodies. There is an assumption that if you have XX chromosomes you are going to be a woman and you will have a particular set of characteristics. There is an assumption that the only other option to that is to have XY chromosomes and a set of particular characteristics that go with that. That is not true in the case of students with intersex variations. Biology curricula are one point of that, but other aspects of the curricula in terms of personal development do not recognise that humanity is diverse.

School counselling may not recognise that intersex variations exist and is not then able to offer support to students who are going through, perhaps, a vaginoplasty while they're in school to make their body appear more typically female, and to deal with the consequences of that in the school environment. As I say, there can be consequences for any kind of physical activity and time out of school to deal with postsurgical consequences.

There are also issues around developmental delays that happen in some cases. Again, these are examples of human biological diversity that are not necessarily respected very well in the school environment. I would argue that respecting human biological diversity is a very strong and important entry point for the recognition of other forms of diversity, including diversity of identification.

I think that there are quite fundamental issues that we see in schools when one in five students with intersex variations fail to complete secondary school. That's a really shocking statistic. Those issues need to be addressed as well.

**Senator PRATT:** Ms Bath and Mr Carpenter, from the point of view, for example, of bullying, if a person with intersex characteristics is bullied because their appearance is gender nonconforming, how might that be consistent with the experience of LGBTI students? What do we learn where under one environment there's an obligation to prevent that discrimination, and under another, seemingly, there may not be?

**Ms Johnson:** You're talking about genitalia of children.

**Senator PRATT:** No, I'm talking about gender presentation, Ms Johnson, not about genitalia.
Mr Carpenter: If I may add a point: the issues when it comes to children with intersex variations could mean a boy growing secondary sex characteristics that don't fit the norm for a boy or it could mean somebody who is a girl being taller or having any of those characteristics that don't fit the gender norm. We're not talking about gender presentation when it comes to intersex people; we're talking about the development of sex characteristics and the obviousness of those sex characteristics. I think there are quite obvious parallels with transgender or gender diverse students who may be going through some chosen form of transition, and that may involve some kind of chosen delay to puberty. Clearly, there are strong parallels.

Mr Comensoli: From my understanding of your question, it's important to emphasise that the experiences of gender sexuality and bodily diverse people are consistent in terms of their experiences of stigma and discrimination. That has impacts on their health and wellbeing. That is why we're here today and that is why it's relevant to the bill that is up for debate, because those discriminatory measures or exemptions in the bill have implications for our community's health and wellbeing. That's something that we are here to advise on. We want to fix that.

Just to reiterate what Nicki was saying, we are not seeing improvements in our health despite the marriage equality bill being passed and recent advances in our human rights. We are still seeing disadvantage. In a way, to address those health disparities does not necessarily fit within the realms of the health system. Other legislative instruments such as the Sex Discrimination Act removing discrimination in other areas will have positive effects on the health and wellbeing of LGBT people in general.

CHAIR: You're saying that, if we remove these two sections of the act, that's going to make your health better?

Mr Comensoli: Yes, because we're removing discrimination and stigma within law. Structural discrimination legitimises and enables institutional and interpersonal discrimination. We've heard today, from previous submissions and evidence, that religious schools don't want to use these exemptions.

CHAIR: Right. Yes.

Mr Comensoli: But we would also argue that that's beside the point. When it is articulated in law that they can be exercised, that perception of discrimination can also have detrimental health impacts on our young people. Any removal of discrimination is definitely going to have a positive impact on our health.

Ms Johnson: Thank you!

Senator FIERRAVANTI-WELLS: Can I move from perceptions to actuality. The objective, as stated in the explanatory memorandum, is to remove or prevent discrimination against students in accordance with the various provisions of the act—in particular section 21, which is about education. What are the actual instances where people have been either expelled or denied access? What actually has been happening? Do we have some statistics as to what is actually happening that warrants the removal of these exemptions? I appreciate and fully respect your concerns about health et cetera, but we're here to look at the actuality. How many people are we dealing with?

I ask this question particularly in the context of some data that was given to us by an organisation yesterday. We are talking about 3.8 million students in our schools and we've got 9,400 schools. One in three of those students are in non-government, Catholic or independent schools. Compare that with statistics that say we're talking about 46,000 same-sex couples, according to the 2016 census, 15 per cent of whom have children. So we're talking about 10½ thousand students. So can we compare 10½ thousand with 1.3 million? What are the statistics that lead you to make the assertion that students have been discriminated against, particularly in relation to the attributes contained in section 21?

Ms Bath: Thank you for that question. I would like to take you to the Growing up queer report, which we referred to in our opening statement. The report finds that, of the young people surveyed who had experienced homophobia or transphobia at school, approximately one-third indicate that they couldn't concentrate in class, 24 per cent acknowledged that their marks dropped, 20 per cent missed classes, 21 per cent skipped days and 22 per cent hid at recess and lunch times in order to avoid harassers. Nine per cent of these young people felt that they could not use the toilets in their school—where experiences of harassment prevail and treatment goes unnoticed by teachers. And, significantly, 8.8 per cent of young people experiencing homophobia and transphobia were forced to move schools. So the fact is very much that homophobia and transphobia are alive and well in all schools. We hope very much that all schools will be able to put in place systems and processes to eradicate this. My understanding is that the bill would mandate for religious based schools to not take a proactive approach in supporting the health and wellbeing of our young people.
Before I pass over to Daniel in response to this question, I will come back to numbers. I think my question would be: why aren't those 10,000 children's lives important when those 10,000 children are more at risk of suicide, more at risk of mental health issues and more at risk of having other adverse health impacts as young people and also as older people? As a society, we have a duty to ensure that all of our young people, even if it is one or two people, have the best opportunity in life moving forward.

**Senator FIERRAVANTI-WELLS:** I'm not denying that. All I'm saying to you is that we are now embarking on establishing a framework—just look at any number of the recommendations. This is effectively going to impose constraints on schools, particularly religious schools, by removing their religious freedom or discriminating against them in relation to their religious freedom—and not just their religious freedom but the religious freedom of their school community and the rights of parents to choose a school that reflects their faiths—when we are not seeing cold, concrete examples of where students are actually being expelled. Do you see where I'm coming from? I'm not denying that there are issues, potentially, with 10,000 students, but, in effect, we are putting in a framework that's going to affect over 1.3 million students and thousands of schools, effectively for a very small number of people, when, in effect, there is no data that is actually showing expulsions and we are being constantly told that there have been no expulsions and that there has been no real problem.

**Mr Comensoli:** But we just provided you with that data. When you're talking about—

**Senator FIERRAVANTI-WELLS:** You haven't provided me with data, you have provided me with a survey. What was the pool of people?

**Mr Comensoli:** We are happy to table those reports and that research for you to read. Just in terms of your—

**Senator FIERRAVANTI-WELLS:** Please don't dismiss it.

**Mr Comensoli:** I'm not dismissing it.

**Senator FIERRAVANTI-WELLS:** You've come here and said, 'We've done this survey and we've got these statistics.' How many people were the subject of that survey? Thousands? Hundreds? Do you see what I'm getting at?

**Mr Comensoli:** We are happy to provide that information for you.

**Ms Bath:** I can understand that you're asking for the detail of the numbers of people who participated in that survey. I'm sorry that I can't give you that, but I can follow that up for you.

**Senator FIERRAVANTI-WELLS:** Thank you. I'd appreciate it.

**Ms Bath:** I can, however, report to you on the survey—and they're not just surveys; these were important research studies; when we talk about 'surveys', it's as if we just filled something in on Survey Monkey. If we look at the research writings themselves, in the three reports, there were over 3,000 young people participating. The findings from that study, from 2010, are very similar to, if not the same as, the findings that were found in the *Growing up queer* report. A sample of over 3,000 people is quite substantial.

**Senator FIERRAVANTI-WELLS:** Do you accept that religious schools are entitled to teach their students according to a religious ethos and that parents are entitled to send their children to that school, and that there is choice in the system? Do you accept that proposition—particularly in light of the comments that were made in the Ruddock review about the hierarchy of rights, that no one right takes precedence over another?

**Ms Bath:** I know that Daniel will want to answer your question with regard to the premise of religious schools being able to teach. Before I hand over to him, I want to come back to the point about the parents' choice of school. When we talk about this, it's really important that we are mindful that for some young people in some families, where that young person identifies as L,G, B or T, the family, in and of themselves, within that institution, can find that information really challenging and that child would not be particularly supported in the way that they would need to be so they could have a positive outcome from the way in which they are developing as a young person. It's the parents who decide what school that child goes to. It's not the child. We really have to think about the way in which young people are given the protections, because often for parents it will be, 'I want to send my child to that school because it affiliates with my own personal beliefs, yet my child is different and my child needs to have extra protections because of that difference.' This is the whole notion of the way in which LGBT and I people are othered in our society. While we've played lots of games, there are still many things that we need to do. The fact that we at the alliance live every day in those mental health stats, in those drug and alcohol stats, and reading about the high presentations of young trans people who are having suicidal thoughts and attempting suicide, it's very, very hard for us to be able to stand back and say that it's okay for young people in any school to have anything other than a supportive environment. I know you want to answer, Daniel.
Mr Comensoli: In response to your question, Senator, it's absolutely our position that religious schools should be able to teach the doctrines and tenets of their faith, but I would suggest that, in saying that we do have a particular position on the definition of marriage and the sacramental meaning of marriage, proficient teachers and educators should also provide to their students that civil law actually allows same-sex marriage. It's the same with abortion. For example, the Catholic Church has this particular teaching on abortion; however, civil law allows abortion. I don't see the problem in having that within schools. In response to your wanting concrete evidence, I want to put on the record for this committee that Philip Ruddock, at the end of last year, actually stated that there was very little hard evidence of discrimination based on religion in Australia. Yet the government wants to table a religious discrimination act. I find that that's a double standard.

Senator FIERRAVANTI-WELLS: Mr Carpenter, did you want to add something?

Ms Johnson: Why doesn't the committee go out there and get their own bloody stats, instead of relying on groups that never get funded and that are run by volunteers? Or people who are paid to run statistics? Why can't the committee members do it before these things happen?

CHAIR: Thanks, Ms Johnson. That's not a bad point, but that's not quite what we're doing here just at the moment.

Ms Johnson: Get rid of discrimination from every child under the act.

CHAIR: I don't think anyone disagrees with that, Ms Johnson, so thanks for that.

Senator RICE: Thanks for your evidence this afternoon showing the harm that is done by ongoing discrimination. I particularly want to go to the issue of trans young people. You've quoted some of the survey results. For the benefit of Senator Fierravanti-Wells, in the Trans Pathways report some of the research they quoted was 859 trans and gender-diverse young people. I want to explore with you the damage that is done through religious schools having a position of, basically, discrimination against trans people and not accepting that trans people exist. I've quoted a number of times yesterday and today the statement of faith of the Ballarat Christian College that says that transgender is a social construct which denies our God-given biological sex. We discussed trans issues with some of the religious schools and their supporters this morning. Certainly, the Australian Christian association reiterated that they felt that they didn't want to see changes to the law—that schools should retain the choice of being able to ask trans kids to leave the school because they didn't fit in with the school.

Senator O'NEILL: I don't actually agree that that's what they said, Senator Rice.

Senator RICE: They said that the school would work it through with the families.

Senator O'NEILL: That's more accurate, yes.

Senator RICE: But they wanted to have the choice, after discussing it with the families, to ask the trans young person to leave the school because they didn't fit in with the school. So my question is: What is the impact on young people of schools feeling that they have to teach that transgender is a social construct because of their religious beliefs? What is the impact on trans young people of that?

Mr Comensoli: I would argue that those kinds of messages to young people are harmful. They are really harmful. I wouldn't think that anyone on this committee panel would want their child to be told at school that they were broken, intrinsically disordered or sick. That does harm.

Senator O'NEILL: You are very reasonable in your evidence, Mr Comensoli. You should read the transcript yourself, because I think you might get a different view of what was said this morning.

Mr Comensoli: I'm just making the point—

Senator O'NEILL: I agree with what you're saying, but I think you might need to read what they said.

Mr Comensoli: I'm just making an overall point that those messages are quite harmful. No student, regardless of their sexuality or gender identity, should be exposed to those kinds of harmful messages, no matter what school they are at. That's the main point.

Senator PRATT: Can I in that context clarify that. It's really about whether the framework is positive or negative in terms of being broken or positive or negative in terms of saying, 'We're here for your pastoral care and to support you and we love you.' The implication is whether any of those messages are coercive in terms of undermining the identity of that child and delegitimising their identity as a trans or LGBTI student.

Senator O'NEILL: It can happen in any context.
Senator PRATT: That's right. I guess that's the point. The schools this morning were very positive in terms of talking about their pastoral care, but it's really a question about what direction that pastoral care goes in. It could be negative, even without talking about a child being broken, because it might in other ways—

Senator O'NEILL: Context is everything.

Senator PRATT: It might in other ways be saying 'We can support you and love you, and God can guide you to change.' There are many ways in which that might play out.

