



1 June 2016

Members  
Education and Science Select Committee  
Youth Parliament 2016

## **Inquiry into whether schools be required to be more accessible to the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community (for example, in terms of school culture and facilities)**

The Education and Science Select Committee has been asked to conduct an inquiry into: “Should schools be required to be more accessible to the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community (for example, in terms of school culture and facilities?)” on 19 July 2016. This paper has been prepared to assist the Committee with its examination. Issues are identified and possible lines of inquiry are provided for the Committee to consider. The Committee may also wish to raise these matters with the witnesses who have been asked to appear before the Committee to give evidence on this inquiry.

### **Introduction**

According to the results of the Youth’12 survey,<sup>1</sup> 3.8 percent of New Zealand secondary school students are attracted to the same or both sexes (see Table 1 below). These students are more likely to report bullying, depressive symptoms and attempting suicide than students who only reported attraction to the opposite sex.

**Table 1: LGBTI students compared to non-LGBTI students**

	Exclusively opposite-sex attracted (percent)		Those attracted to the same sex, both sexes, or not sure (percent)	
	Males	Females	Males	Females
Weekly bullying in last 12 months	6.4	5.3	15.8	12.7
Significant depressive symptoms	7.3	14.8	24.2	38.6
Attempted suicide in last 12 months	1.8	5.4	10.3	16.3

<sup>1</sup> Adolescent Health Research Group, *Youth’12 Prevalence Tables* (2013)  
<https://www.fmhs.auckland.ac.nz/assets/fmhs/faculty/ahrg/docs/2012prevalence-tables-report.pdf>, p.121.

*Transgender students*

Transgender people are those whose gender identity differs from the gender they were assigned at birth (including men who were assigned female at birth, women who were assigned male at birth and people who identify outside of the gender binary). Of the students who responded to the Youth'12 survey, 1.2 percent reported being transgender, and 2.5 percent reported being unsure about their gender. Transgender students were more likely to report concerns about their personal safety and poor mental health than cisgender students (those whose gender identity is the same as the gender they were assigned at birth).

**Table 1: Cisgender, transgender and unsure**

	Cisgender (percent)	Transgender (percent)	Unsure (percent)
Likes school a bit or a lot	90.4	74.1	91.6
Afraid someone at school would hurt or bother them	39.8	53.5	50.6
Bullied at school at least weekly	5.8	17.6	12
Been hit or physically harmed	32.5	49.9	43.1
Significant depressive symptoms	11.8	41.3	30.9
Self-harmed in past 12 months	23.4	45.5	40.4
Attempted suicide in past 12 months	4.1	19.8	8.2

The Human Rights Commission inquiry into discrimination experienced by transgender people identified a number of difficulties faced by transgender children and young people in New Zealand schools:

- *Appropriate name:* Transgender students report schools refusing to use their chosen name.
- *School uniform:* Transgender students report schools requiring them to wear the uniform of the gender they were assigned at birth.
- *Participation in sport:* Transgender students face difficulties in participating in their preferred sporting teams and events that are sex-segregated. This results in many transgender youth avoiding participation in sport.
- *Safety:* Transgender students report being bullied and harassed at school because of their gender identity, including reports of physical violence.<sup>2</sup>

In the period 2010-2015 the Human Rights Commission received six gender identity complaints from secondary school students and two from primary school students, accounting for half of all gender identity complaints received. These complaints included not being allowed to perform in school cultural groups and being harassed by senior staff. In one case a transgender girl was expelled, and when she sought to enrol in another school she was told that she would not be allowed to use the girls' toilet or wear the girls' uniform (Leane, 2015).

