Public Health Association
AUSTRALIA

Religious Educational Institutions and Anti-Discrimination Laws

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27 February 2023

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Preamble

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia.

The PHAA works to ensure that the public's health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people's health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

Introduction

PHAA welcomes the opportunity to provide input to the Commission's examination of Religious Educational Institutions and Anti-Discrimination Laws. The terms of reference are as follows:

> "…consideration of what reforms to Federal anti-discrimination laws (including section 38 of the Sex Discrimination Act 1984 (Cth) and the Fair Work Act 2009 (Cth)) should be made in order to ensure, to the extent practicable, Federal anti-discrimination laws reflect the Government's commitments [see below] in a manner that is consistent with the rights and freedoms recognised in the international agreements to which Australia is a party including the International Covenant on Civil and Political Rights."

The Government's commitment was stated as follows:

> " to amend the Sex Discrimination Act 1984 (Cth) and other Federal anti-discrimination laws (as necessary), including the Fair Work Act 2009 (Cth), to ensure that an educational institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed:
>
> - must not discriminate against a student on the basis of sexual orientation, gender identity, marital or relationship status or pregnancy;
> - must not discriminate against a member of staff on the basis of sex, sexual orientation, gender identity, marital or relationship status or pregnancy;
> - can continue to build a community of faith by giving preference, in good faith, to persons of the same religion as the educational institution in the selection of staff."

The fundamental starting point here is the need to provide all children with a supportive environment in school, in every sense. With this in mind, PHAA strongly supports the Government's commitments in relation to the need to prohibit discrimination against students on the basis of sexual orientation, gender identity, marital or relationship status or pregnancy.

This submission deals primarily with the issue of the rights of ***students***, drawing upon our *policy statement on Children and Young People's Health and Rights* and our policy statement on *Comprehensive Reproductive Health, Relationships and Sexuality Education for Children and Young People at School*, both adopted in 2022.

While this submission focuses on children's rights, we also believe that employers and institutions should be prohibited from discriminating against staff. There law should (continue to) provide that there must not be any discrimination directed at current or future staff in any education setting based on gender, sexuality, intersex status, or other aspects of a person's identity.

We note that the collective term "LGBTQIA+" is not all-encompassing, and does not capture the complexities of everyone's experiences, and will therefore resonate with people differently. This term is used in this submission in the absence of a national consensus, after consultation with LGBTIQ+ Health Australia, Intersex Human Rights Australia, and other key stakeholders across several states.

Principles for the protection of children

In PHAA's policy statement on *Children and Young People's Health and Rights* (adopted in 2022) we call for a public health model and child rights approach to guide the promotion of children and young people's wellbeing, including prevention of harm, and ensuring that individuals receive appropriate, safe and effective support as required. Children should be recognised as agents in their own lives who are entitled to participate in decisions about them and about matters that affect them.

We call on governments and education providers to provide accessible health services including preventive health care, particularly in mental health and sexual health, outreach and non-traditional services to reach marginalised groups, early intervention, and holistic health service provision.

We also note Australia's international commitments regarding child rights. We call on governments to work to achieve the highest level of implementation of the UN *Convention on the Rights of the Child* to ensure the wellbeing of all Australian children and young people, including comprehensively incorporating the Convention into Australian law and policy.[1] Governments should also take a more systematic approach to achieve the goals of the *Convention on the Rights of the Child* and commit to strengthen implementation efforts to address the UN Committee on the Right of the Child's recommendations to Australia and recommendations made by other UN Committees, Special Rapporteurs and member states about children's rights in Australia.

In line with the definitions used by the World Health Organization (WHO),[2] PHAA's policy statement on *Comprehensive Reproductive Health, Relationships and Sexuality Education for Children and Young People at School* recognises that sexual health is a state of physical, emotional, mental, and social wellbeing related to sexuality. Sexual health requires a positive and respectful approach to sexuality and sexual relationships and the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination, and violence.

For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected, and fulfilled. Sexuality is a key part of each person's identity and includes "sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy, and reproduction [within] the interaction of biological, psychological, social, economic, political, cultural, legal, historical, religious, and spiritual factors". There is growing consensus that sexual health cannot be achieved and maintained without respect for, and protection of certain human rights enshrined in existing laws.[3]

Educating children and young people about their rights to access health care, Medicare, health service provision, navigating the healthcare system, access to contraception and vaccinations should be supported and promoted.

Young people's right to health includes freedom and control over their bodies, including their sexual and reproductive health choices. These entitlements include access to supportive adults, systems, resources, services, and conditions that provide equality of opportunity for every young person to enjoy the highest attainable standard of health.

