

# **The Controversy over the Safe Schools Program – Finding the Sensible Centre**

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*The Safe Schools program has attracted great controversy. On one end of the spectrum it is defended as an anti-bullying program. On the other end of the spectrum it is regarded as social engineering.*

*It is important to have programs in schools that offer support for same-sex attracted youth, or those experiencing confusion about their gender identity, particularly those who do not have support at home. However, this particular program has some serious flaws.*

*This paper seeks to draw attention to various problems in the Safe Schools materials which ought to be rectified if a program like this is to continue to be offered in schools. First, the materials present statistics on same-sex attraction and transgender prevalence that have no valid scientific basis. Secondly, they present sexual orientation as fixed when for school-aged adolescents it is very volatile, and many same-sex attractions are transitory. Thirdly, they present gender as fluid when for about 99.5% of the population, there is complete congruence between sexual characteristics and gender identity. Fourthly, they promote gender transitioning without the need for any medical and psychological guidance and even without parental knowledge or consent. Finally, they offer potentially misleading legal advice to teachers.*

*While a program of this kind may offer benefits for some young people, there is reason to be concerned that it may cause harm to other young people who experience same-sex attraction or gender confusion. There is certainly a place for an anti-bullying program that addresses the issues with which the Safe Schools program is concerned, but this program needs to be rescued from its progenitors.*

## **The politics of Safe Schools**

The Safe Schools program has attracted huge controversy across Australia over the last year or two, but especially in Victoria from where it originated and where its use is most common.

To a large extent, the controversy over “Safe Schools” has followed left-right political divisions. The Labor Left and the Greens are strong supporters of the program, arguing it is protective of same-sex attracted and gender-confused young people and may reduce youth suicides in this vulnerable population.

Indeed, Labor-Left premier Daniel Andrews wants to mandate it in all state schools in Victoria from 2018 onwards. Critics have come from the right of politics - including George Christensen and Senator Cory Bernardi. The issues about Safe Schools were first raised in the public arena by the Australian Christian Lobby, and in the last few months, *The Australian* newspaper has been in the forefront of raising concerns about it.

When a social issue becomes a contested matter politically, or support for, or opposition to, a program is seen as a marker of ideological identity, it is hard to have a rational discussion. Yet a rational discussion is badly needed about the Safe Schools program, based upon evidence. There are important questions about what we teach children and young people about sexuality and gender identity, when we do so, and how we do so in a manner which is sensitive to the cultural diversity of the Australian population.

This paper is offered as a contribution to that discussion, aware of course that to raise any questions about the Safe Schools program is to risk demagogic denigration, name-calling and abuse. The terms 'homophobic' and 'transphobic' are freely bandied about as descriptions of anyone who raises concerns about the program.<sup>1</sup> This is unfortunate. It makes it harder to find the common ground, the sensible centre between those who are advocates of the retention of the program and those who would like to see its abolition. There are people of goodwill and experience on both sides of the divide who are not situated on the extremes of each spectrum. Former High Court judge, Michael Kirby, for example, has urged the retention of the program so that the issue of same-sex orientation is able to be discussed in schools,<sup>2</sup> but does not suggest it should remain unaltered.<sup>3</sup>

By way of introduction, though, I need to offer a caveat. The research evidence and the issues discussed in this paper draw upon many disciplines and different bodies of research knowledge. This includes the specialist research knowledge on the development of same-sex attraction and sexual orientation, the medical and clinical literature on the management and treatment of children and young people who report experiencing gender confusion, the scientific literature on varieties of condition known by some collectively as “intersex” conditions, the legal literature

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<sup>1</sup> For examples, <http://www.abc.net.au/news/2016-03-24/donnelly-criticising-safe-schools-doesn't-make-you-homophobic/7272932>; Rebecca Urban, 'Activist Roz Ward hurting gay marriage push', *The Australian*, August 26<sup>th</sup> 2016.

<sup>2</sup> <http://www.abc.net.au/news/2016-08-26/former-high-court-judge-backs-safe-schools-program/7790666>.

<sup>3</sup> He said: “You can have debates about particular aspects of it and tweak the model, but the notion that you say nothing about this is quite wrong.” Ibid.

on anti-discrimination laws and legally changing one's gender identity, and more generally the literature on radical gender theory.

I do not, for one moment claim to be expert in all or most of these fields, but I do reference in footnotes the latest peer-reviewed research articles on such issues in the leading specialist journals. I have also benefited from advice from experts in different disciplines who were kind enough to point me to relevant literature and to read this paper in draft.

