

Research articles

# Educating children about sexual orientation and gender identity post-marriage equality in Australia

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## Abstract

Australia achieved marriage equality in 2017, following a controversial and divisive postal survey which invited all Australians to ‘vote’ on whether same-sex couples should be allowed to marry. The ‘No’ campaign focused on the alleged negative impact of marriage equality on children’s education. Scare-mongering television clips claimed that boys would start wearing dresses to school and radical sex and gender education would become mandatory. Four years later, it is timely to consider the legacy of the ‘No’ campaign on education. An analysis of developments since marriage equality was achieved, reveals that LGBTQ+ students have become *more* vulnerable to discrimination and there is *less* human rights education (HRE) about diverse sexual orientations and gender identities. The article concludes with six recommendations for measures to combat these negative developments.

## Keywords

Human rights education, HRE, lesbian, gay, bisexual, transgender, queer, LGBT, LGBTQ+, marriage equality, sexual orientation, gender identity, SOGI, Safe Schools, Religious Discrimination Bills, Australia

## Introduction

In December 2017, Australia became the 26th country to open the institution of marriage to same-sex couples. Such reforms were achieved following a divisive postal survey, in which Australians were invited to 'vote' on whether same-sex couples should be allowed to marry. Unlike in Ireland, where a referendum was necessary to amend the Constitution to allow same-sex couples to marry, no such constitutional or legislative requirement existed in Australia. Despite this, the Australian Government decided to undertake a non-compulsory postal survey, to evaluate citizens' views on whether the institution of marriage should be available to all persons, regardless of their sexual orientation or gender identity (SOGI).

The outcome of the postal survey confirmed that the majority of Australians supported marriage equality (Winsor, 2016). Shortly after the survey results were announced, the Federal Parliament amended the *Marriage Act 1961* (Cth), by removing the words that defined marriage as being 'between a man and a woman'. Since then, thousands of same-sex couples have married. The Australian Bureau of Statistics reported that in 2018 – the first full year in which same-sex couples could lawfully marry – 6,538 same-sex couples were married, accounting for 5.5% of all Australian marriages that year (Australian Bureau of Statistics, 2019).

The introduction of marriage equality in Australia signalled a new era; one in which lesbian, gay, bisexual, transgender and queer (LGBTQ+) people expected they would experience reduced discrimination and enjoy increased respect for their human rights. Unfortunately, this expectation has not been realised, and schools have become the new 'battleground' in which those who campaigned against marriage equality are continuing their fight against equal rights for LGBTQ+ people.

The attainment of marriage equality was accompanied by an upsurge in vocal opposition to schools teaching students about diverse sexual orientations and gender identities and the use of anti-bullying programmes designed to make schools safer for LGBTQ+ students and students with LGBTQ+ parents. Organisations such as the Australian Christian Lobby not only advocated against marriage equality, but also for the abolition of the Safe Schools Program (Brohier, 2018), an initiative designed to create safer and more inclusive school environments for LGBTQ+ students, staff and families (The Safe Schools Coalition Australia, n.d.). This campaign was successful, with federal government funding for the Safe Schools Program ceasing and most state and territory governments withdrawing their support for it.

While Australia's national curriculum does include some opportunities for human rights education (HRE), it is largely silent on matters relating to SOGI and the rights of LGBTQ+ persons (Gerber & Pettitt, 2021). The Safe Schools Program ameliorated, to some degree, the

absence of comprehensive HRE about SOGI in the national curriculum. However, since the Safe Schools Program was defunded, there is less opportunity for students to learn about SOGI and the rights of LGBTQ+ people.

This article begins with an analysis of how HRE is addressed in international human rights law, followed by a similar analysis of how international human rights law recognises the right of LGBTQ+ people to live their lives free from discrimination based on their SOGI. Within international human rights law, HRE and the rights of LGBTQ+ people are rarely considered together, notwithstanding that there are clearly important links between the two. The discussion in sections 2 and 3 of this article analyses the international human rights law pertaining to both HRE and the rights of LGBTQ+ people and, in so doing, demonstrates how governments have an obligation to ensure that students learn about the rights of LGBTQ+ people.

Section 4 moves from an examination of Australia's obligations under international law to an analysis of what is happening domestically. It considers the extent to which SOGI-based HRE was provided in Australian schools before marriage equality, and what has changed since then. In particular, it considers two key developments, namely, the Federal Government's defunding of the Safe Schools Program and its attempts to enact the *Religious Discrimination Bills 2021*.

Section 5 considers a way forward, discussing reforms that would help Australia to implement SOGI-based HRE within schools, in accordance with its international law obligations. According to UNESCO, a comprehensive approach to addressing SOGI-based discrimination and bullying that would help ensure schools are an inclusive environment for LGBTQ+ students—requires governments to adopt six specific actions, namely to,

- (i) develop national policies or action plans;
- (ii) have inclusive curricula and learning materials;
- (iii) provide training for educational staff;
- (iv) ensure there is support for students and families;
- (v) enter into partnerships with civil society organisations; and
- (vi) monitor discrimination and evaluate the implementation of these measures (UNESCO, 2016).