Senator PATRICK: I have an engineering background, so I'm just looking at the numbers The Growing up queer report talks about people who have thought about self-harm—it might say 'queers at 100 per cent', for example. With that data, are you able to extract the circumstances where those feelings resulted from the conduct of the institution versus what might have taken place in the schoolyard? I accept that schools kind of have a duty to make sure bullying doesn't take place in the schoolyard. Is there any way you can do that? Just because someone goes to school and they walk away with awful feelings doesn't necessarily mean it's from the institution. I'm just trying to work out if there's some way of quantifying what is directly attributable to something the institution has done versus their experience with other children, for example.

Ms Johnson: You can't quantify it, because there are so many bloody issues involved in that. Having rejection from your parents when they're going to a religious school that doesn't accept them—oh my word, that just compounds the situation.

CHAIR: Ms Johnson, that question was actually directed to Ms Bath.

Senator PATRICK: That's correct.

Ms Johnson: My apologies.

CHAIR: That's fine.

Ms Bath: I'm not the researcher from that report, and I don't know in which way the data could be interrogated. We would have to go to the researchers to ask if they could interrogate the data in that way.

Senator PATRICK: Can you see where I'm coming from?

Ms Bath: I understand your question, but I can't answer it.

Senator PATRICK: This bill goes to the institution. It's dealing with discrimination that the institution might cause.

Ms Bath: Can I just add to that, though. As I say, I don't know in which way the data could be analysed, but with the issue of whether it happened in a schoolyard or was a part of the institution—and I understand the way that you separate the schoolyard and the institution—it's really important that I think of myself as a young person—a bit hard given how old I am now! I think of myself as a young person in the schoolyard who has been bullied in the schoolyard because I'm a lesbian. I have memories of that from when I was a child. If I had been at a school where I thought I was going to be supported and taken care of, my experience at that school would have been very different. If I attend a school where there is the possibility for me not to be able to be supported in that way, that is a detrimental health outcome. That sits in the institution. That playground and what happens in that institution become the same, because the protections aren't the same.

Senator PATRICK: Where I'm coming from is that, if you pass a law that says that the institution can't discriminate, in some sense, if someone's doing something in a playground that causes a problem and the school doesn't exist, I'm not sure that constitutes a discrimination. Having been on the cyberbullying inquiry, I see education as the better remedy for that, rather than necessarily a legislative remedy. That's the distinction I'm trying to work my way through.

Ms Bath: Yes. What I'm trying to say is that, if I were attending a school where in the morning I hadn't heard something that was derogatory to who I am, I would be more likely to be able to get support from within that school. There is an impact from the way in which things are taught and the ways in which people are not supported. That has an impact in the playground. I'm not sure if I've made myself very clear, but I'm trying to—

Senator PATRICK: Rather than put you on the spot, maybe it could help to untangle that if you think about it and then come back.

CHAIR: We really are running out of time.

Senator PATRICK: Can I ask one more question, please.

CHAIR: Yes.

Mr Comensoli: Sorry, Senator. Just going back to my earlier point, because it's there in law within the Sex Discrimination Act, that actually fosters an environment—
Senator PATRICK: I get that. Mr Comensoli, I'm going to ask you a question that I've asked the religious institutions. If someone comes into a classroom and says, 'In accordance with our faith, marriage is between a man and a woman,' I think you were comfortable with the idea if the next piece of the conversation is, 'But, of course, in this country same-sex marriage is lawful.' I'm getting that you don't have a problem with that. What about a situation where someone comes into a classroom and says, 'Marriage is between a man and a woman in accordance with our faith, and any other arrangement we consider to be a sin'? That's evidence that has been presented to us. Would you feel that that would give rise to a claim of discrimination if you were sitting in that classroom and felt differently?

Mr Comensoli: I'm not a legal expert.

Senator PATRICK: Sure. It's about feelings, actually, where you'd walk away saying: 'Actually, I want to take some action about that. I don't feel comfortable about that.'

Mr Comensoli: I'm just trying to understand where that would take place in the curriculum. What would compel a teacher to actually say that? Is it in the science classroom? Is it in the religious education classroom?

Senator PATRICK: It might be in the religious education classroom. We did have witnesses say that that's the approach they would take. I'm just trying to find where the boundaries are.

Mr Comensoli: I guess it comes back to my point about those harmful messages.

Senator PATRICK: So you would view that as harmful?

Mr Comensoli: Yes, absolutely.

Senator PATRICK: I understand that. I understand why you might do that. Therefore, some people might then go off and say: 'You know what? I'm going to take an action against it, because I feel uncomfortable about it.'

Mr Comensoli: I can defer that answer to the legal experts that are coming.

CHAIR: I thank the five of you very much for coming today. It's not always easy to face a Senate committee, particularly in public, so we very much appreciate your effort and your being here to assist the committee. With that, thank you all very much.

Senator O'NEILL: May I put one on notice, because I didn't ask any questions.

CHAIR: Oh, I'm sorry.

Senator O'NEILL: I have one question on notice. We received a suggestion of some words from the Sydney Anglicans today—the archbishop. His concern was to go to the matter that Senator Patrick was just discussing: would this lead to significant litigation? They sought comfort in the idea of adding words to proposed section 7B(2) to add a protection:

(d) whether the condition, requirement or practice of a body conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed is imposed, or proposed to be imposed, in good faith in accordance with those doctrines, tenets, beliefs or teachings or for a religious purpose.

There are lots and lots of words there, but it was a remedy that they felt would give them sufficient protection to be able to do what you described, Mr Comensoli: to state their faith but also accept that it operates in a legal framework that sits outside. Would you give careful consideration to their evidence and give your view on that.

Mr Comensoli: Absolutely.

Senator O'NEILL: Thank you, and thank you for being here today. Thank you for your evidence.

CHAIR: Thank you very much.
BROWN, Ms Anna, Chief Executive Officer, Equality Australia
CARNIE, Lee, Director of Legal Advocacy, Equality Australia
CROOME, Mr Rodney, Campaign Coordinator, Equality Tasmania
HOGARTH, Ms Olivia, Private capacity
HUNYOR, Mr Jonathon, Chief Executive Officer, Public Interest Advocacy Centre
LAWRIE, Mr Alastair, Senior Policy Officer, Public Interest Advocacy Centre

Evidence from Mr Croome and Ms Hogarth was taken via teleconference—

[17:01]

CHAIR: We now move to our next witnesses: Equality Australia, Equality Tasmania by teleconference, and the Public Interest Advocacy Centre. We have submissions from Equality Australia, No. 282; Equality Tasmania, which we've numbered 911; and the Public Interest Advocacy Centre, which we've numbered for our records as 173. We're having some difficulty in getting in touch with Mr Croome and Ms Hogarth, so we might just ask the two of you who are with us if you would like to make opening statements. As you know, this is recorded by Hansard. You've got information about parliamentary privilege and the protection of witnesses. This is being broadcast, as you know. Off you go. Who wants to start?

Ms Brown: I'll start. Thanks to the committee for inviting us here today. Equality Australia has been formed from the Equality Campaign, the successful campaign to achieve marriage equality in Australia, and is an independent not-for-profit national legal advocacy organisation. We work to achieve equality for LGBTIQA+ people. We have been formed from support from the Human Rights Law Centre. I and my colleague Lee Carnie previously ran the LGBTI practice within that centre. I explain that because in the previous inquiry on this matter we made submissions for both organisations.

We believe that no student or teacher should be going back to school in 2019 being scared that they'll be kicked out, excluded or treated badly for being who they are. Discrimination has no place in our schools or in our classrooms. The exemptions in the Sex Discrimination Act that allow discrimination against students are unjust, they perpetuate harm and they don't have public support. We saw the public outcry in October last year after media reports on the Religious Freedom Review shone a light on the existence of these exemptions. In some cases, we saw parents and former students shocked and disappointed that the schools that they thought were welcoming and inclusive were advocating for these exemptions to continue. We included in our submission recent data showing that nearly three-quarters of Australians believe students and teachers at faith based schools should be legally protected from exclusion and firing on the basis of them being gay or transgender, including nearly 70 per cent of Liberal voters.

Of course, many religious schools do the right thing and provide inclusive and supportive environments. You've heard evidence from a number of these schools that the exemptions are not relied upon—that they're essentially a backstop—but they continue to oppose their removal. So we would say that either the exemptions are not relied upon by these schools, in which case they should be removed, or they actually are being used to do harm against children. Either way, there's absolutely no case that supports the status quo or justifies further delaying passing legislation. I think it's important to acknowledge that vulnerable young people who have suffered abuse or expulsion shouldn't have to come forward to explain how or why what was done to them was wrong in order for us to be convinced that we shouldn't have laws in this country that permit discrimination against children. Of course, we do recommend reform to protect teachers and staff in schools as well, but we understand the scope of this inquiry is limited to the bill before us.

Before I hand over to my colleague, I'd just like to make a point about some of the evidence today around discrimination complaints and the perceived risk of discrimination complaints. I think there seems to be an inordinate amount of hyperbole about the threat of a complaint that would result from these changes. I think much was made earlier of the fact that a complaint about a photographer was withdrawn even before it made a tribunal. That complaint was withdrawn; it wasn't a court case. People need to understand that discrimination cases are notoriously difficult to run, so much so that former High Court Judge Michael Kirby said that the field of antidiscrimination law is littered with the bodies of the wounded complainants. Launching an action under a federal discrimination law statute requires the financial and emotional resources that many victims of discrimination simply do not possess. On top of that, the vast majority of discrimination complaints, because of the way our system works—we have a cost jurisdiction, so people have to be prepared to expose themselves
financially in order to bring a case to court—the vast majority are resolved through conciliation and settled without even going near a court. I think we just have to keep that in mind.

Before I hand over to my colleague, I'd just like to say that Australia is a diverse, multicultural and multifaith country and, as a nation, we strive to ensure that people from a range of backgrounds can live together in harmony and peace. But, currently, they're funded by the public purse to discriminate against the youth of our nation. This is wrong, and it has to stop.

CHAIR: Thank you, Ms Brown. Just before we go to Lee Carnie, we have now with us, from Equality Tasmania, Mr Croome and Ms Hogarth. Is that correct? Can you hear me?

Ms Hogarth: Yes.
Mr Croome: Yes.

CHAIR: Just for your benefit, you're on a panel with Equality Australia—you probably know that—and the Public Interest Advocacy Centre. While we've been waiting to connect with you, we've heard from Ms Brown from Equality Australia, and we're just about to hear from Lee Carnie. We will then perhaps go to you and then to the Public Interest Advocacy Centre for an opening statement before we ask you some questions.

Lee Carnie: Before I start with the legal analysis of the government amendments to the bill, I'd like to read out one of the stories that was shared with us from a young person in his own words about his experience at school. He said:

It was six weeks before my HSC and—
the school—
set a meeting with me and my mother to talk … about the "issue" of my sexuality.
…… …
After this meeting the conclusion was that they would take it to the school board to see what will be done and whether or not I would be expelled.
…… …
A week later I had another meeting … saying I could stay in school - on these conditions:
1. I could not mention or talk about my sexuality at school …
2.—
I would be excluded from some—
school … functions.
3. I had to see a counsellor weekly until I left school.
I didn't agree with this but with only six weeks left I had to suck it up and deal with it. It left me feeling very angry and stressed.

In the debates that we're having, we believe that it is so important to make sure that the voices of LGBTQ+ young people and students, who are the people who are supposed to be the beneficiaries of this bill, have their voices heard.

I will now briefly summarise our key objections to the government amendments to the bill. The bill's simple and straightforward removal of existing legislative exemptions is the most effective way to remove discrimination against LGBTQ+ students without introducing complex, unorthodox amendments which open the door for unintended consequences.

We oppose amendment KQ147. In order to protect LGBTQ+ students from discrimination in schools, subsection 37(1)(d) of the Sex Discrimination Act must be amended to ensure that religious schools cannot discriminate against students under the broad religious exemption for 'bodies established for religious purposes', which will still apply even if the specific exemption for educational institutions under subsection 38(3) is removed.

In relation to amendment KQ148, a deeming provision which overrides the existing test of reasonableness if the criteria are met, the existing test of reasonableness for indirect discrimination is a longstanding test of discrimination law which is operated effectively and requires consideration of all relevant circumstances, including the nature and extent of disadvantage to students, the feasibility of overcoming or mitigating that disadvantage, and whether the disadvantage is proportionate to the results. This test is sufficient to balance competing rights. We should not allow a blanket school policy which appears neutral on its face but, in effect, disadvantages vulnerable LGBTQ+ students and a school's subjective considerations to override what is objectively in the best interests of the child, taking into account the individual circumstances of the case.
In a similar way, amendments KQ150 and KQ151, which add criteria to the non-exhaustive list in subsection 7B(2), distort the test of reasonableness by creating a special rule for one particular issue within the Sex Discrimination Act, even though all other issues do not require special treatments in the same way.

