



AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS

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12 September 2018

The Hon. Scott Morrison MP
Prime Minister
Parliament House
CANBERRA ACT 2600

By post

Dear Prime Minister

RE: Human rights within schools in Australia

Australian Lawyers for Human Rights (**ALHR**) writes to express its concerns following your negative public statements last week about programs designed to ensure that children who may identify as members of the lesbian, gay, bisexual, transgender and intersex (**LGBTI**) community are cared for within Australian schools.

You shared a Daily Telegraph article on Twitter together with the statement “*We do not need ‘gender whisperers’ in our schools. Let kids be kids.*” The article referred to the work of counsellors and alleged that those counsellors coached teachers on how to identify transgender children in the classroom. It then went on to suggest that this is causing a growing number of children to identify as transgender. As the Prime Minister of Australia, by Tweeting the article with this comment you effectively endorsed the content of this news story.

Earlier the same week, in an interview on 2GB radio with Alan Jones, you stated that programs in schools that aim to prevent family violence or acknowledge the existence, for example, of lesbian girls, made you “skin crawl”. You further stated:

I don’t want the values of others being imposed on my children in my school and I don’t think that should be happening in a public school or a private schools. That’s why I want to protect the independent schools to ensure they can continue on providing at least that choice. When it comes to public schools ... how about we just have state schools that focus on things like learning maths [and] learning science.”

As we will explain further below, Australia is in fact obliged under international law to ensure the education system delivers much more than ‘learning maths [and] learning science.

It is not clear to ALHR what you mean by the term “gender whisperers.” ALHR rejects the assertions in the Daily Telegraph article that counsellors in schools are doing anything other than assisting teaching staff to fulfill their obligations as teachers. Indeed, under the NSW Government’s Policy, teachers’ responsibilities are to:

- be conscious of their special duty of care to the students of the NSW public education system in all educational activities in and out of school;
- demonstrate the highest standards of professional behaviour, exercise professional judgement and act in a courteous and sensitive manner when interacting with students, parents or caregivers, staff and the public;
- collaborate in the development of school plans, policies, and programs;
- devise and document teaching and learning programs and develop and implement appropriate evaluation mechanisms;
- be conscious of the need for equitable treatment of all students, including those with disabilities or other special needs; meet the individual learning needs of students and assist each student to maximise their learning outcomes;
- effectively manage and implement programs for child protection and student welfare;
- undertake appropriate ongoing professional development to promote competence in curriculum development, delivery and evaluation, classroom management and teaching skills;
- comply with legislative and industrial requirements and the Department's Code of Conduct, policies and procedures;
- be familiar with the provisions of legislation relevant to official responsibilities;
- comply with reasonable directions given by a supervisor/principal and adhere to the official guidelines concerning the performance of duties;
- implement the priorities of the Department and the school and ensure professional actions reflect Government policy and departmental procedures and guidelines;
- be fair in exercising delegated responsibility and promote personal and professional development of staff;
- perform duties efficiently and effectively and with honesty, integrity and fairness at all times;
- administer prescribed medications and non-prescribed medications (such as analgesics) only in accordance with departmental guidelines; and
- not, under any circumstances, use any form of discipline that includes any threat of physical violence or harm, corporal punishment or engage in any form of behaviour which could cause physical, emotional or psychological harm of any kind to students.¹

It follows that counsellors and support staff are imperative to teachers’ work.

If those counsellors and support staff are required to assist teachers with children who may identify as members of the LGBTI community, then they should be encouraged and be aided to do so. This would facilitate a safe learning environment for all children nurturing and would allow them to develop organically with self-determination and self-awareness while learning under the guidance of culturally-trained teaching staff.

ALHR also notes that in your Twitter comment you stated, “Let kids be kids.” ALHR is in absolute agreement. Letting kids be kids is fundamental to international human rights law and is consistent

¹ NSW Department of Education <<https://education.nsw.gov.au/about-us/jobs-and-opportunities/school-careers/teachers/professional-responsibilities-for-teachers>>

with the *Convention on the Rights of the Child (CRC)*, a treaty which Australia ratified on 17 December 1990² and is therefore bound to uphold.