Section 5 discusses each of these six elements, including how they can be implemented in Australia.

## International human rights law relating to HRE

The principle of human rights education was first espoused in the Universal Declaration of Human Rights (UDHR) in 1948. The drafters of the UDHR wanted to ensure that states not only provided education, but that the education provided would promote respect for human rights. As the UNESCO delegate, Pierre Lebar, observed:

[In] Germany, under the Hitler regime, education had been admirably organized but had, nevertheless, produced disastrous results. It was absolutely necessary to make clear that education to which everyone was entitled should strengthen respect of the rights set forth in the Declaration and combat the spirit of intolerance (UN Economic and Social Council, 1948, 12).

The result was Article 26(2) of the UDHR which provides 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. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace (United Nations [UN], 1948).

This broad definition, outlining the need for education to be directed to respect for human rights and freedoms, was subsequently incorporated into the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 13(1) of which provides that,

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the **full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms**. They further agree that education shall **enable all persons to participate effectively in a free society**, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace (UN, 1966a). [emphasis added]

Directing that education ‘enable all persons to participate effectively in a free society’ is particularly relevant when discussing the need for HRE that addresses SOGI-based human rights violations, as it requires that HRE contribute to LGBTQ+ people being able to live their lives free from discrimination based on their SOGI (UN Human Rights Council, 2015). Making the experiences of LGBTQ+ people visible within the school curriculum has demonstrably positive impacts on LGBTQ+ students, and their peers, and is essential if students of all SOGIs are to participate effectively in their schooling, and in society (Ezer et al., 2019).

The Convention on the Rights of the Child (CRC) also addresses HRE. Article 29 of that treaty

sets out governments' obligations regarding the content of education that children are to receive. Of particular relevance to the human rights of LGBTQ+ children is the mandate that education be directed to,

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- ...
- (d) 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, ethnic, national and religious groups and persons of indigenous origin (UN, 1989, Art 29(1)).

HRE that is inclusive of respect and understanding of diverse SOGIs is necessary to fulfil the aims of developing 'the child's personality, talents and mental and physical abilities to their fullest potential' and developing 'respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations' (UN, 1989, Art 29(1)(a) and (b)). Furthermore, HRE that promotes respect for the rights of LGBTQ+ people is also arguably essential for '[t]he 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, ethnic, national and religious groups and persons of indigenous origin'. This is because homophobia, biphobia and transphobia are able to thrive in environments where there is not 'understanding, peace, tolerance, equality of sexes, and friendship among all peoples' (Fulcher, 2021).

In 2011, the UN General Assembly adopted the United Nations Declaration on Human Rights Education and Training, Article 4 of which further clarifies and articulates States' obligations to provide HRE, declaring that HRE should be directed to,

- (a) raising awareness, understanding and acceptance of human rights;
- (b) developing a universal culture of human rights;
- (c) pursuing the effective realization of all human rights and promoting tolerance, non-discrimination and equality;
- (d) ensuring equal opportunities for all through access to HRE, without any discrimination; and
- (e) contributing to the prevention of human rights violations by combating 'discrimination, racism, stereotyping and incitement to hatred, and the harmful attitudes and

prejudices that underlie them' (UN, 2011).

All of these directives are relevant to creating a society where the rights of LGBTQ+ people are respected, protected and fulfilled (Gerber, 2013).

In addition to articulating the norms pertaining to HRE, the UN has also actively promoted HRE through the activities and advocacy of its various organs. The UN declared the period from 1995 to 2004 to be the 'Decade for Human Rights Education'. This decade reflected an ambitious determination on the part of the UN to further HRE, by providing a framework for 'global mobilization of strategies for human rights education' (UN High Commissioner for Human Rights, 2000, [178]).

As this decade was coming to an end, the UN Human Rights Council (HRC) proclaimed the 'World Programme for HRE', commencing in 2005. The World Programme seeks to 'promote a common understanding of basic principles and methodologies of human rights education, to provide a concrete framework for action and to strengthen partnerships and cooperation from the international level down to the grass roots' (World Programme for Human Rights Education, n.d.). There have been three phases of the World Programme, spanning four years each.

The HRC's 'Plan of Action for the fourth phase (2020-2024) of the World Programme for Human Rights Education' states that one of the programme's 'specific objectives' is,

To expand human rights education for, with and by youth in formal and nonformal education and, indirectly, informal learning, prioritizing young people in situations of exclusion or vulnerability. (UN Human Rights Council, 2019, para. 22(b))

In a footnote, the HRC specifies that the 'young people' to whom it is referring includes 'lesbian, gay, bisexual, transgender and intersex youth' (UN Human Rights Council, 2019, fn 16). Furthermore, the Plan explicitly provides that educational and training activities shall,

Foster respect for and appreciation of diversity, and opposition to discrimination on the basis of [...] **sexual orientation and gender identity**, and other bases. (UN Human Rights Council, 2019, para. 10(b)); [emphasis added]

The Plan also sets out some 'core competencies' that should be covered within HRE, including,