## **Against bullying and discrimination**

It is axiomatic that children and young people should be protected from bullying, whatever the reason that they might be bullied, and that all children and young people should be free from discrimination, whatever the ground of that discrimination. It is also axiomatic that children and young people who are troubled by issues about sexual orientation or gender identity should receive appropriate support. This is especially important because some of these children and young people will not have supportive home environments. School may therefore be an important context in which they can find information and acceptance.

Those are givens. Now let us move on.

## **What is the Safe Schools program?**

That is a legitimate question, for the schools which subscribe to this program and are members of the Safe Schools Coalition seem to vary widely in their use of the materials. Indeed, many have never used them.<sup>4</sup> A review by education academic Prof. Bill Loudon reported in March 2016 that “no school is known to have implemented the whole eight-lesson program”.<sup>5</sup> Loudon also reported that only

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<sup>4</sup> As at August 22<sup>nd</sup> 2016, 545 schools were said to be members of the Safe Schools Coalition. However, A senior official from the NSW Education Department reported to a parliamentary committee: “Originally, when the issue was raised around the Safe Schools, we had 120 schools that had registered and were on the website of the Safe Schools Coalition. They comprised of 90 secondary, 22 primary and eight central schools. When we started to implement the recommendations of the independent review, though, we determined that there were 89 of those schools that had never accessed resources—they had registered but they had no intention in the immediate future to do that.” Hansard, General Purpose Standing Committee No. 3 Legislative Council, 29<sup>th</sup> August 2016, p.12.

<sup>5</sup> W Loudon, *Review of Appropriateness and Efficacy of the Safe Schools Coalition Australia Program Resources*, p.2, available at <https://docs.education.gov.au/documents/review-appropriateness-and-efficacy-safe-schools-coalition-australia-program-resources>.

“five schools in Victoria had taught a sub-set of the lessons”.<sup>6</sup> However, that may be because some of the program materials were at that stage, quite new. The teaching resource *All of Us*, for students in years 7 and 8, was posted on November 15<sup>th</sup> 2015, near the end of the academic year.<sup>7</sup> Louden’s review was near the start of the 2016 academic year.

Nonetheless, it is important to note that membership of the Safe Schools Coalition “does not oblige the school to any particular level of participation”.<sup>8</sup> While there are reports of secondary schools which have enthusiastically embraced the Safe Schools program and embedded it within the organised curriculum and life of the school, other schools have confined their participation to that of receiving some staff training or drawing upon its resources in assisting individual students.

Nor is it clear what it means for the program to be ‘mandated’ in Victoria. The current information from the Government of Victoria indicates that all state schools will be mandated to become members of the Safe Schools Coalition but:

“While all government secondary schools need to be signed up by 2018, they can decide which program resources they use, depending on the needs of the school community.”<sup>9</sup>

It would seem that they can also decide not to use any program resources at all. The Victorian Government fact sheet explains the benefits of membership to be that schools can request various sorts of assistance, which may be helpful in dealing with students on an individual basis.

As Louden observed, many of the materials are age-appropriate and address the issues in an educationally suitable manner. His qualifications on this went to issues of detail. The program materials are also not static. As a result of changes required by the federal government following the Louden review, there have been some modifications to the program. As a result, it seems, Safe Schools Coalition Victoria, based at La Trobe University, has split from the national coalition and is being funded entirely by the Victorian government.<sup>10</sup> It can be expected that the materials that it promotes for use will include some that are not deemed

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<sup>6</sup> Ibid, p.6.

<sup>7</sup> Ibid, p.5.

<sup>8</sup> Ibid, p.4.

<sup>9</sup> Education Department, Victoria, School Fact Sheet: Safe Schools Coalition, (2016) p.2 at <http://www.education.vic.gov.au/Documents/about/programs/health/fact-sheet-safe-schools-coalition13may.pdf>

<sup>10</sup> <http://www.safeschoolscoalition.org.au/a-statement-from-safe-schools-coalition-australia>

appropriate for national distribution through the Safe Schools Coalition websites.<sup>11</sup>

## The Louden Review

Initially this review, initiated by the Federal Government as it was clearing the decks for an election, was to be undertaken by two academics, Emeritus Professor Bill Louden and Professor Donna Cross.<sup>12</sup> The review was to be a very quick and cursory one. They were given only two weeks to report. The review was announced on February 26<sup>th</sup> 2016 and the report was submitted on March 11<sup>th</sup> 2016. Although Prof. Cross, a distinguished academic and former Western Australian of the Year who is an expert on bullying, was announced as a reviewer, she took no part in it.<sup>13</sup> The report was written by Prof. Louden alone.