In particular, we strongly oppose amendment KQ149. It is exceptionally broad, uncertain and creates confusion. It introduces a blanket exemption for religious teaching, regardless of the content of these teachings and whether they are harmful. It undermines the existing test of reasonableness, which requires an objective consideration of disadvantage facing a student. And the definition of teaching activity in particular leaves the door open for misuse, applying to any kind of instruction, inside or outside the classroom, from any person, including people with no teaching qualifications at all. For example, it would appear to allow for inferior tuition, excluding a student from a classroom activity or program or so-called conversion therapy being delivered in schools despite every reputable medical association condemning this ineffective and discriminatory practice.

Amendments KQ148 to KQ151 also unacceptably broaden the scope of exemptions for religious educational institutions to sex, intersex status, potential pregnancy and breastfeeding whereas subsection 38(3) currently only allows faith based educational institutions to discriminate on the basis of a person's sexual orientation, gender identity, marital or relationship status or pregnancy. As a whole, these amendments place policies on a piece of paper ahead of the best interests of students—contrary to the Convention on the Rights of the Child, which requires consideration of the child's best interests as a primary consideration determined objectively, not to a school's subjective satisfaction. These amendments were not needed in the states and territories which have already prohibited religious schools from discriminating against LGBTQ+ students, including Tasmania, Queensland and the ACT.

We believe these amendments would continue to result in vulnerable students feeling rejected, isolated, ashamed or unable to access support at school, including seeking support after being targeted for bullying by other students. The LGBTI Health Alliance has already given evidence that discrimination against LGBTQ+ young people is harmful and is the reason for the already staggering rates of mental health issues, suicide and self-harm nationwide. We must remove these outdated and discriminatory exemptions which allow mistreatment of LGBTQ+ students in taxpayer funded religious schools across the country as an urgent priority. Every day that a child in an Australian school lives in fear of mistreatment because of who they are or are bullied or made to feel that they are wrong, sick or broken and they can't go to a teacher for help is one day too many.

Mr Croome: Thanks for the opportunity to speak today. As you know, I am representing Equality Tasmania, which was formerly the Tasmanian Gay and Lesbian Rights Group. I will be very brief. Our submission to the inquiry was in regard to Tasmanian law. As you know, in Tasmania, for 20 years now, our Anti-Discrimination Act has prohibited discrimination against all students, including those in faith based schools, on the grounds of sexual orientation, gender identity and relationship status. There is a provision that allows some discrimination, upon enrolment, by faith based schools. But it is on the grounds of the religion of the child, not on the grounds that I have already mentioned.

You would also be aware that the Tasmanian Anti-Discrimination Act prohibits discrimination on the grounds I have already mentioned—sexual orientation, gender identity and relationship status—when it comes to employment in faith based schools. There is a provision that allows discrimination on the grounds of religious affiliation. Again, repeatedly our lawmakers have made it clear that that shouldn't be used as cover or justification for discrimination against LGBTI teachers or other staff.

Given that in Tasmanian law over the last 20 years there has been a clear prohibition on discrimination against LGBTI teachers and students in faith based schools, the next question, obviously, is: what consequences has that had?

It's clear to me that the consequences have been entirely good. The culture in Tasmanian faith based schools—particularly the ones that I'm familiar with in the Catholic system through friendship networks and through speaking at length with students and teachers in those schools—has improved immensely. It's far more inclusive and far safer than it once was. And no private schools in Tasmania—no faith based schools—have had any reason to complain about these particular provisions. I know of no concerns about the provisions we have in Tasmania. I know of no prelates, no principals and no teachers who have any issues with these particular laws. I've seen no public statements which say that they are in any way onerous. I have, however, spoken to quite a few principals of faith based schools in Tasmania who have made the point that the law is a complement to their policies of inclusion, fairness and treating all teachers and students equally. They feel that the law is important to back up the ethos of their school. It doesn't violate their ethos; it in fact supports their ethos.

So, given that these laws have been in place for 20 years, given that they seem to have had positive consequences—particularly for LGBTI people but also for whole school communities—and given that there have
been no complaints about them as far as I can see and no-one seems to be bothered by them, the question becomes: why don't we adopt these standards nationally? Our recommendation in the submission we sent in was that that should be the case. The standards that we have in Tasmania, which, like I said, have not resulted in the sky falling in, should be the standards which are adopted nationally.

On a personal note, I'll finish by saying there's a certain weariness I feel about making representations on this issue and a certain disappointment that the Tasmanian precedent, which is perfectly relevant to the issue you're discussing, isn't taken more seriously. The precedent set in Tasmania, which is directly relevant to the issues before you now, needs to be central to your discussion of and reflections on this issue. I believe that, when you do take the situation in Tasmania as seriously as it deserves to be taken, you'll see that there's absolutely no reason why the standards that apply in Tasmania shouldn't apply nationally, and I highly recommend to you that they are.

I'll ask Olivia to speak now. Olivia is with me in the Equality Tasmania section, but I believe she wants to talk about her personal experiences as a teacher in the Catholic system in Tasmania.

CHAIR: Okay. Ms Hogarth, away you go.

Ms Hogarth: Thank you, Ian, and thanks, Rodney. As Rodney indicated, I'm here to talk about my personal experiences. I coincidentally began my career in the Catholic education system as a teacher the same year that the Anti-Discrimination Act came into being in Tasmania. On investigating the option of joining the Independent Education Union, I discovered within their documentation a reference to the new Anti-Discrimination Act, which at that time as a 21-year-old I wasn't necessarily aware of, and was pleasantly surprised to see that sexual orientation was protected under that act. So I was able to enter my teaching career with the security and understanding that, should my employment be threatened at any point and I felt that that were due to my sexual orientation or a same-sex relationship that I might find myself in, there would be protection under the law. So I was able to feel secure and enter into my teaching career, entering into that vocation to work in the Catholic education system, having grown up as a Catholic and feeling very passionately about faith and what I wanted to give back to children in Catholic school. I could enter into that vocation secure in the knowledge that I would be protected by law in Tasmania during my career. In that sense, having LGBTI teachers being able to work in faith based schools, and having them protected by the law, enables teachers who do have that sense of vocation, who do have that passion for teaching, particularly in faith based schools, and who are able to practise their faith, as well, and are the best teachers for the job, to carry out their career, and, as I keep saying, to feel protected. It saddens me that that can't be the case—and I don't really understand why—in other states for other teachers. I am aware that teachers in other situations do very much feel that they need to hide their identity. That, obviously, brings with it the hypocrisy and the idea of secrecy that students become aware of, that hiding who you are and not being able to be proud of who you are and celebrate who you are is something that is practised by faith based schools. As Rodney has indicated, that is not necessarily the case. That inclusion and social justice is very much a part of the practice of many faith based schools. In my experience I have found that to be very much the case.

Mr Hunyor: Thanks for the opportunity to come and give evidence to your inquiry. There are just four points that I want to make in this brief opening statement. The first is that PIAC does not accept that discrimination against lesbian, gay, bisexual and transgender students is at all a hypothetical issue. It is happening. But let me say that if it isn't, then there is no need for an exemption and the exemption should be removed from our law. But the Ruddock religious freedom review report, which was released last year, highlighted the evidence that it had received of teachers being forced out on the basis of their sexuality, of students being forced to leave schools after having come out, and bullying and a lack of support at schools that were not accepting of same-sex relationships. So, that review was satisfied that the evidence was there and the report is consistent with some of the evidence that I understand the committee heard yesterday and today. We don't suggest that discrimination is happening in all religious schools. We recognise those religious schools that provide an environment that is inclusive of all students. It can be done. As Mr Croome has pointed out, it has been done successfully in Tasmania for over 20 years. But there is a real problem here that requires action.

Second, we emphasise to the members of the committee that the existence of this exemption in our law itself has a profound impact on LGBT students and their families. The law sets the standard in our society. The law has a profound normative value. It sends a very clear message that LGBT students are not equal in the eyes of the law; they are not safe to be who they are in the very place that should be supporting them to develop and flourish. The law says that LGBT kids can be expelled, can be excluded and can be treated differently at religious schools because of who they are. We ask senators to please not underestimate how undermining of the child it is to know this. Will they be expelled if they come out? What will happen if a supportive teacher they may have leaves? What if the new principal is not inclusive and takes a different approach? What message does our parliament wish to send to LGBT kids and indeed, with respect, what message does this committee want to send to LGBT kids?
Third, we know how to fix this problem. For students it can be done quite simply. We do support changing the law also for teachers, but we accept that in relation to students there is a bill before parliament that fixes the problem and does so quite simply and neatly. The exemptions that exist in sections 37 and 38 of the Sex Discrimination Act don't achieve an appropriate balance between the right to manifest religious belief and the rights to nondiscrimination and privacy and the rights of children to develop to their fullest potential.

The Anti-Discrimination Act in Tasmania and the recently passed Discrimination Amendment Act in the ACT do provide a clear model, a tried and tested model, that can be adopted. These acts allow religious schools to discriminate on the basis of religious belief in terms of enrolment and employment but do not permit discrimination on other grounds. They achieve the balance. On this basis we support the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018, which would ensure religious schools cannot discriminate against LGBT students on the basis of their sexual orientation or gender identity.

We note the amendments put forward by the Centre Alliance that seek to clarify the proposed new section 38(3) to apply to religious educational institutions rather than education, broadly defined. We think that's a useful technical clarification which ensures that churches, synagogues, temples and mosques can engage in what might otherwise be considered education—for example, sermons—while ensuring that religious schools, which is what this legislation is designed to address, are not able to discriminate against LGBT students.

I do note there's a technical issue that's raised by the Attorney-General's Department about the need for changes to section 37 of the SDA. I'm happy to address that if we get to questions, but for now let me just note that we disagree, with respect, with the department's point. At the very least, in the interests of certainty, we think that Queensland and the ACT have taken the better approach, similar to the bill that's before parliament. These drafting issues aside, the upshot of this third point is that we have a workable and simple way to protect LGBT students from discrimination in religious schools.

Finally, the government's proposed amendments to the bill would permit discrimination against LGBT students to continue. With respect, they don't achieve what this this bill sets out to achieve and, in our view, should be rejected. I can take the committee through the specific problems we have with the proposed amendments. Our views are very similar to those of Lee Carnie, who spoke earlier, but, for the purposes of these initial comments, I just note two points. First, the argument that special rules are required to allow religious schools to uphold their ethos and values is unfounded. There is nothing under the law, as it generally applies, to prevent religious educational institutions from engaging in reasonable activity based on the religious ethos of their school. We accept that. That is exactly what religious schools should expect to do. That's why they exist: to promote their religious ethos. We don't have a problem with that, but no changes to the bill before parliament are required to allow schools to act reasonably to uphold their values.

The second point here is this: nobody, to our knowledge—and, if there has been evidence, I'm happy to address it—has articulated what specific actions religious schools wish to engage in that require an exemption. With respect, if religious institutions want to maintain special treatment, they need to tell us specifically how they want to discriminate against LGBT students. How exactly do they want to single LGBT students out and disadvantage them? That's what direct discrimination is. Or, what unreasonable conditions do they want to impose that would disadvantage them? That's what indirect discrimination is.

**Senator PATRICK:** Can I just interrupt and say that no witness has suggested in any way, shape or form that that sort of discrimination should be allowed.

**Mr Hunyor:** Great.

**Senator PRATT:** Then why isn't the reasonableness test—

**Senator PATRICK:** No, I'm just making the point: you're making an inference that the religious entities are suggesting that's okay, and they're not; they're suggesting that they want some protections when that comes.

**CHAIR:** That's a very important point that I was going to also make.

**Mr Hunyor:** Until someone can tell us what they want to do that they can't do—how they want to single out students for disadvantage or how they want to treat them that is unreasonable—there's no basis for an exemption.

**CHAIR:** You have a very busy life and don't have time to sit and listen to Senate committees, but there have been quite a number of schools who have indicated the comfort and reason they oppose this bill.

**Mr Hunyor:** I accept that. With respect, my point is, until we know specifically, we are told in general—

**CHAIR:** They are told—

**Senator PRATT:** They haven't been—

**Mr Hunyor:** but we don't have an example of—
CHAIR: I think they have; some of my colleagues don't think they have, but that's fair enough.

Mr Hunyor: We might get to questions. I'll leave it there.

CHAIR: Thanks very much, everyone. We're here to listen to your views, not to engage in debate, because we are receiving evidence before we consider the matter, so thanks for that; I think everyone's views are quite clear. Ms Carnie, did you say that some schools still practise conversion therapy?

Lee Carnie: The Human Rights Law Centre and La Trobe University released a report last year called Preventing harm, promoting justice—

Ms Brown: Of which you were one of the authors.

Lee Carnie: of which I was one of the authors, which sets out experiences of conversion therapy that still continue in Australia today. It outlines experiences of people, including children, who've been subjected to conversion therapy and conversion practices—

CHAIR: Are you saying the schools are doing that?

Lee Carnie: including an example of a young transgender girl who was sent to conversion-therapy-style counselling within a school, by the school chaplain, and her parents were not informed.

Ms Brown: She was referred, according to a media report. I think Lee—

CHAIR: If media report that, it takes away any credibility.