Respect for and appreciation of diversity, including through the use of inclusive language and attitudes, and opposition to discrimination on the basis of [...] **sexual orientation and gender identity** and other bases. (UN Human Rights Council, 2019, para. 27(c)(ii)); [emphasis added]

These specific references to SOGI and LGBT+ young people is a significant improvement on Plans for the earlier phases of the World Programme. The Plans for Phases Two and Three of the World Programme contained only one reference to 'sexual orientation' (but notably not 'gender identity') under the heading of 'Principles for HRE Activities' (no reference to 'sexual orientation' was made in Phase One of the World Programme for HRE). The more specific and detailed inclusion of SOGI in the Plan for Phase Four indicates that the UN's HRE efforts are recognising the importance of expressly including education about the rights of vulnerable minorities.

### **International human rights law relating to LGBTQ+ people**

While the UN's references to SOGI issues within the HRE context is relatively new, HRE has been a focus of the UN's work regarding the rights of LGBTQ+ people for a long time. For example, in 2011 the HRC adopted a Resolution directing the Office of the High Commissioner for Human Rights (OHCHR) to undertake a study into violence and related human rights violations based on SOGI. The resultant report outlined ways in which LGBTQ+ students were discriminated against within education systems (UN Human Rights Council, 2011, paras. 58-61), and briefly canvassed the ways that some states had attempted to address such discrimination. Under 'Examples of initiatives to counter homophobia and transphobia in educational institutions', the Report specifically recognised that, 'In Australia, the publicly funded Safe Schools Coalition ([www.safeschoolscoalitionvictoria.org.au](http://www.safeschoolscoalitionvictoria.org.au)) offers teacher training and learning materials' (UN Human Rights Council, 2011, para. 77).

The Free & Equal programme is a UN initiative aimed at promoting respect for the rights of LGBTQ+ people (UN, n.d.). Launched in July 2013, by the UN High Commissioner, UN Free & Equal is a global campaign for equal rights and the fair treatment of LGBTQ+ people everywhere. It is implemented in partnership with several other UN agencies, including the United Nations Children's Fund (UNICEF) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), both of which play important roles in school-based HRE. UN Free and Equal recognises the vital role that HRE plays in improving respect for the rights of LGBTQ+. This is illustrated in the 2016 Report to the HRC, entitled *Living Free and Equal*, which recommended that states should be,

establishing comprehensive national and school policies to prevent and address such [homophobic and transphobic] violence; ensuring that curricula and learning materials are inclusive; providing training and support to teachers and other staff; ensuring safe and inclusive school environments; providing access to objective, accurate information on sexual orientation, gender identity... (UN, 2016, p. 28)

In addition, the Report noted that,

it is important to tackle harmful stereotypes and attitudes through: the explicit inclusion of affirming messages about diversity and LGBT and intersex people in the national curriculum; the provision of adequate training to teachers and education sector staff; and monitoring levels of discrimination, including against LGBT and intersex students. (UN, 2016, p. 69)

Thus, the UN's initiatives to improve respect for the rights of LGBTQ+ people recognise the important role that HRE plays in achieving equality and non-discrimination for sexual and gender minorities.

In 2014, the HRC requested the UN High Commissioner to report on good practices and ways to overcome violence and discrimination against LGBTQ+ people. The resultant report stated that,

United Nations agencies are increasingly integrating issues of sexual orientation and gender identity into their programmatic work, including in the areas of development, **education**, labour rights, child rights, gender equality, refugee protection, HIV and public health. (UN Human Rights Council, 2015, para. 7)

Once again, Australia was identified as a country that was actively seeking to reduce discrimination within education, through the 'expansion of anti-bullying programmes and other anti-discrimination measures in schools' (UN Human Rights Council, 2015, para. 74). While not explicitly referenced in the 2015 report, the Safe Schools Program was still running at the time, and it is likely that this was the programme referred to.

The role that HRE can play in improving respect for rights of LGBTQ+ people has received increased attention since the 2016 appointment of the UN Independent Expert for the Protection Against Violence and Discrimination based on Sexual Orientation and Gender Identity (Independent Expert) (Narain, 2020). The Independent Expert has made important observations regarding HRE relating to SOGI. For example, the first Independent Expert stated,

We call on States to adopt and implement effective measures prohibiting violence, anti-discrimination laws covering gender identity and expression — real or perceived — as well as sexual orientation as prohibited grounds for discrimination, to **develop inclusive curriculums and learning materials, training for and support to teachers and other school staff, education and support programmes for parents**, safe and non-discriminatory access to bathrooms, and awareness-raising programmes nurturing respect and understanding for gender diversity. (Muntarhorn, 2017, para. 21)

The 2nd Independent Expert stated in 2018 that states needed to:

- (a) Design and conduct public education campaigns, including on antibullying and sexual education;
- (b) Formulate education policies addressing harmful social and cultural bias, misconceptions and prejudice. (Madrigal-Borloz, 2018, para. 97)

The UN's efforts to promote HRE are beginning to include the rights of LGBTQ+ people, and the UN's efforts to increase respect for the rights of LGBTQ+ people recognise the vital role that HRE plays in achieving this goal. However, these efforts still tend to operate in parallel and would benefit from increased collaboration and cooperation between the different arms of the UN that are separately working on HRE and the rights of LGBTQ+ people.