Largely it was a desktop review of the materials. Prof. Louden reports that he also interviewed a small number of people and visited two schools. His report did not purport to be a proper review of the experience of teachers, students and parents when elements of the program were utilised in the schools.

The review process, being so quick, did not involve a call for submissions either, no doubt because there was no time for people to do so given the short reporting deadline. Prof. Kim Oates, an eminent paediatrician, and I nonetheless wrote a lengthy letter to Profs. Louden and Cross drawing to their attention some of the issues raised in this paper concerning the research basis for statistics presented in the materials.<sup>14</sup> Although he responded courteously, there is no acknowledgement in the report of any of the issues that we raised. He wrote that

Public submissions were not sought and did not form part of the review process.<sup>15</sup>  
and

No independent review of the veracity of the statistics cited in this document was undertaken.<sup>16</sup>

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<sup>11</sup> The Victorian Education Department has made available a range of materials, <http://www.education.vic.gov.au/about/programs/health/Pages/safe-schools-coalition.aspx>, which the Louden review indicated were not suitable for classroom distribution (see Louden review, pp.16-17) and which in other States are only distributed on request from a school. The material on the Victorian website may be compared with that on the Safe Schools Hub: <http://www.safeschoolshub.edu.au/safe-schools-coalition-australia-resources>.

<sup>12</sup> For biographies, see <http://www.outinperth.com/wa-professors-to-head-safe-schools-review>.

<sup>13</sup> Email from Prof. Louden, 6<sup>th</sup> September 2016: Prof. Louden explained that although she was announced as a reviewer in an early press release, she was 'unavailable'.

<sup>14</sup> Letter sent by email, February 29<sup>th</sup> 2016.

<sup>15</sup> Louden report, p.6.

<sup>16</sup> Louden report, p.8.

Both these statements are of course, factually correct; but I consider, with respect, that Prof. Loudon should have reported that his attention had been drawn to serious problems with those statistics, even if, given the extraordinarily short reporting deadline, he did not have time to consider the issues.

The Safe Schools Coalition has also commissioned a more comprehensive evaluation of the program by two academics at the University of Western Sydney and two at the University of Sydney, which is due to be completed later this year.

## **The Safe Schools statistics on same-sex attraction**

As Prof. Oates and I wrote to Profs. Loudon and Cross:

An education program of any kind must as a basic minimum, convey accurate information. If the objective is to prevent bullying, then there is no need to present any statistics about how many young people experience same-sex attractions or feel discomfort about their gender. It would still be wrong to bully a young person who comes out as gay or lesbian if only one in a million young people had that orientation.

If statistics are to be cited then they must be accurate and properly explained.

In the teaching resource *All of Us*, p.8, the claim is made that “10% of people are same-sex attracted”. This statistic is presented as fact by the Safe Schools Coalition. Furthermore, it is not qualified even by reference to school students. By implication, the statistics on same-sex attraction are equated with being gay, lesbian, bisexual or identifying as some other sexual minority such as being 'pansexual' or 'queer', for this is the whole purpose of the program.

Is the 10% figure reconcilable with the body of research evidence? The Safe Schools Coalition cites only one study, and that is of school students, not the general population: Anne Mitchell, Kent Patrick, Wendy Heywood, Pamela Blackman and Marian Pitts, *5th National Survey of Australian Secondary Students and Sexual Health 2013*, published in 2014. This study was conducted by the team from La Trobe which has also pioneered the Safe Schools program.

The 10% figure, popularly associated with the work of Alfred Kinsey nearly 70 years ago, is not actually contained in that report. On page 23 it is reported that 6% overall (8% boys, 4% girls) said that they were attracted exclusively to people of the same sex; others (11% overall: 5% boys, 15% girls) were attracted to people of both sexes. If those figures are combined, then 13% of boys and 19% of girls are 'same-sex attracted', but most of the girls are not exclusively attracted to other girls. Many females who experience some level of same-sex attraction may in fact classify themselves as 'mostly heterosexual'.

### *Same-sex attraction in adolescence*

How representative is the La Trobe finding in terms of other studies of adolescents? Only five years earlier, the 2008 study by the La Trobe team reported that only 1% of respondents were attracted exclusively to people of the same sex, while 6% were attracted to both sexes.<sup>17</sup> These findings are dramatically different from the 2013 study.

