Public Attitudes to Discrimination in Private Schools

1. Background

The debate over the values that should be taught in public and private schools has been heated. But in the face of this conflict, there is little argument about the desirability of teaching all children the value of mutual respect, that is, to respect difference and eschew any discrimination against children on the basis of their ethnicity, race, religion, sexuality or physical characteristics. The Minister for Education, Brendan Nelson, has recently declared:

> Australian parents, more than ever, are expecting schools to foster values such as tolerance, trust, mutual respect, courage, compassion, honesty, courtesy and doing one's best (Nelson, 2004).

In recent decades the desire to promote a more tolerant and inclusive society has been enshrined in legislation enacted by both Commonwealth and State governments. Anti-discrimination legislation at Commonwealth and State level regulates the practices of all educational authorities. However, these laws often provide extensive exemptions for private schools, exemptions that enable them to engage in discriminatory practices that are prohibited in public schools and other sectors. Consequently, it is often left to the management of each individual private school to determine whether they will engage in, or condone, discriminatory behaviour.

The different treatment of public and private schools under anti-discrimination laws means that employees, contract workers and students in the public sector have more rights than their counterparts in private schools. Furthermore, by establishing exemptions for some areas of discrimination but not others, legislators have created a *de facto* hierarchy of discrimination, with discrimination on the grounds of sexuality or pregnancy, for instance, more likely to be lawful for private schools than racial discrimination.

With respect to these exemptions, it is ironic that one of the agreed Federal-State Ministerial Council's National Goals for Schooling in the Twenty-first Century is that:

> Schooling should be socially just, so that students' outcomes from schooling are free from the negative forms of discrimination based on sex, language, culture and ethnicity, religion or disability; and of differences arising from students' socio-economic background or geographic location (MCEETYA, 1999).

These goals reflect Australia's obligations under several international treaties (including the International Covenant on Civil and Political Rights, the Convention Against Discrimination in Education, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Discrimination (Employment and Occupation) Convention) and were agreed by State, Territory and Commonwealth

Ministers for Education in 1999.[1] They are meant to establish a foundation for action among governments and non-government school authorities. In addition, the recent 'Bullying. No Way' statement from the Australian Education Association declares:

> We all have the right to learn in a safe and supportive school environment that values diversity - an environment free from bullying, harassment, discrimination and violence. We all have the right to be treated with fairness and dignity. We all have a responsibility to keep others safe and to treat them in the same way - with fairness, dignity and respect. Australian school communities working together to build safe, supportive, respectful and inclusive environments for every member of the school community - empowering students to be active in the pursuit of justice (AEA 2004).

2. The treatment of public and private schools under anti-discrimination laws

The commentary below concentrates on the differences in the treatment of public and private schools in Commonwealth and State/Territory anti-discrimination laws. As such, it does not provide a comprehensive list of all exemptions that apply to both public and private schools, such as exemptions enabling single sex schools to enrol only students of that sex, or schools catering exclusively for students with disabilities to enrol only such students.

2.1 Commonwealth anti-discrimination legislation

The main pieces of Commonwealth anti-discrimination legislation regulating the conduct of educational authorities are the *Human Rights and Equal Opportunity Commission Act 1986*, *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984* and *Disability Discrimination Act 1992*.[2]

The *Human Rights and Equal Opportunity Commission Act* established the Human Rights and Equal Opportunity Commission and provides the framework for the hearing and conciliation of complaints by the Commission concerning unlawful discrimination under the *Racial Discrimination Act*, *Sex Discrimination Act* and *Disability Discrimination Act 1992*.

In addition to the power to conciliate complaints concerning unlawful discrimination, the Commission also has the power to inquire into any act or practice that is inconsistent with, or contrary to, any human right or that constitutes discrimination

[1] For example, Article 26 of the *International Covenant on Civil and Political Rights* states: 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

[2] Section 109 of the Commonwealth Constitution provides that where a law of a State is inconsistent with a law of the Commonwealth, the Commonwealth law will prevail to the extent of the inconsistency. However, all three Acts mentioned above include provisions that indicate they are not intended to limit or exclude the operation of State anti-discrimination laws that are capable of operating concurrently with the Commonwealth laws (see s.6A(1) of the *Racial Discrimination Act (Cwlth)*; s.10 of the *Sex Discrimination Act 1984 (Cwlth)*; and s.13 of the *Disability Discrimination Act 1992 (Cwlth)*). Note also, at the time of writing a bill outlawing discrimination on the grounds of age was before the Federal Parliament (the *Age Discrimination Bill 2004*).

under the Act. Discrimination is defined for these purposes as including any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, age, marital status, disability, nationality, sexual preference and trade union activity.[3] However, there are two exemptions.