### **HRE in Australia**

Unlike most other liberal democracies, Australia does not have a Human Rights Bill. It has, however, ratified the CRC and the ICESCR, which, as outlined above, both require State Parties to provide HRE. However, Australia has not yet given domestic effect to these norms through the enactment of legislative mandates pertaining to HRE. This has contributed to Australia not fully complying with its international commitments relating to HRE (Gerber & Pettitt, 2021).

The UN Committee on the Rights of the Child (CRC Committee) (2001, para. 17) has recommended that State Parties should formally incorporate HRE into education policies and legislation at all levels. Without such measures, the Committee noted, it will be unlikely that HRE will be incorporated into educational systems (2001, para. 17). Australia's failure to embed HRE in legislation and education policies has contributed to the finding that: '[h]uman rights are not well understood by the Australian community' (National Human Rights Consultation Committee, 2009, p. 149).

Australia, as a federation – consisting of six states and two territories – also suffers from a lack of legislatively mandated HRE at the state and territory levels. The *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) is one of only three state or territory-based human rights Acts (The two other jurisdictions with human rights Acts being the ACT and Queensland). Section 41(d) of the Victorian Charter provides that the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) has responsibility for education about human rights. However, this responsibility is misplaced, because the responsibility for curriculum and schools falls on the Department of Education, not the VEOHRC (Gerber & Pettitt, 2021).

While there is a lack of legislative mandate, there are some policies that to some extent ameliorate this omission. For example, the 2008 *Melbourne Declaration on Education Goals*

*for Young Australians* provides that education should be free from discrimination based on 'gender' and 'sexual orientation'. However, this does not flow through to the Declaration's action plan, with the result that 'the Declaration's reference to orientation is widely undiscovered' (Jones & Hillier, 2012). Further, this policy is about education not being provided in a discriminatory manner, rather than the provision of HRE that is inclusive of diverse SOGIs.

### ***SOGI-based HRE Pre Marriage Equality***

While HRE is not legislatively mandated, human rights do appear, to a limited extent, in the Australian National Curriculum (Australian Curriculum, n.d.). For example, human rights are referred to within the General Capabilities area of 'Ethical Understanding', and sexuality forms part of the Learning Area of 'Health and Physical Education'. This section outlines how the rights of LGBTQ+ people were addressed within Australian schools prior to marriage equality, by analysing both the national curriculum and the Safe Schools Program.

### ***SOGI-related HRE in the National Curriculum***

Australia has a national school curriculum for Foundation (a nationally consistent term for the year of schooling prior to Year 1) to Year 12. Unfortunately, HRE is only included to a limited degree in the national curriculum, and it largely remains up to the discretion of individual schools and teachers as to how to include it in the classroom (Gerber & Pettitt, 2021). HRE has been incorporated into a variety of subject areas, including English, history and geography (Gerber & Pettitt, 2021). Unfortunately, no HRE specifically relating to the rights of LGBTQ+ people is included in the curriculum.

An example of how the curriculum addresses diverse sexual orientations and gender identities is in the health and physical education curriculum for years 7 and 8, where there is a reference to 'investigating how changing feelings and attractions are part of developing sexual identities' (*Health and Physical Education*, n.d.). Although the reference to identities in the plural suggests more than one sexual identity, no further elaboration on diverse sexual orientation and gender identities is provided. This is in stark contrast to the many references within the curriculum to diverse cultural identities.

A 2010 national study on the sexual health and wellbeing of same-sex attracted and gender-questioning young people found that heteronormativity dominates the curricula of Australian schools (Hillier et al., 2010). Heteronormativity is the presentation of heterosexuality as the 'norm' of human sexuality. It reinforces and perpetuates homophobic oppression, reflecting wider societal attitudes to sexuality and gender diversity (Rhodes, 2015). The follow-up 2021 national study found that,

A large proportion of young people in this survey said that their education included

no mention of LGBTQA+ people in supportive or affirming ways, and this can foster a sense of invisibility or exclusion. (Hill et al., 2021)

Rhodes (2015) argues that the lack of visibility of LGBTQ+ identities in the national curriculum ‘oppresses and silences those who don’t conform to heterosexist ideals’. He further states that,

Within this context there is little room for the myriad expressions of sexuality beyond the biological and physical. The emotional, spiritual and lived experiences of LGBTQI people and the contributions they have made to society are nowhere to be found in the curriculum. (Rhodes, 2015)

There are several missed opportunities for SOGI-related HRE in the national curriculum. For example, history is a subject in which family histories and structures are studied in the Foundation year and in Years 1 and 6. While the changing nature of families in terms of their size and structure is discussed, and different types of families such as nuclear, single parent and blended families are noted, there is no reference to same-sex families. This reflects the notable absence of SOGI-related HRE in the Australian National Curriculum prior to marriage equality.