Further, Australia's international obligations under the Universal Declaration of Human Rights³ (**UDHR**), the International Covenant on Civil and Political Rights⁴ (**ICCPR**); the International Covenant on Economic, Social, and Cultural Rights⁵ (**ICESCR**) and the Convention on the Elimination of All Forms of Discrimination against Women⁶ (**CEDAW**) apply to Australia's children. These instruments establish that all students have the right to protection from mental or physical harm, the right to freedom from discrimination based on their sexual orientation or gender identity, the right to an education, and the right to freedom of expression.

The ICCPR and the CRC guarantee children and adolescents the right to freedom of expression - a right which encompasses the "freedom to seek, receive, and impart information and ideas of all kinds."⁷ The United Nations Human Rights Committee (**UNHRC**) has confirmed that States may not show less respect for this right on the basis of a person's status as a child or adolescent.⁸

As has been noted by Human Rights Watch:

The preamble to the Universal Declaration of Human Rights declares that "every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for "human rights. The Universal Declaration goes on to provide that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms." Similarly, the Convention on the Rights of the Child provides that the purposes of education include "the development of respect for human rights and fundamental freedoms" and "the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples"⁹

Australia has therefore committed to taking all appropriate measures to ensure children are protected against all forms of discrimination, irrespective of their gender or sexuality¹⁰ and to ensure children have access to information aimed at the promotion of their physical and mental health.¹¹

Article 29 of the CRC firmly establishes your Government's obligation to ensure that Australian schools promote, support and protect the core value of the CRC: the human dignity innate in every

² UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

³ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 12 September 2018]

⁴ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> [accessed 12 September 2018]

⁵ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 12 September 2018]

⁶ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <http://www.refworld.org/docid/3ae6b3970.html> [accessed 12 September 2018]

⁷ ICCPR, art. 19(2); Convention on the Rights of the Child, art. 13(1).

⁸ *General Comment 17, Rights of the Child (Article 24)*, para. 2, Human Rights Committee, 35th sess., 1989, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1, p. 23 (1994).

⁹ "Hatred in the Hallways: Violence and Discrimination Against Lesbian, Gay, Bisexual and Transgender Students in U.S. Schools" Human Rights Watch Report May 2001 page Chapter XI Right to Education.

¹⁰ Op Cit Article 2

¹¹ Ibid Article 17

child and his or her equal and inalienable rights, taking into account the child's special developmental needs and diverse evolving capacities.

As the United Nations Committee on the Rights of the Child (**UNCRC**) has noted, the CRC:

..(l)nsists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates. The education to which every child has a right is one designed to provide the child with life skills, to strengthen the child's capacity to enjoy the full range of human rights and to promote a culture which is infused by appropriate human rights values. The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society"¹²

ALHR reminds you that Australia is due to appear before the UNCRC early in 2019.

Over recent years we have progressed in making our country safer for LGBTI people, with marriage equality as well as strengthened anti-discrimination protections in the *Sex Discrimination Act 1984* (Cth), the removal of the 'gay panic' defence from most criminal legislation and the passing of bills allowing same-sex couples to adopt a child and have access to surrogacy.

Yet still, LGBTI youth remain amongst some of our most vulnerable to abuse, harassment and violence. Indeed, LGBTI students represent a significant minority population: 10% of students are same-sex attracted, 4% of students are trans and gender diverse and 1.7% of students are intersex.¹³

A La Trobe University study of 3,134 same-sex-attracted and gender questioning young people, *Writing Themselves In 3*, found that:

- 10% of young people reported that their school did not provide any form of Sexuality Education at all;
- 40% attended a school with no social or structural support features for sexual difference;
- only 19% of young people attended a school that was supportive of their sexuality; and
- over a third described their school as homophobic.¹⁴

A survey of 564 LGBTI individuals in 2015 by the Bully Zero Australia Foundation reported that:

- over 50% of same-sex-attracted or gender diverse young people in Australia have experienced verbal abuse;
- over 15% of same-sex-attracted or gender diverse young people in Australia have experienced physical abuse; and
- over 70% of these homophobic and transphobic incidents take place in schools.¹⁵

¹² United Nations Committee on the Rights of the Child General Comment No.1 (2001) Article 29(1): The Aims of Education CRC/GC/2001/1 17 April 2001 at page 2

¹³ Radcliffe, J. Ward, R. Scott, M. Richardson, S. 2013. Safe Schools Do Better: Supporting sexual diversity, intersex and gender diversity in schools. Safe Schools Coalition Australia.