Firstly, discrimination for these purposes does not include any distinction, exclusion or preference in respect of a particular job based on the inherent requirements of the job (the 'inherent requirements of the job exemption').[4] Secondly, it excludes any distinction, exclusion or preference:

> …in connection with employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, being a distinction, exclusion or preference made in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or that creed.

This is sometimes described as the 'religious institutions exemption'. The religious institutions have been held to include organisations that are responsible for the administration of religious schools.[5] Therefore, if homosexual behaviour is against the teachings of a religion, there is a strong argument a school that is conducted for children of that religion could refuse to employ a person who openly engages in a homosexual relationship without being deemed to have taken an act that constitutes discrimination under the *Human Rights and Equal Opportunity Commission Act*.[6]

The *Disability Discrimination Act,* which makes it unlawful for a person to discriminate against another on the grounds of disability, treats public and private educational institutions equally. However, unlike the *Racial Discrimination Act* which contains no exemptions for public and private schools, the *Disability Discrimination Act 1992* provides exemptions for both the private and public educational institutions.[7]

The *Sex Discrimination Act* makes it unlawful for an educational institution to discriminate against a person on the grounds of sex, marital status, pregnancy or potential pregnancy in relation to employment, contract work and the provision of education.[8] For students, this means that educational institutions cannot refuse

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[3] See *Human Rights and Equal Opportunity Commission Act 1986*, s.3; and *Human Rights and Equal Opportunity Commission Regulations*, reg.4.

[4] For discussion of the scope of this exemption, see HREOC (1998) and International Labour Conference (1998)

[5] See HREOC (1998).

[6] See HREOC (1998).

[7] Under the *Disability Discrimination Act 1992 (Cwlth),* it is unlawful for an educational authority to discriminate against a person on the grounds of the person's disability in relation to admission, access to benefits or expulsion, or to subject them to any other detriment. However, both public and private educational authorities can refuse the admission of a student where the person "would require services or facilities that are not required by students who do not have a disability and the provision of which would impose unjustifiable hardship on the educational authority" (see s.22(4)). Furthermore, both private and public schools are able to rely on the "reasonableness requirement" to avoid liability for indirect discrimination in relation to enrolments and existing students (see s.6, *Finney v Hills Grammar School* [1999] HREOCA 14 (20 July 1999); *Hills Grammar School v Human Rights and Equal Opportunity Commission* [2000] FCA 658 (18 May 2000)).

[8] See sections 14, 16 & 21.

admission, deny access to benefits, expel a student or subject them to any other detriment on these grounds.[9] It also prevents schools from refusing to employ, dismissing, or imposing special conditions or restrictions on teachers and other staff on the grounds of sex, marital status, pregnancy or potential pregnancy.[10] However, the Act contains a number of exemptions that are relevant to the administration of public and private schools.

Importantly, public schools, State education departments and other relevant State government agencies are exempt from the prohibitions concerning discrimination on the grounds of sex, marital status, pregnancy and potential pregnancy in relation to employment and sexual harassment.[11] While this exemption may seem strange, it stems from an implied Constitutional limitation on the Commonwealth's legislative power, 'which protects the States from an exercise of power that would threaten their existence or capacity to govern or would impose a particular disability or burden upon an operation or activity of a State or the execution of its constitutional powers'.[12] However, as is discussed below, all States have legislation that prohibits discrimination on the grounds of sex, marital status, pregnancy and potential pregnancy in relation to employment.

The *Sex Discrimination Act* also contains several exemptions that only apply to religious private schools and organisations that are responsible for the administration of religious schools.[13] With regard to students, religious schools are exempt from the prohibitions concerning marital status and pregnancy if the discrimination is done 'in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed'.[14] Religious schools are also allowed to discriminate against a person in connection with employment or a position as a contract worker on the grounds of sex, marital status or pregnancy. Again, this exemption is subject to the proviso that it be done 'in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed'.[15]

Therefore, a religious school may be able lawfully to expel a female student on the grounds she is unmarried and pregnant if it is against the doctrines of the religion to give birth out of wedlock. Similarly, it may also be lawful for a religious school to

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[9] s. 21(1) & (2). However, s.21(3) allows a school to refuse to admit a student of one sex where it is conducted solely for students of the opposite sex and where education at the level at which the applicant is seeking admission is provided by the school only or mainly for students of the opposite sex.