Senator PRATT: Her mother gave evidence at the last inquiry that this committee did to confirm that that's what—

CHAIR: This committee didn't do a previous inquiry. People keep referring to another inquiry about an entirely separate committee and a separate hearing.

Senator PRATT: No; the references committee. She gave evidence to that effect.

CHAIR: It's not related to this bill.

Lee Carnie: My point is that the current drafting of the teaching activity amendment KQ148 would allow a referral to conversion therapy or for conversion therapy to take place within schools.

CHAIR: Perhaps in 1950 but hardly now.

Senator RICE: It depends on your definition of 'conversion therapy'.

CHAIR: I had never heard of it until Ms Carnie mentioned it.

Lee Carnie: We did recommend our report to you, Senator.

CHAIR: Okay. The other question I had, Ms Brown, if I understood you correctly—it was almost a throwaway comment—from what you said in your opening address was that LGBTI people were not really concerned about the legislation that has been in place for 20 years until—

Ms Brown: No. I said—

CHAIR: the leak of a small section of the Ruddock report came out.

Ms Brown: What I said was the leak shone a light on that. We've been advocating, as many people—

CHAIR: But I thought you were suggesting in your opening—and I might have got this wrong, which is why I'm raising it with you—that 'shone a light on' meant that suddenly everybody knew; prior to that, you knew but very few students knew about it. It was only on the 'highlighting', to use your words, of this very small, malicious, I might say, and I might guess politically motivated leak of a small section of a report, which Mr Ruddock had spent quite a long time on and the government was spending a long time trying to get it right. This leak came out, and did you say that it 'shone a light on' meaning that LGBTI kids now knew about it and they were now suddenly concerned?

Ms Brown: No. My point was that the broader public became aware—so, everyday Australians that send their children to these schools. There were a large number of parents and former students contacting their schools that were signatories to the letter—37 Anglican schools wrote a letter in support of the exemptions—and a large number of petitions were established online because people became aware of the exemptions and were horrified by them.

CHAIR: But you're saying the 'harm', which are parents and students, was multiplied.

Ms Brown: No, I'm not saying the harm was multiplied; I'm just saying it was an awareness point.

Unidentified speaker: Yes.
CHAIR: You're not giving evidence. I'm asking Ms Brown.

Ms Brown: Many Australians were not aware of the existence of the exemptions. They were probably enrolling their children in schools thinking that they were sending their student to a place that was safe and inclusive. They weren't aware that the law actually allows for this discrimination.

Mr Lawrie: Senator Macdonald, if I might add to that. The LGBTI community was well aware of these exemptions. The people who had been affected or could be potentially affected by them were aware of them.

CHAIR: But their parents weren't?

Mr Lawrie: Potentially parents were but not necessarily the mainstream community. As you've already heard earlier, LGBT teachers are well aware of the existence of these exemptions. It was not something that was covered in mainstream newspapers until October.

CHAIR: Sure. But my understanding of the evidence to this inquiry and, might I say, the heightened concern that we are hearing from lots of witnesses that LGBTIQ kids have now results—and this is perhaps a comment from the chair—from the selective, malicious and, I think, politically motivated leaking of a very small section of a very comprehensive report. It has caused anxiety with some that wasn't there before.

Ms Brown: I think it was the existence of the law that caused the anxiety, not—

CHAIR: But nobody knew about it is what you're saying.

Ms Brown: I think it's a good thing that they do now.

CHAIR: It would have been a good thing had they known about it when the government had come out with a response to a report that Mr Ruddock, bless his soul—whether you like him or don't like him—spent a lot of time trying to get right. As I understand it, the government was trying to do that when this was maliciously and politically—

Senator RICE: Resisting it! It was resisting an order for the production of documents for many months.

CHAIR: No. There was a malicious and politically motivated leak to cause the—

Senator PATRICK: Yes.

CHAIR: Then there wouldn't have been a leak.

CHAIR: But why was this small—

Senator O'NEILL: I think we're getting political here, Chair. I feel like I'm going to need to chime in any second.

CHAIR: Why was this small part—

Senator O'NEILL: I'm holding back.

CHAIR: of a very comprehensive—

Senator PATRICK: I don't know. Why was the document withheld from the Senate in the first place?

Senator O'NEILL: Exactly!

CHAIR: That's another question.

Senator RICE: We've got limited time, Chair. Can we move on?

Ms Brown: We're happy to take any more questions.

CHAIR: You've answered my questions, thank you very much. They were the only two questions I had for you both. I'll pass to the deputy chair.

Senator PRATT: I'm happy to give my time to Senator O'Neill if she likes, because I know we're under massive time constraints.

CHAIR: Okay. Thank you for that. Senator O'Neill?

Senator O'NEILL: Thank you for the quality of your submissions and the close scrutiny that you've given to the amendments that have arisen in the context of Senator Wong's private member's bill. One of the concerns that I have is that, while the bill sought to deal with—

CHAIR: Can you ask a question.

Senator O'NEILL: Yes. I have to frame it, if that's okay, Chair. One of the concerns I have is that the bill dealt with a very specific issue, which was discrimination against students in schools. The amendments have
changed the shape of the debate around that particular bill. Consequently, the discussions that we've had here today, the evidence, has been very broad and far-reaching. You've indicated clearly the concerns about the mental health impacts of this hiatus and this uncertainty for school students in particular, their families and their teachers et cetera. Moving forward, how quickly do we need to resolve that? I think you've indicated that you think all of the teaching status can be resolved simultaneously, but there are very different views on that that have been put before this committee. So I want to get a sense from you about the separation of these bits. What has to be done quickly? What can have closer scrutiny so that we can reach a consensus on how to balance the need for people to be able to express their faith without fear of ending up in court on a regular basis and the rights of individuals to be who they are in a pluralist, multifaith society? What's your view about that complexity?

Ms Brown: We made submissions in the previous inquiry on amendments relating to both students and teachers. We said in that inquiry—and I think we were joined by the same colleagues in that inquiry as well—that it is a relatively straightforward question. For all the complexity, it really just requires the removal of exemptions that currently allow discrimination. The teachers question obviously does involve a context where there are other statutes that also govern discrimination in employment, namely the Fair Work Act. The bill before the Senate now is in a state that could pass and should pass as soon as possible.

Senator O'NEILL: The bill as put forward by Senator Wong, without amendment—is that what you're saying?

Ms Brown: Yes.

Senator O'NEILL: I'm just trying to be clear on that.

Ms Brown: It should pass as soon as possible and give parents, students and school communities the certainty they need. We would prefer for it to be amended to include teachers as well. But, if that's a matter that's too complex for resolution within this term of parliament, we'd urge the parliament to act to remove as much discrimination as it can within the time available.

Senator PRATT: Just to clarify—you're comfortable with the Centre Alliance amendment that constrains it to particular organisations?

Senator O'NEILL: Do you have a view about that amendment?

Lee Carnie: In terms of the scope of the Centre Alliance amendment, we're not entirely certain that it does address the issue we think it is intended to address, which is teaching activity by religious orders, such as Sunday school. That's because the definition of 'educational institution' within section 4 of the act is very broad and includes any other institution which provides educational training. Having said that, we think that what the amendment does do is distinguish between an educational institution and an educational authority. In practice, this would mean that a discrimination complaint could be brought against a school which engages in discriminatory behaviour but not a religious authority directing the school to implement a particular policy where that religious authority does not itself provide education. We think that this is the operation of the bill. We didn't have any supplementary material to discover if that was the intent of it. If you have any further guidance, we'd be interested to hear it. In terms of the amendments that have been tabled, we believe that a discrimination complaint should be able to be brought against any organisation that is involved in the discrimination, whether that be the body directing a school to act in a particular way or the school itself.

In terms of the amendment, while we have some reservations about the detail of the wording, we think we agree with the principle behind it, which is that religious schools—for example, a Sunday school or a religious sermon—shouldn't fall within the scope of this bill but education within any primary or secondary school should. But we're not entirely sure of the operation of that amendment in particular.

Mr Croome: Just to address that issue of students and teachers: as you can imagine, from a Tasmania perspective, someone who is familiar with the way the law works would be very reluctant to say, 'Oh, yes, deal with students and not with teachers.' If we're looking at this issue through the prism of what's in the best interests of LGBTI students in faith based schools, it's not in their best interests for them to be protected from discrimination but their teachers not to be if their teachers are also in same-sex relationships or are transgender. That sends a terrible message to those students about their inclusion and their acceptance. Like I said, from a Tasmania perspective, it just makes no sense.

In our Anti-Discrimination Act, no staff of religious organisations can be discriminated against—not only schools but all organisations. To be honest, I feel like I'm on the phone not to Sydney but to last century! It is very difficult to say, 'Oh, yes, deal with students, not with teachers.' If that is the only possible outcome before the next federal election, then, as reluctant as I would be to say it, yes: if that is all you're able to do to bring yourself up to anything like the standard set in Tasmania, then do it.
I'm not sure who it was, but someone talked about faith based schools ending up in court—I think that was the statement; I might have misheard it. On that point, I don't think any faith based schools in Tasmania have been taken to court, because of the laws we have here. That hasn't resulted in extra litigation. It hasn't resulted in those schools having to answer for any particular actions on their part. There haven't been a large number of cases taken. If there have been cases taken, they've been resolved in mediation. I don't think it's the case that, if the laws are changed nationally, we'll see faith based schools dragged into court. That's fearmongering. It's not the truth.

Senator O'NEILL: Thanks, Mr Croome. Mr Hunyor, you wanted to add something?

Mr Hunyor: I think Mr Croome has added the thing I wanted to add. We agree that the issue can be potentially complex, but this is a very simple issue; this part of the balancing of rights of people of faith and children to get an education free of discrimination. This is the best we can do. We also support ending discrimination against teachers. Perhaps the beauty of this legislation, in the current nature of this debate, is its simplicity. It does something very simple: it removes the exemption for students in the cleanest way possible.

We do support Senator Patrick's amendment and the intention behind it. I think the drafting probably works. I accept Lee Carnie's point about a concern about the drafting. That's a technical issue; it isn't an issue of principle. That can be fixed. If advice is needed on that, we can work through that and I'm sure government lawyers will assist in working through that. But that's a technical issue; it's not one of principle or substance. Our view is also that Tasmania has shown that this works. Despite the broader complexity that can be brought to bear on this issue, there is some real simplicity and clarity here. Tasmania has shown that we don't need to overcomplicate it. It can work, and it does work.

Senator RICE: I have three quick questions. Firstly, you have stated that, ideally, you want to see the removal of discrimination against staff as well. I just wanted to see whether you support the Australian Greens' proposed amendments—noting, as has been said, that there are other changes required to the Fair Work Act.

Mr Hunyor: In principle, yes, we do. We recognise that there may be political difficulties and realities of getting that through, but, in principle, absolutely.

Ms Brown: And we'd have the same view.

Senator RICE: And Mr Croome?

Mr Croome: Yes.

Senator RICE: Okay—a good quick answer! Secondly, I'd like you to take this on notice. We had quite a discussion with the Anglican Church this morning, and they put forward some proposed amendments about excluding teaching which I thought were worthy of consideration, so I'd love to get your response on notice to their proposed amendments. It was the Public Affairs Commission of the Anglican Church—in particular, Dr Tan's proposed amendments.

Thirdly, Ms Hogarth, as a teacher in Tasmania, you've had the ability to feel safe and supported as a same-sex attracted person in Catholic schools in Tasmania. I just wanted you to reflect upon the importance of that also for providing a safe environment for students. I know we've talked about that in general, but what's your perspective from your personal experience?

Ms Hogarth: I guess that having a faith based school be in a position to support and have LGBTI teachers on their staff who aren't in a position where they feel like they need to hide their identity in order to be safe in their job allows that teacher to be the best person and the best teacher they can be. It sends a message to the rest of the school community that you can be honest and open about and proud of who you are and not practice that hypocrisy that Rodney spoke about, in terms of protecting students but not protecting staff, and that secrecy—that, if you are having to hide, it sends a message, therefore, to students that hiding who you are is what's needed in order to survive as an LGBTI person, which is the stuff of the past. Society has moved on from that time and we're in a position now where students are confident in who they are and are coming out as who they are, and, in that sense, they are vulnerable, and, by having protections for them and protections for staff, it provides a sense of security. I go back to the point that the school community is therefore stronger for that because teachers, as I said, are in a position to be the best person and the best teacher they can be. Parents and carers, in sending their young people to faith based schools, to private schools, expect the best teaching and the best whole school experience that they can get, and if staff in that teaching environment are providing the best of themselves then they're going to be the best teachers they can be.

Senator PATRICK: You talk about the bill being passed in its current form—so just simply the Wong bill, possibly with the Centre Alliance amendment. I'm putting this to you to try to be helpful. In the last sitting week in the Senate, that proposition was put to the Senate and it wouldn't get through in the configuration the Senate is currently in. So, in some sense, that has already been tested. Although there was no vote, there was no vote
because there was no prospect of it getting through. In those circumstances—and I'm really just going to the importance of perhaps answering Senator Rice's question about alternative amendments—I'd like to bring your attention to submission 46, that of the Anglican Church Diocese of Sydney, where they've made some recommendations in terms of amendments, and to whether or not those amendments would suffice. What that goes to—I understand, and everyone gets, that we don't want discrimination against children, and teachers ultimately as well. But there are concerns for politicians, who represent a wide body of people, to make sure that religious entities do feel comfortable, and I think supportive of your desires as well: it's about where we can find the next middle ground. I understand your preferred position. I'm just trying to come up with an answer that might let it get through the Senate.