A recent New Zealand study also found much lower figures than reported in the 2013 La Trobe survey.<sup>18</sup> The research team reported that 4% of students were attracted to the same-sex or both sexes and 4% were either not sure of their sexual attractions or were attracted to neither sex. In the 2003 British Columbia Adolescent Health Survey 1.5% of boys identified themselves as bisexual, mostly homosexual or 100% homosexual. However, 3.5% of sexually active boys said that they have had a same-sex experience in the past year. Three per cent of girls identified as bisexual, mostly homosexual or 100% homosexual, but, 6.4% of sexually active girls reported having had a same-sex experience in the past year.<sup>19</sup>

While more young people may report an experience of sex with someone of the same gender than identify as homosexual, the numbers are still very much lower than claimed by the Safe Schools program. Even as a statement about adolescent sexual attraction, only the most recent La Trobe study gives any support for the 10% figure, but that study is an outlier. The authors of that 2013 study properly noted that their data was unrepresentative. They reported that “it was extremely difficult to obtain large numbers of schools willing to participate and students willing to complete the survey.” Even in some of the schools that did participate, student response rates were “extremely low”.<sup>20</sup> The researchers also used an online recruitment survey. They cautioned that “the recruitment of an online sample may also account for increased numbers of same sex attracted young people who are known to be experienced and frequent users of online sites.”<sup>21</sup>

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<sup>17</sup> A. Smith, P. Agius, A. Mitchell, C. Barrett, & M. Pitts, *Secondary Students and Sexual Health 2008: Results of the 4th National Survey of Australian Secondary Students*, Australian Research Centre in Sex Health and Society (La Trobe), p.27 (2009).

<sup>18</sup> T. Clark et al, *Youth'12 Overview: The Health and Wellbeing of New Zealand Secondary School Students in 2012*. The University of Auckland (2013).

<sup>19</sup> E. Saewyc, C. Poon, N. Wang, Y. Homma, & A. Smith, *Not Yet Equal: The Health of Lesbian, Gay, & Bisexual Youth in BC*. Vancouver: McCreary Centre Society; 2007. See also G. Remafedi, M. Resnick, R. Blum, & L. Harris, 'Demography of sexual orientation in adolescents'. (1992) 89 *Pediatrics* 714.

<sup>20</sup> A. Mitchell, K. Patrick, W. Heywood, P. Blackman & M. Pitts, *5th National Survey of Australian Secondary Students and Sexual Health 2013*, p. 10 (2014).

<sup>21</sup> *Ibid*, p.23.

It should be concluded therefore that the 10% figure cited in Australian data cannot be validated by any reliable research, even if it refers only to adolescents.

Does this matter? A not insubstantial proportion of adolescents report same-sex attractions and some have same-sex experiences, even if the figure is nowhere near 10% in reliable research studies. So perhaps the authorship team have cherry-picked the data and found a plausible citation for the highest figures possible. Is that a serious criticism? For a university-based program supplying teaching materials to schools, yes; but its importance goes beyond this. The point is that for most adolescents – but not all - same-sex attraction is transitory.

This can be seen first of all by comparing the figures on adolescent same-sex attraction with adults, and then examining the research evidence in relation to the volatility of adolescent same-sex attraction.

#### *Same-sex attraction in adulthood*

Safe Schools made the claim that 10% of the entire population is same-sex attracted (not just adolescents). This is simply not the case. Large-scale surveys in recent years (when homosexual orientation has become normalised and therefore much less likely to be a matter which people fail to disclose) put the figures on same-sex orientation in the adult population as between 1% and 3%. One of the largest studies ever conducted was a survey of 238,206 respondents in Britain in 2009–10. It found that 0.9% of the population identified as lesbian or gay, and a further 0.5% as bisexual.<sup>22</sup> In another recent study in Australia of 17,476 persons aged 15 years or older, 1.4% identified as gay or lesbian, and another 1.4% as bisexual.<sup>23</sup>

This is quite similar to a recent large-scale study in the United States (1.7% gay or lesbian and 0.7% bisexual).<sup>24</sup> Even among the younger generation of adults, the figures are not dissimilar. The National Longitudinal Study of Adolescent and Adult Health, a large-scale nationally representative study, found 2.4% of male respondents identified exclusively or mostly homosexual in their late 20s. The corresponding figure for women was 1.7%.<sup>25</sup>

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<sup>22</sup> T. Joloza, J. Evans and R. O'Brien, *Measuring Sexual Identity: An Evaluation Report* (Office of National Statistics, London, 2010).