[10] ss.14 and 16.

[11] ss.12 and 13.

[12] *Australian Education Union v Human Rights and Equal Opportunity Commission* [1997] FCA 1288 (25 November 1997). See also *Re Australian Education Union and Ors; Ex parte the State of Victoria* (1995) 184 CLR 188. It is unclear why there is not an equivalent exemption in the *Disability Discrimination Act* and the *Racial Discrimination Act*.

[13] See s.38.

[14] s.38(3).

[15] S.38(1) and (2). Note, there is also a broad exemption for 'bodies established for religious purposes' (see s.37). In order to apply, the discriminatory act must conform to the doctrines of the religion or be necessary to avoid injury to the religious susceptibilities of adherents of that religion. While there is uncertainty about the relationship between this exemption and the exemption in s.38, it is arguable it applies to organisations established for religious purposes that are responsible for the administration of religious schools.

refuse employment to a person on the grounds they are in a *de facto* relationship if it is against the teachings of the religion to have sexual intercourse out of wedlock.

Some may argue the exemptions for religious schools are necessary due to section 116 of the Commonwealth Constitution, which provides that the Commonwealth cannot make laws 'for prohibiting the free exercise of any religion'.[16] However, the High Court has adopted a narrow interpretation of the restrictions in s.116.[17] This narrow interpretation has provided the Commonwealth with considerable scope to make laws that only incidentally affect the free exercise of a religion, particularly where those laws are intended to achieve an 'overriding public purpose', such as fulfilling an international obligation to outlaw all forms of discrimination.[18] Therefore, there is a strong argument these exemptions are not necessary to ensure the Constitutional validity of the provisions of the *Sex Discrimination Act* that prohibit discrimination in schools.

2.2 State and Territory anti-discrimination legislation

In all State and Territory anti-discrimination legislation, private schools are provided with exemptions in relation to the treatment of employees (including teachers), contract workers and students that are either not available to public schools or that, in practice, only or mainly apply to private schools. These exemptions vary in breadth (in terms of the areas of discrimination they cover) and scope (in terms of the conditions that must be satisfied for the exemption to apply). Some of the major exemptions that apply in NSW and Victoria are summarised in Table 1.

[16] See, for example, discussion of s.116 of the Constitution in Senate Legal and Constitutional Committee, *Inquiry into Sexuality Discrimination*, Commonwealth of Australia, 1997. Note also, the States are not bound by the restrictions in s.116 of the Constitution. Hence, they are able to pass laws banning or restricting the free exercise of any religion (providing the laws are not inconsistent with a Commonwealth law).

[17] See *Kruger v Commonwealth* (1997) 190 CLR 1, *Attorney-General (Victoria); Ex rel Black v Commonwealth* (1981) 146 CLR 559, *Adelaide Company of Jehovah's Witnesses Inc v Commonwealth* (1943) 67 CLR 116, and *Krygger v Williams* (1912) 15 CLR 366.

[18] For example, in *Kruger v Commonwealth* (1997) 190 CLR 1, Gaudron J stated: "a law will not be a law for 'prohibiting the free exercise of any religion', notwithstanding that, in terms, it does just that or that it operates directly with that consequence, if it is necessary to attain some overriding public purpose or to satisfy some pressing social need. Nor will it have that purpose if it is a law for some specific purpose unconnected with the free exercise of religion and only incidentally affects that freedom". Similarly, in the same case, Gummow J stated: "freedom to act in accordance with religious beliefs is not co-extensive with freedom of religious belief. Action in pursuance of a particular religious belief that is both monotheistic and eager to proselytise may conflict impermissibly with toleration both of other religions and of an absence of religion".

Table 1 Exemptions from New South Wales and Victorian anti-discrimination laws specific to private schools

Area of discrimination	NSW	Victoria
Age or age group	✓	✓
Disability/impairment	✓	✓
Homosexuality/sexuality	✓	✓
Marital status	✓	✓
Pregnancy or potential pregnancy	✓	✓
Race	X	✓
Sex	✓	✓

Key: X – No exemptions
✓ – Specific exemptions for private or religious schools

Note: Some of these exemptions may not be available due to the operation of inconsistent Commonwealth laws.