Mr Hunyor: Perhaps I could take on notice the specific response to that, but I will make two observations. While I hope that the outcome of this committee's inquiry will be to allay some of the concerns that I think can be allayed—that churches won't be able to uphold ethos and values—the law allows ethos and values to be maintained in all schools and in religious schools. What it doesn't allow is unreasonable conditions that have the effect of—

Senator PATRICK: I'm just putting that the Senate had a problem with that in the last sitting week.

Ms Brown: But that was a very close call. It's within your power, Senator, and your colleagues' power to change that very quickly.

Senator PATRICK: Sure.

CHAIR: What he means is that one or two crossbench senators had a problem with it—which isn't the Senate, I might add, and doesn't represent the majority of Australians.

Senator PATRICK: I'm trying to be helpful here, to ask, 'What will it take to give something back—'

Mr Hunyor: We'll respond specifically to the technical detail of that. It's not clear to me yet why a general test of reasonableness is inadequate. That's the initial point, and secondly that it's not good lawmaking to—

Senator PATRICK: So, that general test of reasonableness sits comfortably with you but not with the religious entities that we've spoken to. What they're saying is that they don't feel that that gives them enough protection for their faith, and they don't want to discriminate.

Ms Brown: With respect, a feeling doesn't really go far enough. They need to provide concrete examples of how the law would—

Senator PATRICK: Okay. I can fit that around. Lee Carnie said that there were harmful teachings but didn't elaborate on what those were. That goes to the nub—I think it goes to the same space—of where the conflict is, if that can be laid out. I don't think it's just the responsibility of the church to do that. I think you could help in identifying that as well. The devil is in the detail, and I'm trying to work out a pathway through.

Mr Croome: I'm sorry to interrupt the flow of this question, but Ms Hogarth has indicated that she needs to go to a prior engagement. Would there be any questions for her before she goes?

CHAIR: No, and thank you for raising that. Thank you, Ms Hogarth, for your contribution. We very much appreciate it. Go in peace—as they would say at a church school!

Ms Brown: And Senator, thank you for your question. We would really like to be as helpful as possible, and if we can provide further information, please let us know. I think the teachings Lee was referring to include those around sexual brokenness. There are questions over whether there's a dispute over theological bases for those sorts of teachings anyway. But we would hope that most of the religious teachings in these schools are not harmful, but our examples of ones that are harmful are the examples around being inherently sick or disordered or broken if you're same-sex attracted or transgender.

Senator PATRICK: And I think, for example, the conversion training—everyone says that ought not be allowed. But we have been using a common example throughout the day and we've heard evidence that some people in the church would think it's quite okay to be able to stand up in the class, perhaps a religious class, and say, 'In accordance with our faith, marriage is between a man and a woman, and any other arrangement would be a sin.'

Ms Brown: There's absolutely nothing—

Mr Hunyor: How is that discriminatory?

Ms Brown: It's not.

Senator PATRICK: Well, I don't know.

Ms Brown: It's not. So, I think, as has been mentioned, there's a lot of fearmongering and hyperbole.
Senator PATRICK: And that's where it would be useful to define what the harmful teachings are, just as the church defining what it is that they really are concerned about as well. I think there's an obligation on both parties or both sides of the debate to try to identify that, because that might help find the right pathway as well.

Ms Brown: We'd love there to be no harmful teachings. That's the ideal position. But, if there is going to be harm, it should be prevented under the law, and that's a pretty straightforward proposition.

Lee Carnie: I should just add: what the current test of reasonableness allows is a consideration of a range of factors. Our concern is that the so-called protections which are in the amendments do more than just provide comfort. What they do is override the existing test of reasonableness, which takes into account a range of factors—for example, the school's reason for providing a particular teaching. Maybe they want to provide that teaching to uphold the religious ethos of the school and the community that they're operating in, and also the needs of the school to maintain order where there are particular school rules that they might want to impose and which they want students to abide by. But, on the other hand, it also takes into consideration the frequency of the teachings: how often is this being taught to students; how is it being taught; in what tone is it being taught; is it being delivered at the front of the classroom or is it being taught in a way in which students are required to engage in activities that have a more personal element to them—being required, for example, disclose which of their family members are sinful because of their sexual orientation? What is the nature and extent of the disadvantage? Importantly, under the reasonableness test, this allows consideration of the individual circumstances of the child. It could be that one child who listens to teachings which say that particular relationships are sinful, listens to them, engages with them critically and it doesn't have a particularly strong impact on their mental health. They continue happily in their school and with their teaching. It could be that another child is particularly vulnerable and has had other experiences in their life, and that means that listening to repeated teachings which make them feel as though they don't belong and as though they can't approach their teachers for assistance have a much more significant impact on their mental health. We would advocate for the best interests of the child to be the paramount consideration—the primary consideration—if viewed objectively. Our concern with the amendments is that consideration of the best interests of the child is the subjective consideration of the school.

Senator PATRICK: Just to—
CHAIR: Senator Patrick, we really don't want this to be a debate.
Senator PATRICK: No, no, no—
Lee Carnie: I think this is a really important discussion.
CHAIR: We have five more witnesses to go. We're really here to hear the views of witnesses. I've restrained myself from entering the debate—not that I have a view. None of the committee have a view; we're independent and we're here to hear the evidence and then form a view. Regarding some of the questions that you've raised, if you read the submissions of the churches you'll understand why they think things that you don't understand are important. That's not our purpose here. If there's a burning question—

Senator PATRICK: It's a burning question.
CHAIR: We have another five witnesses to go and it's now 6 o'clock.

Senator PATRICK: Very, very helpful. In those circumstances, how does a teacher understand all of the other hidden circumstances? How is that resolved?

Lee Carnie: Discrimination law does operate, but there is a range of other considerations that teachers already have to take into account in considering the best interests of the child and how to protect their wellbeing. They already have a duty of care to take reasonable steps to ensure that children have a happy and supported experience at school and that they're not subjected to significant injury or harm, and they're required to take into account the individual circumstances of—

Senator PATRICK: My question goes to how they know that. Some children, quite rightfully, might not want to share that. It might be hidden and it might be hidden for other reasons. Do you see the complexity that creates?

Senator PRATT: But it's no different than a teacher assessing our child for disability or any other vulnerability—
CHAIR: No, we're not having a debate, Senator.
Senator PRATT: or covered by the protections.
CHAIR: If you want to give evidence, go to the other side of the table.
Senator PATRICK: I'm done.
Senator FIERRAVANTI-WELLS: I have three questions to put on notice. Ms Carnie, following on from the comments that you've just made, aren't you just really outlining that your proposal is going to effectively remove the freedoms that faith based schools and communities have to express their religious ethos and, in effect, it's a reverse discrimination because they're not going to be able to teach their religious ethos. I would welcome your comments in relation to that. I'm happy for you to take these questions on notice.

I'd also be interested to know how you respond to the statement in the expert panel review regarding the hierarchy of rights. It seems to me that the evidence I've heard is very much an assertion that the rights that you're seeking to promote take precedence over others. I haven't really heard much in your evidence that actually looks at the international context and our obligations internationally.

Also, I'd really be interested to hear, because your submissions don't address this, your views about the protection of the religious freedom of the school community and the rights of parents to choose a school that reflects their faith. Ms Brown, I heard you make the assertion about the schools having their funding cut and you made some comments in relation to that. I find that troubling because—

Ms Brown: Sorry, I didn't make any statements about funding cuts.

Senator FIERRAVANTI-WELLS: No, I think you asserted earlier in your evidence to the effect that schools are discriminating, are publicly funded and, therefore, should not be receiving that funding.

Ms Brown: No, absolutely not. I did not say that.

Senator FIERRAVANTI-WELLS: Would you go back to that. That's what I understood you to say.

Ms Brown: It'll be in the Hansard, Senator. What I said was that—

Senator O'NEILL: You could find it in your opening statement.

Ms Brown: Yes, I can just read it out.

Senator FIERRAVANTI-WELLS: I'll go back and have a look at the transcript, but the point that I wanted to—

Ms Brown: My point was that they're publicly funded—that's all.

Senator FIERRAVANTI-WELLS: They are publicly funded, but—

Senator PRATT: Not to withdraw funding?

Ms Brown: No, I did not say anything about withdrawing funding.

Senator FIERRAVANTI-WELLS: No, that's not the point. I'll have a look at that, and if I have anything I'll put it on notice. But those are my questions on notice for now, thank you.

CHAIR: Were there any questions that you could answer very quickly now?

Lee Carnie: Very quickly, on the first question, about whether the bill will reverse the ability of schools to teach in accordance with their religious ethos, we do not believe that this is the case. Schools will still be able to teach in accordance with their religious beliefs. There is nothing in the Sex Discrimination Act which would prevent them from doing so, and I'll outline the reasons why further overnight.

The second question concerned a hierarchy of rights. Equality Australia's submission did not go into a huge amount of detail with international human rights law analysis because it was in the attached Human Rights Law Centre submission from a previous inquiry late last year. But we completely agree that there should not be a hierarchy of one human right being considered or privileged above others. It is not a situation where the right to freedom of thought, conscience and religious belief automatically overrides the right to freedom from discrimination or vice versa. What we would argue for is the protection of all human rights under Australian law, for example through a charter of human rights.

This goes to your third question, I think, which is: what protections are available under Australian law for people of faith? We note that the Human Rights Law Centre submission does support the introduction of a religious discrimination act. In the same way that we don't believe that people should be subjected to discrimination on the basis of age, disability, race or sexual orientation, we also do not believe that people of faith should be discriminated against on the basis of their beliefs or their religious dress et cetera.

There have been some statements made by previous witnesses today about the nature of the exemptions and how they frame a right as effectively an exemption rather than a right on its own behalf. We believe, for example, that the right set out for parents to determine the religious and moral education of the child, which is in article 18 of the International Covenant on Civil and Political Rights, is an important right alongside all of the other rights and that all of those human rights under international law should be protected as positive rights, but they need to be protected equally in a consistent and balanced framework.

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE
Senator O'NEILL: Ms Carnie, can I suggest that the comments that you've made are a very, very important lens through which to see the question that Senator Patrick has asked you to address, with regard to the Anglican submission, because the comfort to do exactly what you've just articulated is what they've attempted, I believe, to advance in their submission. So, if you can frame it in that way, I think that we may actually be able to see a way forward somewhere.

Senator FIERRAVANTI-WELLS: Further to Senator Patrick's point, the point is that the object of this exercise is to deal with a very narrow issue, which is preventing the expulsion of children from schools and discrimination against them. I take the comments that you make, Ms Carnie, about all the other amendments. In your view, is there one very simple amendment that can address the very issue that has caused, if I can put it this way, those public concerns that you were talking about right at the beginning, Ms Brown, and really address just that narrow point? Have a think about it and come back to us.

Lee Carnie: There would be a way.

CHAIR: Thank you very much for your submission today. It is very much appreciated. We could continue all day, but unfortunately we have limited time. Thank you very much.
The Law Council considers that it is essential to approach any antidiscrimination legislative reforms in a comprehensive rather than piecemeal manner. It is important to have regard not only to the Sex Discrimination Act but also to opportunities to consolidate and strengthen federal protections against discrimination on the basis of religion and other federal legislative provisions. The Law Council considers that an improved mechanism which provides for the enforcement of rights in accordance with international human rights law is needed, and that includes a national human rights act. This would also help overcome the current fragmented approach to federal antidiscrimination legislation.

Having stated this, the Law Council generally supports the passage of the bill now before the committee, which repeals the existing exemptions in the Sex Discrimination Act that apply to religious education institutions with respect to students. The reason is this: the Law Council considers that children should not be discriminated against. It does not support laws that add to the LGBTI children's trauma or stigma by permitting discrimination by religious education institutions. Such laws are not in the best interests of children, and that must be the primary consideration. The Law Council's Justice Project, which the committee members may be familiar with, found that the experience of discrimination and social exclusion contribute to LGBTI people facing a higher prevalence of a range of risk factors. LGBTI young people are particularly affected by poor mental health outcomes, which continue with them into adulthood. For example, studies have found same-sex attracted Australians have up to 14 times higher suicide attempts than their heterosexual peers.