<sup>23</sup> M. Wooden, *The Measurement of Sexual Identity in Wave 12 of the HILDA Survey (and associations with mental health and earnings)* Hilda Project Discussion Paper Series No. 1/14, February 2014.

<sup>24</sup> B. Ward et al, 'Sexual orientation and health among US adults: National Health Institute Survey 2013', (2014) 77 *National Health Statistics Reports*, 1.

<sup>25</sup> R. Savin-Williams, K. Joyner, & G. Rieger, 'Prevalence and stability of self-reported sexual orientation identity during young adulthood' (2012) 41 *Archives of Sexual Behavior* 103.



The proportion of those who are same-sex attracted may be quite high if one includes anyone who has any attraction to the same-sex even if they identify as heterosexual. However, if one excludes those who identify as heterosexual or mostly heterosexual, then the numbers of sexual minorities are small. Indeed, in one large scale study, the second largest identity group, “mostly heterosexual” was larger than all other non-heterosexual identities combined.<sup>26</sup>

Nor is there much evidence that prevalence figures are changing. Exclusively same-sex attraction appears to have remained relatively stable over time. In a recent article, Jean Twenge and colleagues report on a study of the attitudes and experiences of adults in the USA over a period of more than 40 years. While the number of U.S. adults who had at least one same-sex partner since age 18 doubled between the early 1990s and early 2010s, almost all of that increase was in bisexual behaviour. The researchers reported little consistent change in those having sex exclusively with others of the same-sex.<sup>27</sup>

It is certainly true that many women in particular have experienced same-sex attractions at some point in their lives, although far fewer have had sexual relations with someone of the same sex. A recent Australian study found that 9% of men and 19% of women had at some stage experienced some same-sex attraction or experience; but a very much smaller number identified themselves as being gay or lesbian. Conversely, some who did identify as gay or lesbian had heterosexual experiences.<sup>28</sup> Recent data from the U.S. National Survey of Family Growth indicates that women aged 18-44 are three times as likely as men to report any same-sex contact, with over 17% reporting that contact compared with 6% of men.<sup>29</sup>

If this is what the authors of *All of Us* mean by the 10% figure then they need to qualify their statement heavily, for the implication is that 10% of the population identify as gay, lesbian, bisexual or identify as another sexual minority. The vast majority of adults who report ever having had a same-sex attraction or experience identify as heterosexual or mostly so. A reasonably accurate figure for those who,

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<sup>26</sup> Ibid.

<sup>27</sup> J. Twenge, R. Sherman, & B. Wells, ‘Changes in American Adults’ Reported Same-Sex Sexual Experiences and Attitudes, 1973–2014’ (2016) 45 *Archives of Sexual Behavior* 1713.

<sup>28</sup> J Richters et al, ‘Sexual identity, sexual attraction and sexual experience: the Second Australian Study of Health and Relationships’, (2014) 11 *Sexual Health* 451.

<sup>29</sup> C. Copen, A. Chandra & I. Febo-Vazquez, *Sexual Behavior, Sexual Attraction, and Sexual Orientation Among Adults Aged 18–44 in the United States: Data From the 2011–2013 National Survey of Family Growth*. National Health Statistics Reports, 88. Hyattsville, MD: National Center for Health Statistics (2016).

as adults, report an exclusively or predominantly same-sex orientation in the general population would be about 2% - that is, about one-fifth of the number that the Safe Schools Coalition claims.

It follows that even if the figures for any reported same-sex attraction in adolescence may be as high as 3-4% for boys and higher for girls (in reliable research studies), far fewer respondents identify as gay, lesbian or bisexual in adulthood.

### *The volatility of teenage same-sex attraction*

Even if the adult figure for identification as exclusively or mainly gay or lesbian were corrected to be about 2% (or more detailed and accurate figures were given for adolescent same-sex attraction) it would not resolve another problem: it seems as if the entire program is premised on the assumption that same-sex attraction is something fixed, and defines a young adolescent's identity, rather than being, for many, a transitory phase in psycho-sexual development. Talk of 'coming out', being 'queer' and so on presupposes that a year 7 or 8 girl's attraction to another girl is definitive of her sexual orientation as she grows into adulthood.