New South Wales's *Anti-Discrimination Act 1977* contains the broadest scope for exemptions for private schools. Under this Act, 'private educational institutions' are exempt from the unlawful discrimination provisions concerning sex (including pregnancy), transgender grounds, marital status, disability, homosexuality and age. [19] [20] However, they are not exempt from the provisions that prohibit discrimination on the grounds of race.[21] So, for example, a private school could expel a student for being a homosexual or transsexual, and could refuse to employ a person on the same grounds.[22]

The Victorian *Equal Opportunity Act 1995* includes a number of exemptions that apply to public and private schools. However, in practice, these exemptions mainly apply to religious private schools. In this regard, the *Equal Opportunity Act* allows people to be excluded from a school or school program on the grounds of race or religious belief if the school or program is operated 'wholly or mainly for students of a particular…race (or) religious belief' of which the person is not a member.[23] ''In addition, organisations that operate religious schools are explicitly exempt from all of

[19] Respectively, ss.25(3) and 31A(3); ss.38C(3) and 38K(3); ss.40(3) and 46A(3); ss.49D(3) and 49L(3); ss.49ZH(3) and 49ZO(3); ss.49ZYL.
[20] Any discrimination on the grounds of sex, marital status, pregnancy or potential pregnancy must also satisfy the requirements in the *Sex Discrimination Act 1984* (Cwlth).
[21] However, that the Government can make regulations excluding any school, public or private, from the racial discrimination provisions (s.17(3)). Although, any exemption granted under this provision would have to be consistent with the requirements in the *Racial Discrimination Act 1975* (Cwlth).
[22] There is also a broad exemption for 'bodies established to propagate religion' (see s.56).
[23] s.38. See also s.56 in relation to the provision of accommodation in schools established "wholly or mainly" for students of a particular race or religious belief. Note, it is arguable the exemptions concerning race are invalid due to the provisions of the *Racial Discrimination Act 1975* (Cwlth).

the prohibitions on discrimination in the Act (which include discrimination on the grounds of age, sex, disability, sexual preference, marital status, parental status, status as a carer, industrial activity, pregnancy, physical features, race, religion, and political belief)[24] in relation to 'establishing, directing, controlling or administering' the schools, provided the relevant acts are carried out 'in accordance with the relevant religious beliefs or principles'.[25] If the organisation was 'established for religious purposes', they are also exempt from all of the prohibitions concerning discrimination in relation to acts or practices that conform with the doctrines of the religion or are necessary to avoid injury to the religious sensitivities of people of that religion.[26]

Western Australia's *Equal Opportunity Act 1984* similarly includes a number of exemptions that only apply to religious private schools. In this regard, 'private educational authorities' are exempt from the provisions concerning discrimination on the grounds of religion in relation to employment 'if the duties of the employment or work are for the purposes of, or in connection with, or otherwise involve or relate to the participation of the employee in any religious observance or practice'.[27] More importantly, religious schools also have a general exemption from all of the anti-discrimination provisions in the act (i.e. sex, marital status, pregnancy, transgender, family responsibility or family status, sexual orientation, race, religion, political conviction, disability or age) in relation to employment and contract workers so long as the relevant action is taken 'in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed'.[28] They are also exempt from all of the anti-discrimination provisions, other than race, disability or age, in relation to students if they discriminate 'in good faith in favour of adherents of that religion or creed generally, but not in a manner that discriminates against a particular class or group of persons who are not adherents of that religion or creed'.[29] In addition, a body established for religious purposes that is responsible for the administration of a religious school may also be exempt from all anti-discrimination provisions in the Act if the discriminatory act 'conforms to the doctrines, tenets or beliefs of that religion' or 'is necessary to avoid injury to the religious susceptibilities of adherents of that religion'.[30]

The situation under the Australian Capital Territory's anti-discrimination laws is similar to that in Western Australia.[31] The *Discrimination Act 1991* (ACT) allows educational authorities to discriminate on the grounds of religious conviction in relation to employment if the duties of the employment involve participation by the employee in the 'teaching, observance or practice of the relevant religion'.[32] It also allows religious schools to discriminate on any of the grounds outlawed under the Act in relation to students, employees, or contract workers if the discrimination is carried out 'in good faith to avoid injury to the religious susceptibilities of adherents of that