However, the Law Council also supports an amendment to narrow the effect of the proposed section 37(3)(d) in the bill. The proposed section 37(3)(d) refers to 'a body established for religious purposes' if 'the act or practice is connected with the provision, by the body, of education'. The Law Council is concerned that the proposed section 37(3)(d) is too broadly framed and would apply to prevent, for example, churches, synagogues or mosques who offer religious tuition as part of their functions from accessing that exemption. So, on this basis, the Law Council recommends that section 37(3)(d) should be amended to apply to the 'acts and practices of an educational institution that are conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed'. This would mean that the proposed section 37(3) would only apply to the acts and practices of faith based schools, colleges and universities or other institutions at which educational training is provided, so it is a similar approach to the Centre Alliance's proposed amendment, but there is just that clarification about the nature of the institutional body. Subject to this amendment, the Law Council recommends that the bill should be passed.
In the given time, we won't address the other amendments in any detail. Suffice to say, the Law Council does not support the government's amendments. It considers these amendments are unnecessary having regard to existing provisions in the Sex Discrimination Act, particularly with respect to those concerning indirect discrimination, in light of the Law Council's recommendation that section 37(3) be amended. The Law Council is further concerned about the breadth and the impact of several of these amendments that would override a more balanced and flexible approach being adopted to the exercise of competing rights and interests, and the existing provisions in the Sex Discrimination Act with the amendments that we support would achieve a best and proper approach.

With regard to the Australian Greens proposed amendment, the Law Council considers that if the existing exemptions permitting discrimination against people who are employed or contracted by religious schools are to be maintained, then there needs to be a broader consideration as to whether this is justified, necessary and proportionate in terms of what schools are seeking to protect. The key concern for the Law Council is there be a consistency across legislation, and, on that issue, which is the employment issue, it is important to note that the Sex Discrimination Act must work with the relevant provisions of the Fair Work Act and the Australian Human Rights Commission Act. So, any decision to repeal or amend the Sex Discrimination Act exemptions in this area, the employment area, should really only take place as a result of comprehensive consideration of the full suite of relevant federal legislation. The Law Council's recommendations are otherwise summarised at page 6 of our submission, and Ms Campbell and I are very happy to take any questions. I thank the committee.

Senator O’NEILL: Might we have a copy of the opening statement?
Ms Eastman: It has my handwriting on it, but I can email you a copy.

Senator O’NEILL: That would be helpful; thank you.
CHAIR: Thanks very much for that. Ms Campbell, you didn't want to add to that?
Ms Campbell: No, thank you.
CHAIR: You mentioned a recommendation of the law society for an amendment. Is that the same recommendation as is on page 26 of your written submission, in relation to 37(3) of the law?
Ms Eastman: Yes, that's exactly the amendment. If you turn back to page 25, in paragraph 82 we've set out that proposed wording, with the additional words in the bold text.
CHAIR: But in the box on page 26 that includes the whole of the—
Ms Eastman: That's right.
CHAIR: Thank you for that. I did quickly read through your submission previously—as with all the others—but they all blur into one. I'll have another look at that now.
Ms Eastman: I can imagine at this time of the evening that's not surprising.

Senator PRATT: There have been other submissions today about the consideration of whether the existing exemption on indirect discrimination would adequately cover circumstances in which religious educational bodies might, in the exercising of their ethos or doctrine, be indirectly discriminating and about whether the reasonableness test in that is enough. How would you characterise the difference or the sameness of applying that reasonableness test for indirect discrimination to a potential claim of indirect discrimination within a religious institution, as compared to other institutions that might also have such claims of indirect discrimination.

Ms Eastman: There are some technical and complex issues and I will try not to oversimply those in terms of my response. As the committee will be aware, the way in which this legislation operates is that first you have to start with a relevant operative provision, and that's found in part 2. The relevant operative provision is section 21. So you go to section 21 first and you ask whether or not the conduct that's causing concern engages section 21. So it's not discrimination at large; if it's 21(1) it has to be either terms and conditions for admission or refusing admission. If it's 21(2) then you're looking at subjecting somebody to a detriment or an expulsion or limiting access to benefits. If the conduct concerned does not engage those provisions, you don't even get to the question of discrimination, because they're definition provisions.

Senator FIERRAVANTI-WELLS: Which is why I talked earlier about the fact you can't look at 37 and 38 without looking at 21.

Ms Eastman: That's true. Technically the way you would approach it, if you were to take somebody through the steps, is: is the operative provision engaged, relevantly section 21? If it's not, that's the end of it. If it is, the next question is to say: 'How does the relevant definition of discrimination apply? Is it direct discrimination or indirect discrimination?' Then you would look at those elements.
The difficulties, may I say, respectfully, with the proposed amendments to the definition of discrimination—that is, the definition of indirect discrimination—include that they seem to confuse the way the operative provision works with the way in which you work out whether discrimination has occurred. The second difficulty with those amendments to indirect discrimination is they seem perhaps to overlook at misconceive the way in which the exemptions operate. As the committee is well aware, there are two relevant exceptions here: one is section 37 and one is 38. From just listening to some of the debate, what seems to be overlooked is an understanding about how section 37 actually operates. If one looks at the introductory words to section 37 it says, 'nothing in division 1 or 2 affects'. So, in effect, what section 37 does is operate as a cloak around a particular body which is either engaged in activities or doing the sorts of things that cover section 37(1)(a), (b), (c) or (d). So if those things occur to you then those operative provisions don't even apply, so you don't even get to questions of whether the definition of 'discrimination' operates. Section 37(1), in this broad context, applies across the board. Section 38, on the other hand, only clicks in if there's a particular instance of discrimination and a transaction, for example, between the educational institution and a particular student. In that particular factual circumstance, 38(3) might apply.

So, when one looks at this tinkering with the definitions of indirect discrimination, I think the view that the Law Council has taken is that it may misconceive the work that indirect discrimination does, because it is simply a definition to help you work out whether discrimination has occurred. I think others have given evidence today to indicate the difficulties with packaging what looks like an exemption into the definition of 'discrimination'. I'm sorry it's a little long winded.

Senator PRATT: No, that's helpful.

Ms Eastman: This is just working through those steps.

Senator PRATT: So how would a test on religious susceptibility be dealt with in terms of whether indirect discrimination is reasonable?

Ms Eastman: It's not going to arise in the context of indirect discrimination, because the concept of indirect discrimination as a definition is simply saying, 'How do we give the label "discrimination" to circumstances where everybody is treated the same way?' So this is a case where, classically, you look at the concept of equality and say, 'Formal equality is dealing with ensuring that everybody is treated the same way.' So the discrimination will occur if you're treating people differently because of a characteristic. Then you've got direct discrimination.

But substantive equality is looking at the outcome. So if you treat everybody the same way but the starting point is that people, because of their attributes, are different then treating everybody the same way actually entrenches the unfair treatment or the discrimination. 'Indirect discrimination', as a definition, is trying to capture circumstances where everybody is treated exactly the same way but it has an adverse outcome or a disproportionate outcome on a particular group because of their characteristic. So what you're looking at, in that indirect discrimination, is that disadvantage as a result of everybody being treated the same way, and indirect discrimination then builds in this element that it may be reasonable, in the particular circumstances of the case, that that same treatment of everybody can be justified.

So, conceptually, these are the basic concepts: 'What is equality? What is formal equality? What is substantive equality? How does the discrimination law reflect those rights, in a sense, and how do they operate?' Some of the amendments, I think, seem to confuse what may be sought to be achieved in terms of the protection of rights.

Senator O'NEILL: Can I just clarify: you described three types of equality. Did you say 'formative'?

Ms Eastman: Formal equality and substantive equality. That's often known in the discourse around equality.

Senator PRATT: There seems to be a perception that schools might get caught up in the act of indirect discrimination if, for example, someone were to stand up in front of a class and say, 'Marriage is between a man and a woman,' because there might be some students in the class who might be same-sex attracted and who are not included by that message. In what way might something like that relate to that test, or does it not relate at all?

Ms Eastman: The first starting point is not to go to the definition of indirect discrimination. The starting point is to ask: 'If somebody stands up and professes those views in a classroom, is section 21(2) engaged? Is that denying a student access or limiting the student's access to a benefit provided by the education authority? Is it expelling a student, or is it subjecting a student to any other detriment?' Simply making those comments in a classroom, without some much broader context or something else, is unlikely to even get you, in effect, to first base for the purpose of the Sex Discrimination Act.

Senator PRATT: That's why we've been arguing that the amendments—the removal of the exemptions—don't place at threat the freedom of schools to teach their doctrine. But I need to ask the question for clarity's sake.
because there's been much debate about religious institutions wanting more reassurance than what's in the bill in order to support it.

**Senator FIERRAVANTI-WELLS:** Can I follow on from what Senator Pratt's just said. When you look at section 37 and section 38—I really would like your view—is 38 subservient to 37, or is 38, in your view, a subset of 37? There's this question in that not all educational institutions will necessarily be a body established for religious purposes.

**Ms Eastman:** That's right, yes.

**Senator FIERRAVANTI-WELLS:** Therefore the question is: which of those two, in your view, is the broader descriptor? Is it the definition of religious bodies, or is it the educational institution? Do you see where I'm coming from?

**Ms Eastman:** Yes, I do. I can tell you from experience of running the very few but I think at least two cases involving language such as section 37(1)(d)—my experience is with comparable wording in the New South Wales act and also in the Victorian discrimination law—that it is a very onerous task for a religious body to establish that it takes the benefit of this exception. If one's looking at 37(1)(d), for example, it only applies to bodies that are established for a religious purpose.

**Senator FIERRAVANTI-WELLS:** Let me take you through that. That would be step 1. So that would be a mosque, a temple, a synagogue, a church—

**Senator O'NEILL:** A theological college?

**Senator FIERRAVANTI-WELLS:** This is now where we start getting into that. So they're clear. Those ones are clearly, in my view, bodies established for religious purposes. But then, when you start looking at a theological college, missionaries, chaplains, youth workers or pastoral—when you start looking, as the Presbyterian Church centre was today, at that broader family—

**Senator O'NEILL:** Of ministry, yes.

**Senator FIERRAVANTI-WELLS:** of ministry that is part of the body established for religious purposes, those are covered as well according to that definition. Is that your view, Ms Eastman? Can you help us on that one?

**Ms Eastman:** I will. In some cases, there might be no dispute in a particular scenario that a body has been established for a religious purpose, but in other cases there might be a dispute about whether the body has been established for that purpose. This is where the lawyer in me, looking at particular words, comes in. I know that the New South Wales Court of Appeal, in a case called OV & OW v Members of the Board of the Wesley Mission Council, looked at this issue as well: what does 'established' mean? One looks at: when was the body established, and for what purpose was it established at that time?

The example that I give you of OV and OW and the Wesley Mission was a case involving the Wesley Mission, which provided foster-caring services, but it had rejected an application from a same-sex couple to engage in foster caring. It sought to rely on the equivalent provision in New South Wales, which is a body established for 'propagation' of religion. The Court of Appeal said one has to look at: what is the establishment of this body? The court said it's important in those circumstances to go back and say: when was the Wesley Mission established, and for what purpose? Clearly, it was a body established to propagate religion.

So this is a factual inquiry. That would—

**Senator FIERRAVANTI-WELLS:** That would mean—sorry, Ms Eastman—going to the aims and objectives of the Wesley Mission—

**Senator O'NEILL:** As expressed in a constitution?

**Senator FIERRAVANTI-WELLS:** as expressed in their constitution.

**Ms Eastman:** It can be evidenced by its constitution. It can be evidenced by the founding documents. There'll be different tests, because you also have this issue of: what is a religious purpose and a religious body? Sometimes there are some conflicts between, 'What is a religious body?' and, 'What is something else?' There is a lot of case law which I don't want to trouble you with, which we can provide to you, where courts in some circumstances have been troubled with trying to define, 'What is religion, and what's not?' It would have to have that religious purpose.

**Senator O'NEILL:** Do you know what happened in this case?

**Ms Eastman:** In this case, after a very long back-and-forth in litigation, the tribunal which eventually heard the factual matter accepted that the Wesley Mission was a body established to propagate religion. There was
evidence before the tribunal given by the head of the Wesley Mission at the time as to the religious doctrines and beliefs, which were particular religious beliefs in the concept of family. So the exemption was made out in that case.

These are such exceptional cases that I can say that, in my almost 30 years experience in working in this area, that is the only time I have ever had to be involved in looking at the application of that exemption, for the Wesley Mission case—and the Victorian case you may be familiar with. I think you've have evidence that these are very rare cases, and often they can be quite challenging cases where you're looking at these very technical provisions. So you're looking at what the meaning of 'religion' is.

These cases also can get very caught up with identifying what 'doctrines and tenets of religion' are, because the test is not just the establishment of the body. The other elements are that the act that you want to have the benefit of the exemption or the exception for is an act that's done in conformity with the doctrines et cetera. Or, under a second limb to subsection (d), it's that the acts are 'necessary to avoid injury to the religious susceptibilities of adherents of that religion'.

So, when you break this down from a legal perspective, you've got so many elements that have to be checked off before the exemption applies. This is why we've said in the Law Council's submission that this is a very onerous exemption to establish, but, if it is established, in effect, as I said, there's a cloak around the relevant body from the operation of these provisions in the Sex Discrimination Act.

**Senator FIERRAVANTI-WELLS:** Ms Eastman, can I then say: and this cloak protects them from both direct and indirect discrimination?