Cultural and religious beliefs often play a key role in discourses about gender, sexuality, and variations of sex characteristics for young people. PHAA advocates for the rights of young people to have access to culturally safe, trauma-informed, evidence-based information, education, and health services.[4]

Intersectionality promotes an understanding of the interconnected nature of social categorisations such as (but not limited to) age, Indigenous identities, ethnicity, culture, migration status, refugee and asylum seeker backgrounds, socioeconomic status, geographic location, sex, sex characteristics, gender, sexuality, disability, and religion as they pertain to disadvantage and discrimination.[5]

Children and young people are frequently excluded from access to gender, sexuality, sex and relationships education and support. This is due to their age and societal perception of this information as being irrelevant to their age group,[6] and in some cases, adult discomfort in addressing these issues with young people. This lack of information intersects with and compounds other social determinants of health that can further marginalise children and young people.[7]

Education, both formal and informal, plays a key role in attaining sexual health. Schools have a crucial role in introducing children and young people to gender, sexuality, reproductive health and age-appropriate affirmative information about intersex variations.[8] [9] All young people should have an understanding of blood borne virus transmission, and young men who have sex with other men should have an understanding about the prevention of HIV through HIV Preexposure Prophylaxis medication.

Young people want consistent, engaging and affirming comprehensive sexuality education (CSE) covering a range of age- and developmentally appropriate content provided by well-trained teachers who are comfortable with the topic. Such education may allow students to practice safe sex, be comfortable with their sexuality, recognise healthy relationships and make informed decisions.[10]

To ensure safety and wellbeing, schools need to address the issues of homophobia, biphobia, transphobia, sexual violence, stigma, gender, and sexuality-based discrimination and promote the rights of young people to reduce marginalisation.[11] [12] [13] [14] [15]

Comprehensive sexuality education is "a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality". [16] CSE equips young people with knowledge, skills, attitudes, and values to make considered and adaptive choices on their relationships, behaviours, and sexual health and wellbeing.

Pedagogically inclusive and affirming curricula addressing the importance of consent and bodily autonomy in a development- and age-appropriate manner is critical. Health literacy, including information about rights to make health decisions, is important to strengthen young people's knowledge, motivation, and competency to make well-informed health decisions.[17] [18] [19]

The development of an equitable and socially just CSE program should involve young people, parents/family and other community stakeholders, in addition to experts in human sexuality. It is also essential that the development of such programs be grounded within contemporary evidence-based standards or guidelines. Importantly, research emphasises that the delivery of CSE is just as important as the content.[20]

Teachers need to be trained on CSE at the tertiary level and supported through accredited, up-to-date continuous professional development. Such training must address self-reflective practice, including allowing teachers to voice and mitigate their own biases. Where current school staff have not received such professional development, a whole school approach is recommended to ensure the same values and language are used by all staff across the site.

There is evidence to suggest that school-based interventions which promote education about informed and affirmative consent to sexual activity can effectively prevent or decrease intimate partner violence, victimisation among adolescents, and the emotional harm that such violence can cause.

Evidence regarding the current situation

Quality CSE has been shown to reduce rates of sexually transmissible infections (STIs), unintended pregnancy, identify and report sexual assault or rape, and improve young people's capacities to seek ongoing and enthusiastic affirmative consent from their sexual partners, and delay sexual activity until they feel ready to engage with consideration of the age of consent in their jurisdiction.[21]

CSE incorporates a focus on the following: 1) relationships and emotions, 2) values, rights, culture and sexuality, 3) understanding gender, 4) the human body and development, including affirmative information about atypical development and bodily diversity, 5) inclusive sexuality and sexual behaviour, 6) sexual and reproductive health 7) violence, sexual coercion and exploitation, and staying safe, 8) online safety, sexting and cyberbullying and 9) development of health literacy skills, including where and how to access services that provide acceptable and youth-friendly sexual and reproductive health care.[22] [23]

72% of young people agree that schools should discuss sexuality, with 86% believing that secondary school students have the right to learn about Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, Asexual (LGBTQIA+) people and 81% believing that sexuality education should be relevant to LGBTQIA people.[24] Most secondary school students reported that they received relationships and sexuality education (RSE; 83.6%) at school. Most RSE was delivered by their regular teacher (82.1%) as part of their Health and Physical Education (HPE) subject (70.6%) in Years 7-8 (75.9%) and/or Years 9-10 (80.8%). One in three (37.8%) students found their RSE very or extremely relevant.[25] Young people want more inclusive and realistic information about sexual and gender diversity, innate variations of sex characteristics, violence in relationships, consent and coercion, pornography, intimacy, sexual pleasure, and love, among other topics.[26] [27]

Young people express the need for more practical and interpersonal skills such as the navigation of healthy relationships, how and where to access help and youth health services. Those from minority groups including those with migrant or refugee backgrounds,[28] people of diverse genders, sexualities, and variations of sex characteristics,[29] [30] young people living with disability often report being unable to access this information. [31] [32] [33]

A key priority area is for young people to have a sound understanding of HIV, STIs and blood-borne viruses, including knowledge of transmission, symptoms, and risk mitigation. Young people also need health services that are youth-friendly, close to public transport, open before and after school and weekend hours, with staff who are trained to work with young people, inclusive intake forms (gender, sexuality, Indigeneity), and specialising in young people's health/sexual health.