The evidence suggests that this may be the case for some, but it is unlikely for most. There is, in other words, a major difference between having feelings of romantic attraction towards someone of the same gender as an adolescent, and going on to enter into a continuing same-sex relationship. There is also a gulf between ever having had a same-sex experience and identifying as an adult who is either exclusively, or predominantly, gay or lesbian in orientation.

This may be illustrated by perhaps the largest and most representative study of adolescent same-sex attraction ever conducted, which has the great advantage of being a longitudinal study. Wave 1 of the National Longitudinal Study of Adolescent Health was conducted in the United States in the mid-1990s, and this cohort of young people has now been followed up into adulthood for many years. The latest wave is wave 4, 13-15 years later. This was a nationally representative sample.

In Wave 1, over 12,000 young people from years 7-12 answered questions about romantic attractions and relationships. Respondents were asked: "Have you ever had a romantic attraction to a female?" and "Have you ever had a romantic attraction to a male?". They were also asked questions about their three most recent romantic relationships. 7.3% of boys and 5% of girls reported romantic

attractions. Same-sex romantic relationships were reported by 1.1% of boys and 2.0% of girls.<sup>30</sup>

However, the students who identified as same-sex attracted in wave 1 were not the same as in later waves. In Wave 2, only a year later than the first wave, 4.5 % of boys and girls reported having any same-sex romantic attraction – a substantial decrease for the boys.<sup>31</sup> Most striking was the change for boys, just one year older. In the first wave, 69 boys reported romantic attraction only to boys and never to girls; but a year later, nearly half of these boys reported that during the past year they had only been attracted to girls while 35% reported that they were not attracted to anyone; only one in ten reported attraction only to boys.<sup>32</sup>

The evidence from this study is that most young people who identified as same-sex attracted at school were not so 13-15 years later. Of Wave 1 boys who indicated they had any same-sex romantic attraction, over 80% identified at Wave 4 as exclusively heterosexual.<sup>33</sup> Of Wave 1 girls who indicated they had any same-sex romantic attraction, 60% identified as exclusively heterosexual at wave 4 and 30% were mostly heterosexual.

Even in early adulthood there were changes. Between waves 3 and 4 (a 6 year period when respondents were in their 20s), 18% of women exhibited change in their sexual orientation, as did 6% of men.<sup>34</sup> For both sexes, mixed-sex attraction was especially volatile over time, with more people who had previously identified as attracted to both sexes changing to identify as having an exclusively heterosexual orientation than to gravitate towards a homosexual orientation. This was especially the case for women.<sup>35</sup> Conversely, those who identified at wave 3 as 100% homosexual typically remained so at wave 4.<sup>36</sup>

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<sup>30</sup> S. Russell & K. Joyner, 'Adolescent sexual orientation and suicide risk: evidence from a national study'. (2001) 91 *American Journal of Public Health* 1276.

<sup>31</sup> R. Savin-Williams & G. Ream, 'Prevalence and stability of sexual orientation components during adolescence and young adulthood'. (2007) 36 *Archives of Sexual Behavior*, 385.

<sup>32</sup> J. Udry, & K. Chantala, 'Risk factors differ according to same-sex and opposite-sex interest'. (2005) 37 *Journal of Biosocial Science*, 481.

<sup>33</sup> R. Savin-Williams, & K. Joyner, 'The dubious assessment of gay, lesbian, and bisexual adolescents of Add Health'. (2014) 43 *Archives of Sexual Behavior* 413.

<sup>34</sup> Savin-Williams, Joyner, & Rieger, above n.25.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

Further analysis of the four waves of data has been conducted by Hu and colleagues in a recently published article.<sup>37</sup> They reported that across the four waves of the study from the mid-1990s to 2008, 19% of respondents indicated that they had had at least one experience of attraction to their own gender or both genders. However, only 0.03 % of the population consistently indicated being attracted to the same-sex and 0.16 % consistently reported being attracted to both genders. In other words, for the great majority of young people who at any stage reported some form of same-sex attraction, their sexual orientation did not remain stable over time. The researchers reported that individuals became significantly more consistent in their same-sex attraction around age 20.<sup>38</sup> However, there is some evidence that for women, the volatility continues into the adult years. Figures from a New Zealand study show quite high levels of same-sex attraction among women in the first two decades of adulthood, but for many that was changeable over time. Furthermore, attraction was much more common than same-sex experiences or a same-sex identity.<sup>39</sup>