[24] See s.6.
[25] s.76.
[26] s.75. See also s.77, which provides an exemption for acts that are necessary for the relevant person to comply with their genuine religious beliefs or principles.
[27] s.66.
[28] s.73(1) and (2).
[29] s.73(3).
[30] s.72.
[31] However, the protection offered to religions in s.116 of the Commonwealth Constitution applies to laws made by all Territory governments. See *Kruger v Commonwealth* (1997) 190 CLR 1.
[32] s.44.

religion or creed'.[33] Further, religious schools are also permitted to refuse to admit a student if the school is conducted solely for students having a religious conviction other than that of the applicant.[34]

In South Australia, private and public schools are generally subject to the same restrictions concerning discrimination. However, religious schools are exempt from the prohibitions concerning discrimination on the grounds of sexuality in relation to any act that 'arises in the course of the administration' of the school, providing it 'is founded on the precepts' of the relevant religion.[35] Bodies established for religious purposes that are responsible for the administration of religious schools may also be exempt from all anti-discrimination provisions in the *Equal Opportunity Act 1984* (SA) in relation to any act that 'conforms with the precepts of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion'.[36]

Religious schools are also treated differently to all other schools in Queensland, Northern Territory and Tasmania. In both Queensland and the Northern Territory, religious schools can exclude people who apply for admission as students who are not of the relevant religion.[37] In all three jurisdictions, religious schools are also entitled to discriminate in relation to employment and contract workers.

In the Northern Territory, religious schools are entitled to discriminate against a person in relation to employment on the grounds of sexuality and 'religious belief or activity', providing the discrimination is done in 'in good faith to avoid offending the religious sensitivities of people of the particular religion'.[38] Similarly, in Tasmania, religious schools are allowed to discriminate on the grounds of religion in relation to employment if the discrimination is for the purpose of enabling, or better enabling, the school to be conducted in accordance with the 'tenets, beliefs, teachings, principles or practices' of the relevant religion.[39] In both Queensland and Tasmania, employers can impose discriminatory requirements on a position, such as being required to practice a certain religion to be a teacher in a religious school, providing they are 'genuine occupational requirements'.[40] Further, in Queensland, a body established for religious purposes that administers a school can discriminate on any grounds (other than age, race or disability) against a person 'in a way that is not unreasonable' if the person

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[33] s.33. See also s.32.
[34] s.46.
[35] *Equal Opportunity Act 1984* (SA), s.50.
[36] s.50(1)(c).
[37] *Anti-Discrimination Act 1991* (Qld), s.41 (see also s.89 in relation to the provision of accommodation); and *Anti-Discrimination Act* (NT), s.30(2) (see also s.40 in relation to the provision of accommodation).
[38] *Anti-Discrimination Act* (NT), s.37A. See also s.51 in relation to "bodies established for religious purposes" and the appointment of people to perform functions or participate in "any religious observance or practice".
[39] *Anti-Discrimination Act 1998* (Tas), s.51(2). See also s.52, which provides two exemptions for discrimination on the grounds of religious belief in relation to the selection or appointment of a person to participate in any religious observance or practice, and acts carried out in accordance with the doctrine of a particular religion that are necessary to avoid offending the religious sensitivities of any person of the relevant religion.
[40] *Anti-Discrimination Act 1991* (Qld), s.25(1); and *Anti-Discrimination Act 1998* (Tas), s.51(1). Note, s.25(1) of the *Anti-Discrimination Act 1991* (Qld) applies to discrimination on any grounds outlined in the Act and could apply to both public and private schools (although it is far more likely to apply to private religious schools). In contrast, s.51(1) of the *Anti-Discrimination Act 1998* (Tas) only applies in relation to discrimination on the ground of "religious belief or affiliation or religious activity" and, in effect, only applies to religious schools.

openly acts in a way that is contrary to the religious beliefs of the employer and it is a genuine occupational requirement of the employer that the person act in a way that is consistent with the employer's religious beliefs.[41]

It is apparent that in all States and Territories, unlike public schools, private schools have considerable scope to engage in discriminatory practices in relation to employment, contract workers and students. However, in most jurisdictions, the relevant exemptions are only available to religious private schools and religious organisations responsible for the administration of private schools.