A recent critical discourse analysis of the Health and Physical Education component of the Australian Curriculum found that the latest version is an improvement on earlier iterations; however, it suffers from a lack of clarity. This lack of direction may cause teachers to experience confusion as to what to teach their students about diverse SOGIs within sexuality education (Ezer et al., 2019).

### *The Safe Schools Program: filling the gap*

The Safe Schools Program was initially developed in Victoria in 2010, in response to an identified need by school communities, parents and teachers ‘for greater support for LGBTI students, who are at higher risks of bullying and suicide, and to ensure that schools create safe and inclusive environments’ (Victoria Department of Education and Training, 2021). The programme’s function was ‘to ensure schools are safe places for all students, including LGBTI students, and are free of discrimination’ (Victoria Department of Education and Training, 2021), and it played a role in filling the gap left by the absence of SOGI-related HRE in the national curriculum.

Building on the Victorian programme, a national network of organisations – the Safe Schools Coalition Australia (SSCA) – was developed to work with schools across Australia, to create safer and more inclusive environments for LGBTQ+ children, staff and families. This included raising awareness about the rights of LGBTQ+ people (*The Safe Schools Coalition Australia*, n.d.). SSCA received funding from the Federal Department of Education and Training between

2014 and 2017. The nation-wide Safe Schools Program assisted hundreds of schools across the country to promote respect, safety and inclusion, benefitting the whole school community.

There were three components to the Safe Schools Program:

- i. **Tailored Professional Learning:** SSCA offered professional development for teachers and school staff. Training sessions could be adapted to the needs of the school and ranged from introductory sessions to in-depth training around complex issues (*The Safe Schools Coalition Australia*, n.d.).
- ii. **Guidance and Consultation:** SSCA staff provided support to school leaders and teachers, including tailored advice on inclusive practices, assisting school staff to explore the school climate and make improvements to school policies to be more inclusive (*The Safe Schools Coalition Australia*, n.d.).
- iii. **Resources for School Staff:** SSCA provided a range of resources for school staff to respond to homophobic/transphobic behaviour, and actively supported and included gender diversity, intersex and sexual diversity in school communities. SSCA also produced age-appropriate teaching and learning resources aligned to the Australian Curriculum for use by schoolteachers, called 'All Of Us' (*Student Wellbeing Hub*, n.d.). The Guide linked to the health and physical education curriculum for years 7 and 8 on the topic of gender and sexual diversity.

Safe Schools was an optional resource for schools and teachers: it did not form part of the school curriculum and was not mandatory. School principals and teachers exercised their professional judgement about accessing support and resources appropriate for their school (*The Safe Schools Coalition Australia*, n.d.). Thus, while Safe Schools helped fill a significant gap in the national curriculum, it was only effective to the extent that individual schools were willing to adopt it.

### ***SOGI-Based HRE Post Marriage Equality***

Somewhat counter-intuitively, the achievement of marriage equality was followed by a reduction in education regarding SOGI-related issues and support for LGBTQ+ students and families. This section examines how HRE relating to SOGI became politicised during the marriage equality postal survey and emerged as the new battlefield between conservative politicians and the religious right on one side, and the LGBTQ+ community and their allies on the other. This section focuses on two strategies that saw SOGI-based HRE challenged and diminished, namely,

- (i) the campaign against the Safe Schools Program that culminated in it being defunded; and
- (ii) the Religious Freedom Bills, which, if passed, will potentially increase and legitimise

discrimination against LGBTQ+ students and teachers within religious schools.

Together, these two measures have had a chilling effect on the extent to which LGBTQ+ students feel included and respected in Australian schools. A 2021 national study reported that approximately 60% of participants said that they had felt unsafe or uncomfortable in the previous 12 months at secondary school due to their sexuality or gender identity (Hill et al., 2021, p. 52).

### *The Death of the Safe Schools Program*

As already noted, there was no legal requirement for a postal survey to gauge public opinion on whether LGBTQ+ people should have equal rights to marry. Parliament had the power to achieve this reform by amending the *Marriage Act 1961* (Cth) to remove the definition of marriage as being exclusively between a man and a woman. Although the postal survey was ultimately successful - 7,817,247 people (61.6%) responded 'Yes' and 4,873,987 people (38.4%) responded 'No' (Australian Bureau of Statistics, 2017) – the process left a damaging legacy that is being seen in schools across the country.

The 'No' campaign has been described as a 'moral panic' for the way in which it created a sense of anxiety around how allowing same-sex couples to marry would lead to changes in the curriculum that would threaten childhood innocence and disrupt societal values and morals. The particular focus of this moral panic was the Safe School Program (Penovic, 2021). The narrative of fear around corrupting children was embraced and amplified by some elements of the media. For example, by February 2017, *The Australian* newspaper had published nearly 200 adverse stories concerning the Safe Schools Program (Penovic, 2021, p. 324).