<sup>2</sup> Human Rights Commission, *To be who I am / Kia noho au ki toku ano ao* (January 2008) [https://www.hrc.co.nz/files/5714/2378/7661/15-Jan-2008\\_14-56-48\\_HRC\\_Transgender\\_FINAL.pdf](https://www.hrc.co.nz/files/5714/2378/7661/15-Jan-2008_14-56-48_HRC_Transgender_FINAL.pdf)

### *Intersex students*

Intersex people are those who are born with reproductive or sexual anatomy that does not fit the typical biological definitions of male or female. There is no reliable data on intersex people in New Zealand. Estimates are that between one in 5,000 and one in 100 people are born intersex, depending on how this is defined.

### **What are schools' current responsibilities towards LGBTI students?**

The primary piece of legislation governing the New Zealand education system is the Education Act 1989. Under Section 61 of the Act, the school Boards of Trustees is required to prepare and annually update a school charter setting out their school's mission, aims, objectives, directions, and targets. These must give effect to the Government's National Education Guidelines, including the National Administration Guidelines (NAGs), which can be accessed at <http://www.education.govt.nz/ministry-of-education/legislation/nags/>. Of particular relevance to this topic is NAG5a, which requires Boards of Trustees to provide a safe physical and emotional environment for students.

Schools are also subject to the Human Rights Act 1993, which prohibits discrimination on a number of grounds, including sex and sexual orientation. The law is unclear on whether discrimination on grounds of gender identity is covered by the prohibition against sex discrimination.<sup>3</sup>

### *Curriculum*

Research suggests that inclusion of LGBTI people or issues in school curricula is an effective strategy for promoting the safety and wellbeing of LGBTI students (Russell, 2011). Visibility in the curriculum validates LGBTI identities and promotes understanding and acceptance of diversity.

All state and state integrated schools in New Zealand are required to provide teaching and learning programmes within the framework of the National Curriculum (NAG 1). The principles of the Curriculum require that a school's curriculum be inclusive ("non-sexist, non-racist and non-discriminatory") and recognise and affirm students' identities.

Boards of Trustees are required to consult with their school community on how they implement the health education component of the curriculum, which includes sex education.

Acknowledgement of gender and sexual diversity in sex education is important for promoting the sexual health of LGBTI students. A 2007 Education Review Office (ERO) report on the quality of sex education found that programmes in the majority of schools reflected an assumption that their students were heterosexual, and that only one in five schools provided opportunities for students to explore and challenge issues such as homophobia, diversity and acceptance.

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<sup>3</sup> For a discussion on this, see the Human Rights Commission inquiry (2008) pp.88-93.

The latest Ministry of Education *Sexuality Education Guidelines* (2015) incorporates LGBTI issues into its suggested learning intentions. For example, at Level 4 of the curriculum, the suggested learning intentions include:

- describing personal gender identity and critiquing media messages about gender, relationships, and sexuality
- identifying the influence of gender and sexuality stereotypes on self-worth
- critiquing heteronormative messages and practices in school and media
- developing policies for supporting diversity of gender and sexual identities.

### *Bullying and school climate*

Research suggests that school policies that specifically prohibit discrimination and bullying on the basis of gender and sexuality contribute positively to the safety and wellbeing of LGBTI students (Russell, 2011). New Zealand school policies are inconsistent in terms of whether they specifically address these issues. Analysis of school policy documents provided to ERO by a sample of secondary schools in 2014 found that 16 made specific mention of homophobic bullying, while 20 did not, and only four mentioned issues specific to transgender students (Riches, 2014).

The Ministry of Education's *Bullying prevention and response guide for schools* (2014) contains content specific to lesbian, gay, bisexual, transgender, intersex and questioning students. In 2015, RainbowYOUTH, Core Education, the University of Auckland and Curative developed Inside Out, a set of freely-available video-based teaching resources that aim to decrease homophobic and transphobic bullying in schools; which can be viewed at <http://insideout.ry.org.nz/>.

### *Peer support groups*

Peer support groups such as Queer Straight Alliances (QSA) provide a safe space for LGBTI students to socialise and promote greater acceptance of gender and sexual diversity within their school. Students in schools with these types of support groups report less harassment and bullying based on sexual orientation or gender identity, and are also more likely to feel a sense of belonging to their school (Russell, 2011).