Evidence of poorer physical and mental health and wellbeing outcomes for diverse young people include:

i. Many young people lack knowledge about the availability and accessibility of various youth-friendly health services, including contraception, mental health, STI and blood borne virus prevention, screening and management, and pregnancy choices.[34] [35]

ii. Young people's access to prevention and health services is further challenged by potential out-of-pocket costs and by their heightened sensitivity around breaches of confidentiality.[36] [37] [38]

iii. Young people of all genders are at risk of sexual assault, especially girls, women, and people with diverse genders and sexualities.[39] Research continues to demonstrate that young Australians are often ill-prepared to navigate safe, healthy, consenting, and egalitarian sexual relationships.[40]

iv. Young people from Aboriginal and Torres Strait Islander communities and those from low socioeconomic backgrounds have disproportionately higher teenage childbirth rates.[41]

v. People with diverse genders, sexualities and variations of sex characteristics have reported lower self-rated physical, mental health and wellbeing than the general Australian population. [42] [43] [44] [45] Young people who identify as sexuality and/or gender diverse and those with innate sex characteristics variations face stigma and discrimination, which makes them vulnerable to increased rates of bullying, harassment, and violence.[46] [47] [48] [49] These young people are disproportionately affected by anxiety, depression, and psychological distress and experience an increased risk of substance misuse, self-harm, suicide ideation and suicide. [50] [51] [52] [53]

vi. Young people from migrant and refugee backgrounds experience language and cultural barriers to accessing sexual and reproductive health services.[54] Migrant and refugee young people are at risk of unintended pregnancies, may have a history of sexual and gender-based violence, [55] and female genital mutilation.[56] Socio-cultural beliefs about sexual health and feelings of shame and stigma attached to sex and sexual health limit migrant and refugee young people's access to sexual and reproductive health services.[57]

vii. Young people with disability do not have adequate opportunities to voice matters affecting their sexual health and wellbeing. Anti-ableist policies in sexual and reproductive health, for example, in education curriculum is key to achieving equitable health outcomes. There is a need for well-designed, disability inclusive education programs that prioritise safety, assertiveness, and self-determination to support positive outcomes. [58] [59]

Appropriate reforms and responses

Regarding the ALRC's current brief to amend Federal anti-discrimination laws, we hope that the principles outlined above can be fully taken into account.

We conclude by noting that we also seek a number of related actions from governments and education providers, which may be of relevance to the ALRC's deliberations, including the following:

- Governments and other stakeholders should work together to develop, implement, and continuously evaluate gender, sexuality, and reproductive health school curricula using an approach that is best practice, implemented whole of school, is student-centred, inclusive, culturally aware, safe, competent, trauma-informed, and rooted in young people's sexual and reproductive health rights.
- Curricula and interventions must be delivered by trained teachers and reinforced in the community.
- Collaboration with services such as Aboriginal Community Controlled Health Organisations is required to provide culturally safe implementation of sexual and reproductive health for Aboriginal and Torres Strait Islander communities.
- Governments (Federal, State, and Territory departments of Health and Education) and other stakeholders (schools across sectors, young people, parents, guardians, families and communities) should work together to develop best practices and curricula to address gender and sexuality and to ensure sexual and reproductive health needs and rights of children and young people.
- Governments and other key stakeholders, including but not limited to tertiary education institutions, teacher registration boards, school boards, and school administrations, must ensure adequate funding, training, resources and support for people with diverse genders, sexualities and

variations of sex characteristics, and reproductive rights-based school curricula founded on best available health evidence.

- In line with key Government frameworks, e.g., Australian Student Wellbeing Framework,[60] a whole school community-based approach is required, including up-to-date and relevant curricula, classroom instruction, supportive environments, and consultations with content experts. The curriculum must be evidence-based, of sufficient duration, incrementally delivered from kindergarten (according to age and developmental stage of students), meet the needs of diverse young people, and include respect and consent education.
- Governments and other stakeholders provide adequate support mechanisms for all children and young people, acknowledging that children and young people grappling with their gender identity, sexuality, and/or sex characteristics and their parents/carers may require referrals to specialist support services.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

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