The target audience for this campaign was parents. They were subjected to fear-mongering that focused on changes that would be made to their children's education if same-sex couples were allowed to marry (see Factrackers, 2017). The QR code below links to an example of the videos that the 'No' campaign ran about how marriage equality would purportedly lead to radical changes to the curriculum. The stated purpose of these videos is to 'disabuse ... viewers of the notion that there is no relationship between same-sex marriage and changes in the education system' and to assert that children will be indoctrinated and exposed to 'discussions of group sex, discussions of anal sex'.

## Figure 1

A QR code below linking to one of the videos of the 'No' campaign on marriage equality.



The views of opponents of marriage equality are largely informed by their religious beliefs. However, in a secular country like Australia, arguments based on religious grounds are unlikely to be successful. Therefore, opponents of marriage equality chose to frame their campaign as being about 'family values and children's rights' (Jones, 2015).

A video produced by the Coalition for Marriage did not even mention marriage. Rather, it begins by stating that 'School programs have no place teaching my son about radical gender ideas' and continues with another woman saying 'How am I supposed to protect my kids in the future from this stuff.' The final message is 'Say no to these radical sex and gender programs' (*Same-sex marriage No campaign launches*, 2017).

Thus, the postal survey gave those opposing equal rights for LGBTQ+ people licence to disseminate fear about how education would change if marriage equality were achieved and gave legitimacy to these arguments on the basis that they were simply part of the national debate about community values (Grattan, 2016).

Linking marriage equality to education made the Safe Schools Program an easy target. Parent groups began challenging the validity of the Safe Schools Program, and even resorted to taking their children out of schools that voluntarily signed up to it in order to 'protect' their children from learning about SOGI issues (see for example, *Kids Rights*, n.d.; *You're teaching our children what?*, n.d.).

Politicians also spoke out against the Safe Schools Program. For example, One Nation Party Queensland leader Steve Dickson claimed that female students in Grade 4 were 'being taught by teachers how to masturbate, how to strap on dildos, how to do this sort of stuff' (Hamilton-Smith, 2017). However, a fact-checking report by *The Conversation*, revealed that: 'There is no discussion of the details of specific sex acts, sex aids or sexual health in Safe Schools resources' (Louden & Rowe, 2017). In fact, the Safe Schools Program was an optional resource

for schools and teachers, which helped school staff ‘create safer and more inclusive environments for LGBTI students and families’ (Louden & Rowe, 2017).

Following vocal opposition to Safe Schools, the Australian Government announced an independent review of the resources provided to schools by the programme (Louden, 2016). Professor William Louden (2016, pp. 2, 9) conducted the review into the ‘appropriateness and efficacy’ of the programme, and found that,

- The resource ‘All of Us’ is consistent with the aims of the program, is suitable, robust, age-appropriate, educationally sound and aligned with the Australian Curriculum.
- The content of the four guidelines documents is consistent with the aims of the program, reducing homophobic and transphobic behaviour and intersex prejudice, and increasing support for same sex attracted, intersex and gender diverse students.
- The language and content is suitable for the teachers, parents and senior students likely to read policy documents.

Notwithstanding these findings, the outspoken critics of Safe Schools were successful in persuading the Federal Government to cut all funding for the Safe Schools Program (Thompson, 2018). It is clear that campaign to stop marriage reform, which consumed the media and public for several years, created a climate of fear that ultimately led to the Safe Schools Program becoming the proverbial ‘sacrificial lamb’ (Rasmussen & Leahy, 2018).

### *The Religious Freedom Bills*

Much of the anti-marriage equality campaign focused on family values and children’s rights. However, as soon as the outcome of the postal survey was announced, opponents of marriage equality changed tack and started campaigning for legislation to protect their right to espouse their religiously informed views. On the face of it, this is a reasonable demand. Australia has federal laws prohibiting discrimination on the basis of sex, race, age and disability, but not religion. An Act prohibiting discrimination on the basis of religion would be a welcome addition to the non-discrimination legislative framework.

However, opponents of marriage equality advocated for much more than a mere prohibition on discrimination based on religion; they sought to elevate religious expression above other human rights, allowing people to use their religion to discriminate against others, including LGBTQ+ people. Indeed, the draft legislation was described as giving Australians ‘the right to be a bigot’ (Ireland, 2020).

Before analysing the *Religious Discrimination Bills 2021*, it is important to recognise the protection that religious schools already enjoy under existing anti-discrimination laws. The *Sex Discrimination Act 1984* (Cth) prohibits discrimination on a number of grounds, including SOGI. However, the Act contains exemptions which allow certain entities to lawfully discriminate against a person, based on their SOGI, in certain circumstances. Section 38 provides that educational institutions established for religious purposes can lawfully discriminate against teachers and students on the basis of their SOGI if it is done in ‘good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed’.

The effect of these exemptions is that religious schools are allowed to lawfully expel a student on the grounds of their SOGI. After public criticism of this provision, Prime Minister Scott Morrison, in October 2018, promised that the discrimination law would be amended to make it clear that religious schools could not expel a student on the basis of their sexuality (Karp, 2018). More than three years have passed since this promise was made, and no legislation protecting LGBTQ+ students from being expelled from religious schools has been presented to Parliament, let alone passed. In contrast, Victoria has recently joined Tasmania in removing religious exemptions from its anti-discrimination laws (The Equal Opportunity (Religious Exceptions) Amendment Bill 2021 (Vic) was enacted in December 2021. Tasmania has not had religious exemptions since 1997, *Anti-Discrimination Act 1998* (Tas)).