**Ms Eastman:** It does, assuming that—as I come back to say, and I've used that expression—operative provisions engage. What it actually says is: 'Section 21 doesn't apply to you, so we don't even get to ask you the question of whether direct or indirect discrimination applies.'

**Senator FIERRAVANTI-WELLS:** That's fine in relation to those sorts of bodies, so—

**Senator O'NEILL:** Can I ask a question that's directly related to what you were just asking?

**Senator FIERRAVANTI-WELLS:** Sure, you go.

**Senator O'NEILL:** Thank you.

**Senator FIERRAVANTI-WELLS:** Sorry, Ian, I think this is really important because—

**CHAIR:** Okay.

**Senator O'NEILL:** Yes, if we can just tick-tack on this one.

**Ms Eastman:** Sorry, you've got a technical perspective. If it's too complex, please let me know.

**Senator FIERRAVANTI-WELLS:** No, it's great. This is what we need.

**Senator O'NEILL:** One of the pieces of evidence that we received earlier today from one of the church groups and was backed up by others who came is concerned that a changing social context will lead to test cases of the kind that you just outlined between OV and OW and the Wesley Mission and that there is a lot of litigation and cost likely to be ahead for these religious entities, some of which are small, very thinly funded and very thinly surviving economically and others of which can be quite enormous institutions. Is that possible? Is there a genuine fear that there could be significant tests at law?

**Ms Eastman:** Can I say this in a personal capacity rather than a Law Council capacity. In my experience working with families and with students but also advising schools, where issues of this kind come up in the day-to-day work of schools, for the most part the parties come together and they work these issues out. Most schools have the benefit of legal advice, so they will get advice about the extent to which any exemption may even be applicable and what would be involved.

I think it's important to recognise that the safeguard of the law is there to help guide the decision-making of families and schools, so the law and clarity in the law are very important. But the existence of the law is not necessarily going to result in litigation. For the most part, if there's any trouble, if I can describe it in that gentle way, it's likely to end up at the Human Rights Commission, and for the most part complaints of this kind inevitably settle in conciliation, because often litigation—

**Senator O'NEILL:** Which is evidence we've heard several times today as well.

**Ms Eastman:** Litigation is often about looking for compensation and damages. It's very difficult for a court to say, 'What orders do we make about whether a child should continue an education?' My experience in this area, and working with disability discrimination cases, is that litigation can take a long time. But a life of a child at school is very fast and the parents don't often have the benefit of saying, I'm going to battle this out with the
school for the next five years,' when the child misses out on a substantial part of education. So parents for the most part are quite practical about these types of issues and schools have also been, in my experience, good at working through the issues in a sensible way. So I do not see a climate of litigation. I think I heard this morning a fear that activists would search out or find out cases. Of course that's possible but in my experience, and in the research we've done in the preparation of the submission for the Law Council, that is such a minimal risk that it should not—

CHAIR: People said that about politicians who weren't born in Australia a couple of years ago—

Ms Eastman: Maybe so.

CHAIR: We're a bit sensitive.

Ms Eastman: That may be so. The area of disability discrimination in education is at times quite a litigious field but it's taken a long time for the law to operate in that area and they're very different provisions to the ones we're talking about. But it's a minute risk that really shouldn't overshadow what you're seeking to achieve in terms of these amendments, which is certainty for families, for students and for schools as to where they stand, and the bill in the form that's proposed, with the tinkering that we've suggested, would give everybody that certainty.

Senator O'NEILL: And that's with regard to students only not teachers?

Ms Eastman: Yes. The education employment issue really needs to be looked at in a broader context. We've said this in the submission, that it has to work with the Fair Work Act. It has to work, in some cases, with state legislation. There may be other industrial provisions, awards that would need to be reviewed in the circumstances. That would be something that I think the Law Council would be prepared to, obviously, assist with at some later point but we've tried to just focus on the matters that are immediately before the committee.

Senator FIERRAVANTI-WELLS: I will take you to 37 and 38. Having got us from 21 to 37, with your added, proposed paragraph 3 in the Wong bill, and assuming the amendment that Senator Patrick is suggesting, where does that place 38?

Ms Eastman: You've seen in the Law Council submission that we think 38(3) should come out entirely. And if you have a look at the language of 38(3), for example, it's casting different language to section 37. So there's no—

Senator FIERRAVANTI-WELLS: I've got it in front of me.

Ms Eastman: introductory passage—nothing in this effects. When you're looking at 38(3) it says, 'Nothing in section 21 renders it unlawful for a person to discriminate against another person'. I'll pause there because the rest of it is then building in the other language, but essentially what you're asking is about unlawful conduct for a person to discriminate against another person. So you're moving from that broad exemption that applies in 37, and in 38(3) you're narrowing it down to what is going to be a particular fact circumstance where one person is alleged to have discriminate against another. To translate that, the education institution is discriminating against a student—so those elements in section 21 will be engaged, there's either been a denial of a benefit, expulsion or subjecting to a detriment—so then 38(3) would come in in those circumstances. Section 38(3) is a far more blunt instrument and it's going to arise in a case specific circumstance. In that sense it's a narrower exemption but it's a broader exemption, I think as you've noted, senator, in terms of it applying to educational institutions. But you'll see that that educational institution still has to establish that it's conducted in accordance with the doctrines, tenets, beliefs et cetera; and that the discrimination is done in good faith and in order to avoid the religious injuries. There are a lot of elements in that.

Senator FIERRAVANTI-WELLS: All right. My question then to you is: is important to have sections 37 and 38 next to each other because they could be dealing with separate bodies? Section 37 deals with religious bodies established for religious purposes. Section 38 looks at educational institutions established for religious purposes. So are the two things dealing with the same bodies or with different bodies?

Ms Eastman: I think as a matter of construction you can take the headings into account. When you take into account 'educational institutions established for religious purposes' and then you look to apply section 38(3) and the elements that have to be established, you'll see that there's considerable overlap with section 37. When you look at them together, you really say, 'Is 38(3) even necessary?' In what particular circumstance would 38(3) have work to do that wouldn't otherwise have been caught or captured by that much broader operation of section 37(1)(d)? This is why I think section 38(3) really has very limited or no work to do and it would be preferable if it were deleted in its entirety.
Ms Campbell: However, we do support the clarification that 37(1)(d) be amended to ensure that it doesn't apply to religious educational institutions. We are concerned that 37(3) as it's drafted at the moment is overly broad and could pick up churches and mosques delivering Sunday school or religious education.

Senator FERRAVANTI-WELLS: Or a preschool, if they're teaching preschool. So, in other words, you are confident that paragraph (3)(1)(d), as amended, would cover a situation where a teacher stands up and says, 'Marriage is between a man and woman, and that's what we believe in and that's what it is'? In your view, they're going to be covered—is that the assurance that you're giving us?

Ms Eastman: I am giving you the assurance that, if that were the only issue that gave rise to a complaint, then the advice that should be given is that this is not even a circumstance that engages the Sex Discrimination Act. So you're not even in the realm of section 21 being engaged or even needing to look at the exemptions. So you've got to come back to what the purpose of the Sex Discrimination Act is. It's to prevent discrimination on particular attributes in particular areas of life. It doesn't say, 'Everything that you might think would be discriminatory is covered.' You have to keep coming back to saying: is it captured relevantly by section 21(1) or section 21(2)? Simply saying, 'These are my religious beliefs,' or saying that in a classroom—that scenario alone does not even get you to first base for the purpose of the Sex Discrimination Act. It does not engage section 21. You would need something significantly greater.

Senator O'NEILL: Senator Patrick has been saying, 'My belief is that marriage is between a man and a woman, and if you do not adhere to that—

Unidentified speaker: That's a sin.

Senator O'NEILL: that would be an act of sin.' Is that going anywhere near—

Ms Eastman: No.

Senator O'NEILL: Why not? Because a concern is held?

Ms Campbell: The submission that we put together travels through the different hurdles that have to be fulfilled under the legislation in this kind of scenario. If I can refer you to page 36 of our submission, it states:

Would faith-based educational institutions be precluded from teaching in accordance with their religious doctrines, tenets or beliefs if the Bill was passed?

We have tried to step through the quite significant hurdles. First you need to engage section 21. It's not going to be direct discrimination. Then you need to look at the definition of indirect discrimination, which has a number of different facets, including that it needs to be likely to have the effect of disadvantaging a group with the same attribute.

It's not just a question of harming a single person; it's quite a significant threshold that has to be met before you demonstrate indirect discrimination.

What we've done is say that we think it's pretty unlikely that that threshold is going to be met. If it is, however, then the question still goes to: is it reasonable in all the circumstances under the reasonableness test, which is an objective test which requires assessment of all of the circumstances of the individual case, including the purposes for which the school was established, which is to uphold the religious faith and the manifestation of that faith, including the parents' needs to ensure the religious education of their children and conforming to their own convictions. Then you're looking at a whole range of other things under the reasonableness test, including the way the subject is taught, and the nature and extent of any disadvantage. If the student's a child, you'd look at the best interests of the child, how the disadvantage might be overcome and whether the disadvantage is proportionate to the result sought. And, weighing all of those things up together, we reached the conclusion that it's highly unlikely that a faith based educational school is going to be thought to be unreasonable to be teaching in accordance with its own religious doctrine. The very worst that could happen, assuming that you got all the way through that legislation, which is very unlikely, is that a school might be required to look at a way of accommodating an extremely distressed, very vulnerable LGBTI individual student and to work with that student to perhaps come up with a different solution not to attend a particular sermon. We don't think that's an unreasonable outcome.

Senator O'NEILL: I think you were here for the evidence given in the last gathering of people who were at the table. Ms Carnie documented for us verbally a case where a student, who was six weeks out from his HSC, was called to the principal's office to have a conversation about his sexual orientation. She talked about his distress and the impact on him. How do you respond to that scenario in the light of what you were just saying?

CHAIR: Before you do, can I just come in from the chair with a question. There have been some suggestions made to us, in view of the complexity of this and very differing legal opinions, that this really should be referred to the ALRC. By the way, do you know if the government has referred this to the ALRC or is it just that some of the submitters have suggested it should be?
Ms Campbell: I believe it hasn't yet been referred it to the ALRC and that it's consulting with states before it does so.

CHAIR: I must say, from a personal point of view, there's been so much going through my head in the last couple days that I'm totally confused. I suspect that other members of this committee—and some may be cleverer than I am and better legally trained. Of course when it gets to the floor of parliament these sorts of decisions are made for political reasons, not for the forensic legal questions you're addressing now with two of my colleagues.

The Attorney-General's Department, who are appearing after you, have to go at 7.20 because of children issues.

Senator O'NEILL: I'm done.

CHAIR: We're not going to be able to do justice to you, the department or these other people, and we have to report on Monday. This is our problem, not yours, so I'm really going to cut it off here. But I come with almost a plea, but I don't expect you to necessarily agree because it was a plea. You've given opinions, Ms Eastman—you are a Senior Counsel, I hear?

Ms Eastman: I am.

CHAIR: It should've been put on your tag, but it wasn't.

Ms Eastman: It's alright; I'm not so precious.

CHAIR: I know you're not, but it helps us mere mortals who used to be in the legal profession.

Senator O'NEILL: I'm a teacher. I just identify talent.

Ms Eastman: We're happy to take any questions on notice.

CHAIR: We have had different opinions from other legal academics, professors, practising lawyers.

Ms Eastman: I'm aware of that.

CHAIR: We as lawyers know that, if you put 11 lawyers in a room, as Senator Patrick says, you get 12 opinions. This is why I think that, if we are serious about this, it really needs to be thought about more carefully than at seven o'clock on a Thursday night and in the parliament next week—if we are serious about it. Perhaps it is a leading question or putting you in the corner, but what would your objection be to referring this to someone like the ALRC, if it's not the ALRC?

Ms Campbell: I think the Law Council's perspective is that the student exemptions can be dealt with fairly cleanly. With the staff ones, we do see some real complexity there, so we can see the opportunity that would be gained by referring it.

CHAIR: Did you hear the Anglican Archbishop of Sydney and his suggestion for a simple amendment you could deal with now?

Ms Campbell: No. I was on the plane, I think.

Senator O'NEILL: Could you take on notice a response to the recommendations in the Sydney Anglican diocese submission that we were discussing today?

Ms Campbell: Dr Tan?

CHAIR: Archbishop Glenn Davies. The difficulty, of course, is that we require answers to questions on notice by tomorrow, or at least by Monday, and we have a lot of questions coming in. Anyhow, that being the case—

Senator O'NEILL: Chair, could we just go back to my question that remains unanswered?

Ms Eastman: The answer to that is: yes, that would engage section 21 in relation to subjecting the student to a detriment. The next question would be whether or not the principal or the teacher involved in that conduct was treating that child less favourably than he or she would treat a child without the relevant characteristic. That's going to be direct discrimination. So anything you want to say about indirect discrimination is not going to help you at this point. The question would then be: would any of the relevant exemptions apply? You'd have to look carefully at the particular factual circumstances. The scenario—yes, that would engage the relevant provisions of the Sex Discrimination Act. The outcome may depend on looking at all of the relevant factual circumstances.