3. Prevalence of discrimination by private schools

In both the public and private education sectors, there are some schools that are performing well in their attempts to rid their schools of negative forms of discrimination, and others that are performing poorly. As we have seen, while discrimination against students occurs in both public and private schools, private schools are able to discriminate in ways that are unlawful in public schools. Importantly, if discrimination does occur in a public school, those affected can usually seek some form of legal redress. Further, it is often the case that State educational authorities will take steps, for example, through the development of specific policies, to ensure that public schools comply with their legal obligations. By contrast, private schools often have no incentives to develop such policies, because in many cases, they are exempt from anti-discriminatory provisions of the legislation.

3.1 Pregnancy

Compared with many other developed countries, Australia has a high teenage pregnancy rate with 19 live births per 1000 teenage girls per year and an estimated 22 abortions per year per 1000 teenage girls (Skinner *et al*., 2003).[42] While there are no data to indicate how many of these teenagers become pregnant while at school, or the number who terminate their pregnancies, if around 12,000 young women below the age of 19 (Boulden, 2000, p. 7) become pregnant each year, it is likely that more than half of these women will be at school at the time they become pregnant. Given that those teenagers who do become pregnant are more likely to live in an area of socio-economic disadvantage (Skinner *et al*., 2003), and that the majority of students from low-socioeconomic groups attend government schools (Preston, 2003), it is also likely that more than 70 per cent of young women who become pregnant while at school will be in the public education system. However, this still means that there are potentially hundreds of young women who become pregnant each year while attending a private school.

Boulden (2000) provides a comprehensive analysis of the relationship between youth pregnancy and education. She finds that the overwhelming majority of young women who become mothers while at school do not finish their secondary education to Year 12 level (Boulden, 2000, p. 7). While many of those who do become pregnant and elect to continue their pregnancies are already 'at risk', if they do not complete their education, they are put at further risk of a lifetime of poverty and welfare dependency:

[41] *Anti-discrimination Act 1991* (Qld), s.25(2).
[42] The figures are based on 1997-1999 data. However, the abortion rate is likely to be an underestimate since it is based on Medicare claims.

> Other consequences of becoming a young mother and leaving school before completing secondary education include social isolation, a higher than average likelihood of a second pregnancy during the teenage years, a higher risk of involvement in unstable and violent relationships, and poorer than average outcomes for children in terms of health, welfare and educational achievement. There is also clear evidence of an inter-generational trend in becoming a teenage parent (Association of Women Educators, 2004).

It appears, however, that despite the risks, some schools are encouraging pregnant girls to leave. According to Boulden:

> Some schools still fear that having pregnant girls and young mums on campus will give the school a 'bad image', and they fail to encourage young women to stay.
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> Others actively encourage them to leave. In researching this study we heard more than once of pregnant young women who had been told by their schools, 'You've made your bed, now lie in it.' (Boulden, 2000, pp. 7-8).[43]

As part of her study, Boulden (2000) contacted both public and private educational authorities about the existence of any policies dealing with the continuing education of pregnant and parenting students. While she found there was considerable variation amongst the policies of state education authorities, and that two States had developed no such policies, overall the response of the public sector appears better by comparison to the private sector. Boulden says that in relation to Independent (non-Catholic) schools:

> The advice was that no such policies existed at a statewide level, and that such issues were a matter for individual schools.
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> There appears to be no broad policy framework for Catholic schools either, due to the absence of systemic relationships between Catholic schools. Contact with Diocesan Education Offices around Australia did not reveal any policy in relation to pregnant and parenting students, although the Broken Bay Diocesan Office in NSW did indicate that such a policy was being considered (Boulden, 2000, p. 15).

3.2 Sexuality

The Human Rights and Equal Opportunity Commission's website notes that 'there have been documented cases of both teachers and students being victimised because of their sexual orientation' (Human Rights and Equal Opportunity Commission, 2001). Both discrimination and verbal and physical abuse are reported.

For many gay, lesbian and bi-sexual students, school is an unsafe environment, with one study finding that such students were just as likely to feel unsafe at school as on the street (Hillier *et al.*, 1998, p. 38). According to the authors of the study:

> Part of the reason for this was the belief that there was no protection available in the ostensibly regulated school environment. There was evidence that if assault or harassment occurred, procedures and practices would not be set in motion to ensure justice or to prevent such behaviour recurring. A number of

[43] None of the 11 schools, which Boulden (2000) described as having developed good quality programs for retaining young mothers, were private schools.