How is this to be explained? One conclusion is that data from youth surveys concerning opposite-sex or same-sex attraction may produce misleading data either because the respondents do not understand the question or because they do not take the survey seriously. There is a small amount of evidence for this in the US Adolescent Health study.<sup>40</sup> However, even allowing for this, the evidence for volatility in terms of sexual attraction in adolescents is very strong indeed, and across multiple studies.<sup>41</sup>

## **Why does fluidity in sexual orientation matter?**

What follows from this is that it is important for teenagers to be told not only that bullying of same-sex attracted teenagers is wrong, but also that a same-sex attraction in one's early teenage years, or even some sexual experience with

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<sup>37</sup> Y. Hu, Y. Xu, & S. Tornello, 'Stability of self-reported same-sex and both-sex attraction from adolescence to young adulthood' (2016) 45 *Archives of Sexual Behavior* 651.

<sup>38</sup> For other evidence of instability in sexual orientation as self-described by young people, see M. Ott et al. 'Stability and change in self-reported sexual orientation identity in young people: application of mobility metrics' (2011) 40 *Archives of Sexual Behavior* 519.

<sup>39</sup> N. Dickson, et al., 'Stability and change in same-sex attraction, experience, and identity by sex and age in a New Zealand birth cohort' (2013) 42 *Archives of Sexual Behavior* 753.

<sup>40</sup> See above, n. 33; but see the letters to the editor in response, e.g. G. Li et al, 'The unjustified doubt of add health studies on the health disparities of non-heterosexual adolescents: comment on Savin-Williams and Joyner (2014)', (2014) 43 *Archives of Sexual Behavior* 1023.

<sup>41</sup> See the review in Hu et al, n. 37; see also Ott et al, n.38; S. Katz-Wise, 'Sexual fluidity in young adult women and men: associations with sexual orientation and sexual identity development' (2015) 6 *Psychology & Sexuality* 189.

another person of the same gender, does not mean that a young person has a fixed and unchangeable orientation only to others of the same gender, or even to continuing bisexuality. The evidence on fluidity in sexual orientation among high-schoolers would suggest that the chances are that only some of the young people who experience a same-sex attraction in adolescence will go on to have an exclusively or even mainly same-sex orientation as adults. Many young people who experience same-sex attractions in adolescence go on to become adults who identify as having an exclusively or mainly heterosexual orientation, and enter into stable long-term heterosexual relationships.

Surely then it is a fundamental problem with the whole Safe Schools program (aimed particularly at years 7 and 8) that it is directed to the support of "LGBTI" youth and assumes that a person's identification of themselves as one of L, B, G, T, or I in their early adolescent years represents a consistent identity. For example, the classroom poster has the headline, "Be a better ally to your LGBTI friends".<sup>42</sup> The T and the I will be discussed later, but the notion that young people should identify as L, B, or G in adolescence (particularly early adolescence) and that this identity should be treated as defining in some way their long-term identity, is surely deeply misleading.

In high school, and particularly in years 7 and 8, young people are at a stage where they are evolving, and it is premature for most to define themselves as having a clear and stable same-sex orientation.

The Safe Schools view of the world then, seems to be premised on a 1980s understanding of same-sex attraction, in which sexual orientation is a relatively stable trait that emerges in early adolescence and remains fixed into adulthood.<sup>43</sup> The student handouts, for example, talk of young people as if they are heterosexual, homosexual, or bisexual, treating these as fixed and stable categorisations while also introducing other identities such as 'queer' or 'pansexual'.<sup>44</sup>

It may be that some of the individuals involved in the Safe Schools program understand that high school same-sex attraction is volatile, unstable and subject to major changes as young people move into adulthood, but if they are aware of

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<sup>42</sup> <http://safeschoolshub.edu.au/common/downloads/All-Of-Us-Classroom-Poster.pdf>.

<sup>43</sup> See e.g. Money, J. (1988). *Gay, straight, and in-between: The sexology of erotic orientation*. New York: Oxford University Press.

<sup>44</sup> <http://safeschoolshub.edu.au/common/downloads/All-Of-US-Student-Version-May-2016-v4.pdf>.

the significant body of research on this, it is not apparent from the Safe Schools' materials.

To be sure, many gay men in particular report that they first identified themselves as having a same-sex orientation in early adolescence or younger; however, it is not the case that someone who identifies as being same-sex attracted at 13-14 years of age has a fixed and stable orientation. Teenage same-sex attraction may or may not say anything about their adult sexuality.