Religious people and organisations are entitled to a ‘shield’ that protects them from being discriminated against because of their religion. The draft *Religious Discrimination Bills* operated more as a ‘sword’ which people of faith could use to discriminate against others. It has been observed that, ‘If passed, [the Bills] will entrench in law the idea that LGBTIQ+ people are still not quite like everyone else – for this is the effect of state-sanctioned discrimination’ (Poulos, 2021).

In May 2022 an election saw the election of a new federal government. The Labor Government, led by Anthony Albanese has committed to better protected the rights of LGBTQ+ people and the *Religious Discrimination Bills* will not be pursued further.

However, to some extent the damage has already been done. LGBTQ+ students have become political fodder and can seemingly be subjected to persecution and discrimination with impunity. The suicide of 13-year-old schoolboy Tyrone Unsworth in Brisbane, in November 2016, following homophobic bullying, provides ample evidence that Australia needs to do much better in supporting and protecting LGBTQ+ youth, and educating young people about the right of LGBTQ+ people to live their lives in dignity and equality (Lewis, 2017).

## **The Way Forward**

Australian schools have become less inclusive and less safe for LGBTQ+ people after the attainment of marriage equality. There is an urgent need for more, rather than less, SOGI-based HRE. To achieve this, Australia should follow UNESCO's recommendations regarding a comprehensive education approach to combatting homophobic, biphobic and transphobic bullying. This requires the development of,

- (i) National policies or action plans;
- (ii) Inclusive curricula and learning materials;
- (iii) Training for educational staff;
- (iv) Support for students and families;
- (v) Partnerships with civil society organisations; and
- (vi) Monitoring of discrimination and evaluating the executed measures (UNESCO, 2016).

Each of these elements is discussed below.

### ***National Policies and Action Plans***

Over 25 years ago the UN OHCHR published *Guidelines for National Plans of Action for Human Rights Education ('Guidelines')* (1997). Australia has yet to adopt a national plan of action for HRE. This reveals the low priority that successive federal governments place on human rights generally, and HRE in particular.

The Guidelines recommend that the first step towards developing a National Plan of Action for HRE is to establish a national committee for HRE. The Australian Council for Human Rights Education (ACHRE), was established in 1999 by a group of committed and dedicated volunteers to actively pursue human rights education in Australia (Australian Council for Human Rights Education, n.d.). The ACHRE has organised several international HRE conferences and run projects such as the 'Citizen for Humanity Project'. However, developing a national plan of action for HRE in Australia does not appear to be on its agenda.

The absence of a national plan of action for HRE in Australia is a significant impediment to comprehensive HRE that includes SOGI issues. Without such a national plan, Australia cannot identify short, medium and long term priorities in HRE, and the strategies and programmes needed for these priorities to be realised.

### ***Inclusive Curricula***

Learning materials and curricula convey influential messages about 'normality', legitimacy and power (UNESCO, 2016). This makes the invisibility of diverse SOGI perspectives within the Australian national curriculum particularly problematic. The lack of representation of LGBTQ+ people in schools has negative consequences for all students (IGLYO, n.d.). For example,

invisibility reinforces stereotypical views of sexuality and gender, and thus contributes to the incidences of homophobic, biphobic and transphobic bullying (UNESCO, 2012).

Conversely, the inclusion of LGBTQ+ identities and realities within the school curricula has demonstrably positive impacts on the well-being of students (Kosciw et al., 2013; Taylor & Peter, 2011). An inclusive curriculum that addresses the experiences of LGBTQ+ people reduces prejudice and SOGI-based bullying (Kosciw et al., 2013; Taylor & Peter, 2011). Inclusive and affirming curricula have the power to break down prejudices and improve respect for and the safety of LGBTQ+ students, by conveying positive representations of LGBTQ+ people, and explicitly affirming their equality in dignity and rights (Snapp, et al., 2015).

The lack of mandated SOGI education within the national curriculum is one key barrier to addressing SOGI issues within schools. In an Australian study, a participant said that teachers get very nervous and find it difficult to deal with contentious issues, and that 'unless they are embedded in the curriculum they will not be taught' (Burrige, 2013, p. 46). There is an urgent need for SOGI-related HRE to be embedded in the national curriculum. This requires removing heteronormative language and attitudes (UNESCO, 2012) and providing positive and non-stereotypical role models of people who identify as LGBTQ+ in all subjects across the curriculum (O'Higgins-Norman et al., 2010). It is also important that the contributions of LGBTQ+ people be incorporated across all areas of the curriculum with open reference to their sexual orientation and gender identity, thereby promoting positive role models (IGLYO, 2018). There is no shortage of LGBTQ+ role models in Australia. Students would benefit from learning about the contributions made across diverse disciplines by respected LGBTQ+ public figures in Australia. To name but a few, these include the first gay High Court judge, Michael Kirby; the first lesbian High Court judge, Virginia Bell; LGBTQ+ politicians Bob Brown and Penny Wong; musicians Peter Allen and Troye Sivan; artists William Dobell and Jeffrey Smart; sportspersons Samantha Stosur and Josh Cavallo; and trans model Andreja Pejić.