> students commented on the inconsistencies between their schools' dealings with racism and sexism as opposed to heterosexism. In many cases, little was seen to be done by school authorities to address the hostility that was directed at gay, lesbian or bisexual students (Hillier *et al*., 1998, p. 38).

While students involved in the study cited examples of discrimination and abuse in both public and private schools, some commentators suggest the culture of boy's only schools (which tend to be predominantly in the private sector) can be particularly homophobic. Hillier *et al.*, quote Rowan, who was then 19 years old:

> I was at an all boys private school which was horribly homophobic until year 11 but moved to a mixed school to do year 11 and 12. There, I was in a very caring and open minded environment, with a lot of other people in my situation both boys and girls (approx. 10% of students were not 'Strait'). So here it was easy to finally find myself and 'Come Out'. I had no problems and all my friends were extremely supportive, as were the teachers who worked it out for themselves (Hillier *et al*., 1998, p. 40).

As discussed above, while many private schools may be able to expel students because they are gay or lesbian, it appears the more common scenario is for schools to pressure such students into leaving. That is, students feel forced to leave school early due to the constant bullying and the failure of the school to do tackle the abuse. Commenting on the feedback of students involved in their study, Hillier *et al.* suggest 'many young people were hunted out of their schools and driven to attempts at suicide' (Hillier *et al.*, 1998, p. 36).

In 2002, a former student of Hillcrest Christian College in Berwick, Victoria commenced proceedings against the school under the *Equal Opportunity Act 1995* (Vic) on the grounds the school discriminated against him because he was homosexual (ABC News, 2002). The student alleged that the Principal told him that 'I shouldn't be admitting it, I shouldn't be proud of it, and that's the last he wanted to hear about it' (ABC News, 2002). He also alleged another teacher remarked that he 'had the devil in him' (Milligan, 2002a). At the time the claim was lodged he stated that 'he eventually felt he had no option but to leave the school and continue by distance education' (ABC News, 2002).

The Principal of Hillcrest Christian College, Tony Ham denied the allegations, and said:

> We [the school] state that we will actively share with them [students] the Christian faith. They [parents] sign on the dotted line. We don't apologise for that…We don't talk about being defective, we talk about sin and disobeying God (quoted in Milligan, 2002b).

He was also reported as saying that he teaches 'mutual respect' for gay people, yet 'stands by the motto "Love the sinner, hate the sin"' (Milligan, 2002b). Obviously, by teaching pupils that homosexuality is a sin, there is the potential for schools to perpetuate homophobic attitudes.

Kelly, a spokesperson for the Rainbow Sash movement who is also a former teacher and seminarian, suggests that teachers can subtly exacerbate homophobia, particularly in religious schools because they do not want to been seen as being too supportive of gay and lesbian students in case they are seen as being gay themselves (Kelly quoted in Milligan, 2002b). According to Kelly, 'bullies in religious schools can readily grab for church teachings to justify their behaviour' (Kelly quoted in Milligan, 2002b).

4. Public attitudes to discrimination by private schools

For this report, public attitudes to various aspects of private schooling have been explored by way of an opinion survey. Newspoll was commissioned to survey a randomly selected sample of 650 adults in New South Wales and Victoria. The survey was conducted by telephone over 19-22 April 2004. In addition to the usual demographic information, respondents were also asked whether they themselves had attended a private or state school for the majority of their high school education, or whether they attended both types equally. Parents were also asked whether they send their children to private or state schools.

Respondents were asked whether they agree or disagree with the following statements:

> Private schools should be able to expel students because they are gay; and
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> Private schools should be able to expel girls if they become pregnant.

If they agreed they were asked whether they strongly agree or partly agree. If they disagreed they were asked whether they strongly disagree or partly disagree.

The responses to the first question are reported in Tables 2-4 below. The Newspoll survey shows that nine out of ten (89 per cent) respondents disagree that private schools should be able to expel gay students – Table 2. Although not shown in the table, 76 per cent *strongly* disagree with the view that private schools should be able to expel gay students. This view is held by both parents with children in private schools (76 per cent strongly disagree) and at state schools (75 per cent strongly disagree). It is a view held consistently by residents of capital cities and country areas, although country Victorians are a little more conservative (Table 3). It is important to note that 89 per cent of those who send their children to private schools disagree that those schools should be able to expel gay students. Interestingly, young adults (18-24) and older people (50+) are more conservative on this issue than those aged 25-34 and 35-49 (Table 4).