Of a sample of 48 New Zealand secondary schools surveyed in 2014, five reported that they had QSAs, and 24 said that they did not.<sup>4</sup> The main reason given by principals for not having a QSA at their school was a lack of demand or 'lack of queer students'. Some principals expressed concern that there would be parent and/or staff resistance to such a group being established, or felt that the guidance counselling available to students was sufficient (Riches, 2014).

### *School facilities*

Harassment of transgender students is particularly common in bathrooms and changing rooms. The 2015 *Sexuality Education Guidelines* suggested that schools review options around toilet facilities to ensure that students have choices of safe spaces. A resource for schools published recently by InsideOUT, has recommended that transgender students have access to gender neutral facilities as well as being able to use the bathroom that corresponds with their gender identity.

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<sup>4</sup> The remainder did not respond.

This second point has been challenged by lobby group Family First NZ, who have provided schools with a suggested ‘Student Physical Privacy Policy’ stating that “student toilets, changing rooms, and showers that are designated for one sex shall only be used by members of that sex.”

Some schools have introduced gender neutral bathrooms or toilet stalls in response to requests from their LGBTI student support group.<sup>5</sup>

Other ways that schools can ensure that they are more inclusive for LGBTI students include:

- offering gender-neutral clothing choices when uniforms come up for review
- allowing same-sex partners to attend school balls
- ensuring sports procedures and policies allow participation of all students regardless of sexual orientation or gender identity (Ministry of Education, 2015).

## **Examples of government policy in international jurisdictions**

### *Legislation*

California has passed three laws that promote the accessibility of schools to LGBTI students:

- The California Student Safety and Violence Prevention Act 2000, which prohibits discrimination and harassment on the basis of sexual orientation or gender identity in California public schools.
- The Fair, Accurate, Inclusive and Respectful Education Act 2011, which requires that history and social studies curricula include the political, economic and social contributions of LGBT people and people with disabilities and prohibits schools from using learning materials that include negative stereotypes based on gender, sexual orientation or disability.
- The School Success and Opportunity Act 2012, which specifies that students must be permitted to participate in sex-segregated activities and use facilities consistent with their gender identity.

Ontario, Canada has also passed legislation relating to this topic. The Accepting Schools Act 2012 introduced the requirement for school boards<sup>6</sup> to:

- “promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any... sex, sexual orientation, gender identity, [and] gender expression”;
- establish a “bullying prevention and intervention plan”; and
- “support pupils who want to establish and lead activities and organisations that promote a safe and inclusive learning environment”, including those that “promote the awareness and understanding of, and respect for, people of all sexual orientations and gender identities”.

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<sup>5</sup> See, for example, <http://www.stuff.co.nz/dominion-post/news/wellington/77457959/wellington-high-onslow-college-get-gendernneutral-bathrooms>

<sup>6</sup> Note that most school boards in Ontario govern multiple schools—as many as 550—while in New Zealand each state school has an individual Board of Trustees.

### *Australia's Safe Schools Coalition*

Some jurisdictions have taken non-regulatory approaches to addressing the issues faced by LGBTI students in schools. An example of this is Australia's Safe Schools Coalition, a government-funded coalition of organisations and schools launched in June 2014. Schools that opt in to the programme get free access to resources and services including:

- tailored professional development
- staff and student surveys
- guidance and consultation services
- resources for school staff on teaching about gender and sexual diversity and responding to homophobic and transphobic behaviour
- resources for students on setting up support groups.

As of March 2016, over 500 schools had opted in to the coalition.<sup>7</sup>

Australian Prime Minister Malcolm Turnbull initiated an investigation into the Safe Schools Coalition in February 2016, following campaigning against the program from Coalition MPs and a petition calling for it to be cut “because it goes beyond education and compels students into advocacy of a social engineering agenda.”<sup>8</sup> Opponents of the scheme have argued that it exposes children to age-inappropriate sexual content and undermines parental authority.<sup>9</sup> Following this review (Louden, 2016), the Government restricted the program to secondary schools only and introduced a requirement for schools to obtain parent-body consent before using any of its materials (Taylor, 2016).