In terms of how SOGI-related HRE should be provided, best practice suggests that it should be 'embedded throughout the full curriculum or, at least, be mandatory for all students' (IGLYO, 2018). Warwick and Douglas (2001, p. 21) found that with an inclusive curriculum, teachers are more likely to address LGBTQ+ issues and reach more students with consistent positive measures of inclusion and respect. The integration of LGBTQ+ issues throughout the curriculum also demonstrates stronger institutional support for the rights of LGBTQ+ people, which can help to foster support amongst teachers, students and parents (Burdge et al., 2013).

### ***Teacher Training***

While teachers play a vital role in creating a safe atmosphere for all students, regardless of their SOGI status, many of them lack the confidence and knowledge to discuss LGBTQ+ issues

or support students who are LGBTQ+ (IGLYO, n.d.). Teachers often 'have misgivings about the perceived controversial nature of HRE' (Struthers, 2016). This is multiplied many times over when the HRE relates to LGBTQ+ issues because teachers can be reticent about discussing diverse sexual orientations and gender identities, for fear of how this will be received by the school administration and parents (Mitchell et al., 2014). Teachers may feel ill-equipped to educate students about sexual and gender diversity (Kitchen and Bellini, 2012).

For teachers to be able to provide HRE regarding SOGI issues, they must have the knowledge and skills to do so. Therefore, 'a national or regional training programme for teachers and other school staff on LGBTQI awareness and inclusion is essential' (IGLYO, n.d.). This could be incorporated into initial teaching training as well as ongoing professional development.

### ***Support for Students***

Providing access to support programmes and resources for LGBTQ+ students in relation to SOGI issues is integral to fostering an inclusive and respectful school environment (Snapp, 2015). In order to achieve this, links to relevant LGBTQ+ youth services and groups should be established for signposting and referrals, and specific support for everyone affected by homophobic, biphobic, and transphobic violence should be provided (IGLYO, n.d.).

It is important the LGBTQ+ students have access to support staff who understand their issues and are trained to respond accordingly (O'Higgins-Norman et al., 2010). These may be school counsellors or nurses, level coordinators or designated teachers.

### ***Partnerships with Civil Society Organisations***

Partnerships between schools and civil society (specifically, NGOs with an LGBTQ+ youth focus), can be instrumental to fostering an LGBTQ+-inclusive and respectful school environment. LGBTQ+ NGOs can assist with advice on bullying policies, ensuring curricula and teaching materials are LGBTQ+-inclusive, and providing training and support to teachers in dealing with issues of sexual and gender diversity.

### ***Monitoring of Discrimination and Evaluating Executed Measures***

In order to create LGBTQ+-inclusive schools across Australia, it is essential to know the nature, prevalence and impact of SOGI-based violence within schools. Thus, it is important to monitor homophobic, biphobic, and transphobic bullying (IGLYO, n.d.). This can be achieved by recording incidences of bullying that are based on students' (perceived or actual) SOGI, so as to build up a record of the issue within each school (IGLYO, n.d.).

Initiatives aimed at fostering an LGBTQ+-inclusive school environment should also be monitored and evaluated so as to develop an evidence base and adapt measures according to this evidence (UNESCO, 2016). Evaluation should be undertaken with the input of LGBTQ+

young people and findings and recommendations from the evaluations be implemented (Attawell, 2012).

## Conclusion

It was reasonable to anticipate that the attainment of marriage equality in Australia would lead to increased education about diverse SOGIs and the rights of LGBTQ+ people and ultimately culminate in a less heterocentric curriculum and school system. However, the opposite is true. Achieving marriage equality sparked renewed efforts by the 'No' campaign to limit the rights of LGBTQ+ people, using arguments of protecting children and religious freedom. This culminated in the defunding of the UN-endorsed Safe Schools Program. As a result, an essential protective and empowering platform, through which the rights of LGBTQ+ people could be discussed, was removed, and LGBTQ+ children became more vulnerable to bullying and other forms of discrimination.

Law reform on its own is not enough to protect the human rights of LGBTQ+ people. Legislative change must be accompanied by a multifaceted, holistic approach to eliminating discrimination that includes increased positive representation of sexual and gender diversity in education, films, the media and from religious leaders (Gerber, 2018). Marriage equality was an important step forward, but equally important is embedding education about the rights of LGBTQ+ people in our national curriculum and ensuring that our young people learn about respecting diversity, in all its forms. The recent change of government does give some cause for cautious optimism. The new Prime Minister, Anthony Albanese said in his victory speech that he wants Australia to be a country where 'no matter where you live, who you worship, who you love or what your last name is, that places no restrictions on your journey in life' (Gerber, 2022). Time will tell whether this change in government leads to a change in what is taught in schools and how safe LGBTQ+ students feel.

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