Table 2 'Private schools should be able to expel students because they are gay', by high school education and whether send children to private school (%)

	High school education		Children in private school		Total
	Private only	State only	Yes	No	
Agree	9	7	8	6	8
Disagree	90	90	89	90	89
Don't know	2	3	4	4	4

Figures may not add due to rounding.

Table 3 'Private schools should be able to expel students because they are gay', by area (%)

	Area				Total
	Sydney	Melbourne	Rest NSW	Rest VIC	
Agree	8	8	7	10	8
Disagree	90	90	88	84	89
Don't know	3	2	5	6	4

Figures may not add due to rounding.

Table 4 'Private schools should be able to expel students because they are gay', by age and whether have children (%)

	Age				Children		Total
	18-24	25-34	35-49	50+	Yes	No	
Agree	10	2	5	12	5	9	8
Disagree	90	96	92	83	92	87	89
Don't know	0	3	3	5	3	4	4

Figures may not add due to rounding.

The responses to the second question are reported in Tables 5-7. A large majority, 77 per cent, of respondents disagree with the view that private schools should be able to expel girls who are pregnant (Table 5), with 62 per cent strongly disagreeing. Those who attended private schools or send their children to private schools are just as likely to oppose expulsions. It is perhaps surprising, however, that 17 per cent believe that private schools should be able to expel pregnant girls, twice the number that favour expelling gay students.

Sydney residents appear more tolerant of pregnant girls than those in Melbourne and country areas although, with the exception of country Victoria, the difference is not large (Table 6). High-income households are more tolerant than low-income ones (Table 6), even though pregnant girls are more likely to come from poorer households. Once again, young adults and older adults are more conservative on this question than those in their 30s and 40s (Table 7).

Table 5 'Private schools should be able to expel girls if they are pregnant', by high school education and whether send children to private school (%)

	High school education		Children in private school		Total
	Private only	State only	Yes	No	
Agree	16	16	17	17	17
Disagree	79	78	76	77	77
Don't know	5	5	7	6	6

Figures may not add due to rounding.

Table 6 'Private schools should be able to expel girls if they are pregnant', by area and income (%)

	Area				Household income			Total
	Sydney	Melb-ourne	Rest NSW	Rest Vic	Less than $30000	$30000 to $59999	$60000 plus	
Agree	14	18	18	20	26	17	13	17
Disagree	81	77	76	69	65	79	83	77
Don't know	5	6	6	11	9	4	3	6

Figures may not add due to rounding.

Table 7 'Private schools should be able to expel girls if they are pregnant', by age and whether have children (%)

	Age				Children		Total
	18-24	25-34	35-49	50+	Yes	No	
Agree	18	7	15	22	16	17	17
Total disagree	82	88	81	69	80	76	77
Don't know	0	5	5	9	4	7	6

Figures may not add due to rounding

5. Conclusions

Under Commonwealth and State legislation private schools are permitted a wide range of exemptions from anti-discrimination laws. The Newspoll survey reported in this paper explores public attitudes to the ability of private schools to expel gay students and girls who become pregnant. There is very widespread and strong opposition in the Australian community to the capacity of private schools to exempt themselves from discrimination on these grounds. There is no difference in the strength of opposition to these laws between parents who send their children to private schools and those who send them to public schools. Opinion is especially strong on the issue of expulsion of gay students.

These findings indicate that these exemptions from laws banning discrimination are out of step with community values. For this reason, there is likely to be strong support for reform of anti-discrimination laws in favour of more consistent treatment of public and private schools under the relevant statutes.

Furthermore, the broad-ranging capacity of private schools to discriminate against their students and staff contradicts the Prime Minister's declaration that it is government schools that are 'values neutral'. While there is no doubt that some private schools uphold the principles of anti-discrimination legislation, there is also no doubt that their students and staff who may be subject to discrimination on the basis of their sexuality, pregnancy or marital status have significantly fewer opportunities for legal redress. If private school students are to learn and practice the same values of tolerance, compassion and mutual respect as their public school peers then the ability of private schools to practice discrimination on the basis of sexuality and pregnancy should be eliminated. There is an extraordinarily high degree of consensus among parents on this question.

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