CHAIR: Senator O'Neill, what was your question—just to remind people?

Senator O'NEILL: It was: what would the likely scenario be in response to the student's story that we heard about the boy who was called to the principal's office about his sexuality six weeks before the HSC?

Ms Eastman: That's direct discrimination.

Senator O'NEILL: Direct?

Ms Eastman: Indirect is irrelevant in that scenario.
Senator O'NEILL: Would there be any protection for that school with the exemptions that you declared in the case of OV and OW against the Wesley Mission, where the purpose of the school was that it was established for the provision of religious education?

Ms Eastman: Yes, and you would then have to work through whether or not all of those other elements had been established: was the act done in conformity with the relevant doctrines or tenets of the religion, or was that act necessary—was that treatment of that child necessary to protect the adherents from injury for religious susceptibility? You can see, when the exemptions start to kick in in a practical setting, it requires a full and clear understanding of the relevant factual context and circumstance and carefully working through how they're going to apply in the circumstances. I won't take up any more time. I am conscious that you have other witnesses. But we are happy to deal with any—

Senator O'NEILL: The question on notice around the Anglicans would be very helpful. Thank you.

CHAIR: Thank you very much and thank you for staying with us for as long as you have. We very much appreciate that.

Senator O'NEILL: And thank you for taking us through your submission. It makes a lot more sense with you talking about it to me. Thank you.

Ms Eastman: Any time. Thank you.
CHIDGEY, Ms Sarah, Deputy Secretary, Integrity and International Group, Attorney-General's Department

CRAWFORD, Ms Kristin, Director, Human Rights Unit, Attorney-General's Department

[18:59]

CHAIR: I welcome representatives from the Attorney-General's Department. Ladies, I won't go through the preliminaries. I think you know them as well as we all do. Do you have an opening statement?

Ms Chidgey: In the interests of time, I won't make an opening statement. Unfortunately my colleague, who is the expert on antidiscrimination law, needs to catch the last flight home because of childcare responsibilities and will need to leave at 20 past seven.

CHAIR: Well, we will excuse you at 20 past seven whether we're mid-question or not. Was there anything that either of you wanted to say about what you've heard of the evidence that might be helpful to the committee, without telling us things that we've heard a hundred times already?

Ms Chidgey: Probably just a couple of points. The government is a strong defender of traditional rights and liberties, like the right to freedom of religion, and also believes that all people are entitled to respect, dignity and the opportunity to participate in a society free of discrimination regardless of personal attributes. I think at the heart of this question is the balance between those rights. Antidiscrimination law is complex, and it's important to achieve that appropriate balance. The particular point we made in our submission, which I think most others have made, is that the proposed amendments to section 37 in the bill are too broad and mean bodies established for religious purposes—churches, mosques et cetera—would not be able to provide education in accordance with their religious beliefs and teachings.

The government has proposed a number of amendments to the bill. I think our submission outlined that some of those are intended to work in concert and others are alternative options. They're particularly intended to ensure balance and to provide certainty about the role and reach of religious educational institutions in the context of the proposed amendments. Given the complexity of the issue, the government has committed to consulting with states and territories on terms of reference for the Australian Law Reform Commission to inquire into religious exemptions. That consultation is underway with a view to making that reference.

CHAIR: I think I'm being accurate here in saying that I don't think anyone has agreed with the government amendments. Some have said they didn't go far enough; some have said they went too far.

Ms Chidgey: Maybe that means they're just right!

CHAIR: That could well be. This may be a hard question to ask officers, but are you able to give us an indication of why it appears as if the government only responded when this amending bill was put in, following the selective leaking of a small portion of the Ruddock report. Some witnesses said the bill seems to have been done in haste and the government responses in even more haste, not in the way I assume the government was intending to go with more time and more consideration. From all the witnesses we've heard, it's clearly very, very complex. Are you able to say—you may not be able to say—why there was the delay, what was happening?

Ms Chidgey: Obviously, the government's made its announcement about religious freedom legislation and a further ALRC reference. Work had been done also on amendments to address the issue of discrimination against students, but political agreement wasn't able to be reached on that, perhaps illustrating the complexity and, ultimately, the decision to refer those matters to the ALRC.

CHAIR: And then the government's hand was forced by this amending bill that came in.

Ms Chidgey: Yes. The amendments the government suggested are a way of dealing with what it sees as some of the issues, or overreach, of the bill.

CHAIR: Did you happen to hear the Anglican archbishop, who made more or less an off-the-cuff suggestion—and he concedes he's not a lawyer—for a very tiny amendment that would do away with the: 'Gasp! Hang on; do we allow schools to discriminate?' Were you here then?

Ms Crawford: I was here. There were a range of suggestions made there. Are you referring to the suggestion to just deal with the expulsions/admissions component?

CHAIR: Yes.

Ms Crawford: It would be technically possible. Subsections 38(1) and 38(2) only provide the exemption in relation to components of employment, so they only draw out particular subsections, whereas subsection 38(3) applies to the entirety of section 21. So you could limit that to just particular provisions of section 21 if you wanted to just address the admissions and expulsions.
CHAIR: The suggestion was that it was a stopgap to deal away with 'Gee, gosh, does it really mean this in Australia?' until a closer look could be had not only to this bill but to all ramifications—the Fair Work Act, state legislation and all that.

Ms Crawford: At the moment, subsection 38(3) provides an exemption to the entirety of section 21. You could pick bits of section 21 if you wanted.

Senator FIERRAVANTI-WELLS: Can I develop this? Let's come at it from another perspective. Instead of removing bits from the legislation, in effect what you're saying is that subsection 3, rather than being repealed, could be qualified so that the act of expulsion of students could be directly dealt with as a subparagraph of subsection 3.

Ms Crawford: That's correct, if this applied essentially to not cover 21(2)(b) and you took that out of 38(3).

Senator FIERRAVANTI-WELLS: Can I just understand this. You could say something like, 'Nothing renders it unlawful, except for section 21(2)(b).' So it's possibly as simple as that.

Ms Crawford: Yes. It would come down to the drafters, but yes, you could cover that, in the same way that 38(1) is limited to offers of employment or dismissing employment, as opposed to all the areas of employment.

Senator FIERRAVANTI-WELLS: And that would then render it unnecessary to tinker with section 37?

Ms Crawford: Yes, I would think so, dealing with education.

Senator FIERRAVANTI-WELLS: In that case, have we given thought to something like that? I appreciate that I'm not asking you to do the drafting—

CHAIR: Or the policy decision.

Senator FIERRAVANTI-WELLS: Or the policy decision.

Ms Chidgey: I think we could confirm that it's possible, then it would be a matter for government to say whether they would want that.

Senator FIERRAVANTI-WELLS: Can we ask you, in light of what you've just said, because in the end, if I can put it this way, the political agreement is about the expulsion of students. That's really what it comes down to. That is the issue that we're trying to rectify—that is, making sure that children are not expelled because they are gay.

Senator O'NEILL: But that's only possible if we get rid of all the amendments that have tacked on teachers.

Senator FIERRAVANTI-WELLS: I think the common thing that everyone agrees on is that we want to ensure that children who are gay are not going to be expelled. So I'm just reducing it to the basic political agreement. If we have a position that only deals with that issue, if you could give us—

Ms Chidgey: We won't be able to draft—

Senator FIERRAVANTI-WELLS: I'm not asking you to draft.

Ms Chidgey: I think we can confirm that that's perfectly possible. Then it would be a matter for the government.

CHAIR: With the intention of a more complete look at all the other issues in the fullness of time.

Ms Chidgey: Yes. I won't give an opinion on that, save that a narrower approach of just excluding discrimination that is expelling is possible and ultimately—

Senator FIERRAVANTI-WELLS: If by tomorrow you could get to us that a very limited—to avoid just the expulsion of children—

Ms Chidgey: It won't be possible for us to you a draft provision.

Senator FIERRAVANTI-WELLS: I'm not asking for a draft provision, but unless what you've said now is sufficient—

Ms Chidgey: That's sufficient. Then it would be a matter for parliamentary drafters.

Senator FIERRAVANTI-WELLS: Senator O'Neill, that's probably sufficient.

Senator O'NEILL: It's an indication of a pathway that we haven't heard before.

Senator FIERRAVANTI-WELLS: It's an indication of a pathway—similarly, if I can just take it one step further—

CHAIR: Very quickly, because I've got to go to Senator O'Neill in the next seven minutes.

Senator O'NEILL: It's all right.
**Senator FIERRAVANTI-WELLS:** In other words, at the same time we're talking about expulsion, but you could similarly say that you give them the exemption for—

**Ms Chidgey:** For applications as well. Exactly.

**Senator FIERRAVANTI-WELLS:** Thank you. That answers my question.

**Senator O'NEILL:** Can you give a view about the question that has been asked a number of times by Senator Patrick with regard to a teacher in a school making a statement that same-sex marriage is against the law according to the tenets of a particular faith—if they added in that it was a sin? Does the department have a view about that matter and the answers that have been given to that question today?

**Ms Chidgey:** Whether it's discriminatory?

**Senator O'NEILL:** Yes.

**Ms Chidgey:** I think a statement of a religious institution's doctrines' tenets to that effect is unlikely to be discrimination. There might be factual circumstances where—

**Senator O'NEILL:** As discussed by the Law Council just prior?

**Ms Chidgey:** There's a particular way it's delivered that targets certain individuals. But as just a teaching of tenets, it's not obvious to me that it would be. I don't think that that would be discriminatory.

**Senator O'NEILL:** Were you here for the evidence from the Anglican bishop?

**Ms Chidgey:** My colleague was, but I wasn't.

**Senator O'NEILL:** In the same way we've asked that question for a critique of the set of amendments there, would you be able to do anything to that end?

**Ms Crawford:** Without being able to look at the Hansard records as to specifically what they were proposing—my recollection was there were suggestions around tying it more to an exemption around teaching doctrine as opposed to teaching in accordance with, or that sort of body, and also some suggestions around limiting to not doing it in a way that caused detriment and that sort of thing.

**Senator O'NEILL:** They suggested an additional paragraph, section 7B(d), that seemed to be quite at the heart of the discussion, which is in their written submission as well. Could I ask you on notice to have a look at that submission and also the other submission that was offered, at the same time I think, by PAC, the Public Affairs Commission, by Dr Carolyn Tan.

**Ms Crawford:** We can have a look. Generally, we say that sort of thing is probably possible. It comes to the complexities of where it sits and how it interacts with the other provisions.

**Ms Chidgey:** And it is then a slightly more specific and narrower exemption than teaching in accordance with. It's more specifically teaching of doctrine, so it is a tighter provision, and it would be possible to make an amendment along those lines.

**Senator O'NEILL:** While the sense in the last few minutes is that we've landed on a very enlightened and simple resolution of the issue, our participants in this hearing previously are back where they gave that evidence, and they haven't heard yours. I'd be interested in your response, too, on that one that seems to have captured the imagination a little today.

**Ms Chidgey:** Certainly.

**Senator O'NEILL:** Thank you. I may have some other questions on notice. I don't know how that's going to go with the timing as it's set. If that timing is adhered to, it will be very difficult to do that, but I just foreshadow that that may be the case.

**Ms Chidgey:** Certainly. We're happy to assist.

**Senator FIERRAVANTI-WELLS:** Thank you so much. I think it has been really, really worthwhile. The next step after that, if this is a route that we do adopt, would mean that the five other amendments that we've put up would be withdrawn. That's the effect.

**CHAIR:** As an interim measure until the wider and more complex issues—including the teachers one—

**Senator FIERRAVANTI-WELLS:** Senator O'Neill, that would then mean that, effectively, the Wong bill would need to be either—we would have to put up amendments that would then—

**Senator O'NEILL:** To the Wong bill?

**Senator FIERRAVANTI-WELLS:** To the Wong bill. Or, basically, the Wong bill would have to be withdrawn and all that would happen would be a minor amendment put up—
CHAIR: To the original act?
Senator FIERRAVANTI-WELLS: to the original act—is that correct?
Ms Chidgey: I won't necessarily comment on what options the parties would want to follow—
Senator FIERRAVANTI-WELLS: But logistically speaking?
Ms Chidgey: Yes, but it would just be an amendment to section 38(3)
Senator FIERRAVANTI-WELLS: To the original act?
Ms Chidgey: Yes, that's right. To rule out certain aspects from that exemption.

CHAIR: With that, I thank you very much for being here for most of the day and for the help you've provided, even though it has been very brief and there are many other things we would have liked to have gone into—but half the committee has gone, as you can see. We do appreciate what you've been able to help us with.

Ms Chidgey: Thank you.
CHAIR: See you in jail, as they say!
Senator FIERRAVANTI-WELLS: It may not have been quantity, but thank you for the quality, if I can put it that way—as a former Attorney-General's officer myself.

CHAIR: We did have Mr Watson listed on the program at the request of either Senator Rice or Senator Pratt, neither of whom are here for all the right reasons. We can't contact Mr Watson, so we might just have to leave Mr Watson.

Committee adjourned at 19:16