¹⁴ Hillier, L., Jones, T., Monagle, M., Overton, N., Gahan, L., Blackman, J., & Mitchell, A. 2010. Writing themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people, 79.

¹⁵ Bully Zero Australia Foundation. 2017. What is Homophobic Bullying? accessed at <http://bzaf.org.au/homophobic-bullying/> on 29 March 2017.

Bullying and discrimination can impact on young people's mental health, self-esteem and sense of safety and may, in turn, affect attendance, concentration and academic achievement.

The Beyond Blue report *From Blues to Rainbows* on mental health and wellbeing of Australian trans and gender diverse young people found that almost two thirds of the young people had experienced verbal abuse in response to their gender presentation or non-conformity, and one fifth had experienced physical abuse. Over 90% of young people who experienced physical abuse had thought about suicide in response to their experience.¹⁶

Australia has also committed to protecting children from physical or mental abuse when they are in care¹⁷ and recognising the rights of the child to the enjoyment of the highest attainable standard of health through education.¹⁸ Homophobia and transphobia in Australia remain barriers to these human rights.

Research demonstrates that social inclusion must be embedded into the school curriculum, in programs and policies. *Writing Themselves In 3* found that young people who attended a school that was supportive, rather than homophobic, were less likely to self-harm and suicide.¹⁹ Research from *Beyond Blue* identifies this population as needing targeted and tailored support at school:

Inclusive schools were those where leadership and teachers tried to address students with their preferred pronouns, were flexible about uniform and toilet arrangements, took a stand against bullying, and aimed to be accommodating to the individual's needs.²⁰

Inclusive schools also set a standard for inclusive workplaces. The *Pride in Diversity Australian Workplace Equality Index Employee Survey 2017* reflects that 40% of gender diverse respondents felt that being open about their gender diversity in the workplace made them "more productive" or "significantly more productive at work". The same research indicates that over one half of the surveyed men, whether gay or bisexual, and one third of surveyed women, confirm the same.²¹

Consequently, complying with Australia's human rights obligations and promoting the benefits of inclusivity from childhood also makes sound economic sense.

In recalling Australia's international human rights obligations, we encourage you to take active steps to create safe and inclusive school environments for LGBTI students, staff and families.

We would be grateful if you could consider, carefully, what language you use on social media and in the public space because, as the Prime Minister of Australia, your conduct has an enormous impact on the physical and psychological safety of everyday Australian citizens.

¹⁶ Smith, E., Jones, T., Ward, R., Dixon, J., Mitchell, A., & Hillier, L. 2014. *From Blues to Rainbows: Mental Health and Wellbeing of gender diverse and transgender young people in Australia*. Melbourne: The Australian Research Centre in Sex, Health, and Society, 12.

¹⁷ Ibid Article 19

¹⁸ Ibid Article 24

¹⁹ Hillier, L., Jones, T., Monagle, M., Overton, N., Gahan, L., Blackman, J., & Mitchell, A. 2010. *Writing themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people*, 73.

²⁰ Smith, E., Jones, T., Ward, R., Dixon, J., Mitchell, A., & Hillier, L. 2014. *From Blues to Rainbows: Mental Health and Wellbeing of gender diverse and transgender young people in Australia*. Melbourne: The Australian Research Centre in Sex, Health, and Society, 12.

²¹ *Pride in Diversity, Australian Workplace Equality Index 2017 Employee Survey Analysis*, accessed at http://www.pid-awei.com.au/content/uploads/2015/08/AWEI_Survey_2017_Digital.pdf on 11 September 2018.

We join other organisations who seek to protect the human rights of all Australian children in calling on you to meet with transgender children and learn about their experiences and the impact that comments such as the ones you have made have upon their wellbeing.

We look forward to receiving your reply and continuing to work with you to improve the wellbeing of all Australians.

Yours sincerely




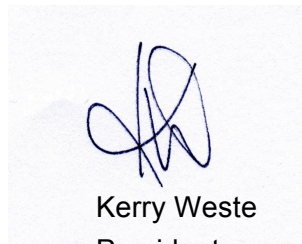
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ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.