## **Options**

### *Status quo*

The current regulatory framework already requires that schools are safe and accessible for all students. This is complemented by guidance which provides specific strategies to ensure that this is the case for LGBTI students.

Sexual diversity and, to a lesser extent, gender diversity, has become more accepted in New Zealand over recent years. Given this trend, and the guidance now available to schools on improving their accessibility for LGBTI students, we might expect that the situation for LGBTI students in New Zealand schools will improve without the need for regulatory changes or other government intervention.

### *Amend the law*

Amending the law to specify schools' responsibilities to LGBTI students would send a strong signal to schools and ensure that ERO specifically reviews schools' policies in this area. For example, NAG5a could be amended to specify that each board must provide a safe physical and emotional environment for students, including LGBTI students.

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<sup>7</sup> Out of over 9000 Australian schools.

<sup>8</sup> [http://www.corybernardi.com/remove\\_funding\\_from\\_safe\\_schools\\_propaganda](http://www.corybernardi.com/remove_funding_from_safe_schools_propaganda).

<sup>9</sup> For examples, see [http://www.corybernardi.com/keep\\_political\\_agendas\\_out\\_of\\_schools](http://www.corybernardi.com/keep_political_agendas_out_of_schools) ; <http://www.acl.org.au/wp-content/uploads/2015/10/Safe-Schools-Coalition-Australia-Briefing.pdf>; <http://www.fava.org.au/publications-access-notice/977>

The law could also be amended to require that all schools include LGBTI-inclusive content in their curriculum, or in other ways along the lines of the California and Ontario laws.

*Support expansion of LGBTI community involvement in schools*

The Government could provide funding to community organisations with expertise in working with LGBTI youth to expand their services in schools, e.g. developing teaching and learning resources, providing professional development and consultation services for school staff, running workshops with students, and working with LGBTI students to establish support networks.

*Workforce development*

The Government could make understanding of gender and sexual diversity a priority for professional development funding, and require that this becomes a part of initial teacher education.

**Report to the House**

The Committee is required to report its findings on this inquiry to the House. The purpose of your report is first to inform the House and stimulate debate. In doing so your report should reflect both the oral and written evidence the Committee received, the issues the Committee considered in-depth, and the views of the members. From these the Committee should develop conclusions and recommendations to the Government.

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Youth Parliament 2016

**Members may wish to ask:**

1. What challenges do LGBTI students face at New Zealand schools?
2. How does the school environment impact on LGBTI students' wellbeing and engagement? What about the school curriculum?
3. What can schools do to improve their accessibility to LGBTI students?
  - a. Why are some schools not doing these things already?
4. What role do community organisations play in supporting schools and their LGBTI students?
  - a. Could this role be expanded?
5. What action could the Government take to ensure that schools are more accessible to the LGBTI community?
  - a. Should the law specify the need for schools to be accessible to the LGBTI community?
  - b. Should schools be required to include LGBTI content in their curriculum?

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### Further Reading

- <http://www.ry.org.nz> [RainbowYOUTH, Auckland-based community organisation supporting LGBTI youth]
- <http://insideout.org.nz/> [InsideOUT, Wellington-based community organisation supporting LGBTI youth]
- <http://www.safeschoolscoalition.org.au/> [Safe Schools Coalition Australia]

As well as considering this background paper, Youth MPs are welcome to undertake their own research on their committee topic (or on the Bill or any other aspect of Youth Parliament 2016). The Parliamentary Library has agreed to accept one question per Youth MP which they will endeavour to answer to inform your work. If you have not already done so, please contact [jill.taylor@parliament.govt.nz](mailto:jill.taylor@parliament.govt.nz) to take advantage of this opportunity.