Many young people would be deeply reassured by this, for even if there were no bullying of those few high school students who openly identify as gay or lesbian, and there were no discrimination against gay and lesbian people within the population, being exclusively gay or lesbian can be for many a difficult and unchosen path. It has many implications for future family life, especially in terms of the deep biological urge to raise children of one's own. This is especially an issue for gay men. The legalisation of same-sex adoption and the push to legalise international commercial surrogacy, in the few very poor countries that permit it, may offer pathways to having the care of children, but children available for adoption are few and far between, and the ethical issues surrounding international commercial surrogacy are considerable.

It is therefore, surely, important that in high school classes teaching about sexuality, accurate information is given about teenage same-sex attraction and that young people are assured that it is a very common, and normal, aspect of teenage psycho-sexual development which may or may not say anything about what they will grow up to be as adults. This message can be given at the same time as also affirming those who now identify as gay or lesbian, and may do so in their adult years.

This may well be a message that is likely to prevent depression and suicidal ideation. Conversely, educational materials which are premised on the idea that sexual orientation emerges in early adolescence and remains fixed, so that it is sensible for young adolescents to identify as "gay" or "lesbian" as if this were a stable identity, should now be regarded as unscientific and irresponsible.

Of course, some adolescents may strongly and openly identify at school as gay or lesbian. Whether or not that proves to be a lasting identity for them doesn't really matter in terms of how they should be treated at school; they should not be bullied or discriminated against. Nor should the child or young person be bullied because of other attributes. The issues require sensitive and careful handling. Some students who identify as gay or lesbian may remain so in the long-term; others will not. Self-identification of belonging to a sexual minority is at the least, likely to be premature for many of them.

Another problem with the focus in years 7 and 8 on being an ally to "LGBTI" friends is the implicit assumption that in early adolescence, sexual and romantic interests are even on young people's agenda. Young people vary considerably in terms of the age at which they begin to become seriously interested in any form of romantic attachment. While it may be quite common for the years 11 and 12 students to have a steady boyfriend or girlfriend, it is also very common for those in the younger years of high school to have no serious interest in establishing an intimate or romantic relationship. A program which presupposes that at the age of 13 young people should identify as heterosexual, homosexual or bisexual prematurely treats them as if they had adult sexual feelings and concerns.

## **Transgender issues**

The word 'transgender' describes those who experience a disconnect between their unambiguous physical characteristics (clearly male, clearly female) and their feelings about what gender they are or how they want to identify. Gender identity disorder, or gender dysphoria, as it is now known, is a medically diagnosed or diagnosable condition, but it is a diagnosis to do with a mental state.

### *The umbrella term 'transgender'*

Once, we would have thought of someone as transsexual or transgender if they had gone through hormone treatment and sex reassignment surgery - a combination of radical treatments which, while they cannot change someone's sex in terms of reproductive capacity, can assist them in various ways to live in conformity with the gender that they feel themselves to be. We could characterise this meaning of 'transgender' as a form of disorder for which medical interventions represent a possible means of treatment.

Now the term 'transgender' has a much wider usage to describe someone's self-adopted identity, whether or not they would regard it as a disorder. Typically, the term is used of anyone who asserts a gender identity different to that of the genitalia with which they were born, whether or not they have had any medical intervention. They may want to live, to a greater or lesser extent, in the manner of the opposite gender in terms of name, dress and other markers of gender identity.

In this expanded usage, when someone describes himself or herself as 'transgender', this may or may not mean that he or she has undergone hormone treatment or surgery, or even plans to do so. This 'identity' definition is reflected in anti-discrimination laws. So for example the *Sex Discrimination Act 1984* (Cth) s.5B makes it unlawful to discriminate against someone on the basis of their 'gender identity'. This is defined in s.4 as "gender-related identity, appearance or

mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth."

Gender dysphoria or confusion appears to be, for the most part, an issue for genetic males. Certainly, women do transition to take on the appearance and characteristics of men, but studies suggest that about three times as many men identify as transgender as do females,<sup>45</sup> and, the ratio may be as high as 6-1.<sup>46</sup>

### *The statistics*

As with the statistics on same-sex attraction, the statistics on gender diversity in the Safe Schools materials have no reliable basis in research.

The claim made by *All of Us* is that 4% of the population are 'transgender' or 'gender diverse'.<sup>47</sup> The citation given for this figure refers to a survey of high school students, aged 13 and above, so it may be inferred that the 4% figure reflects the prevalence of transgender identification or 'gender diversity' in the adolescent population. Gender diversity is defined in a glossary as follows:<sup>48</sup>

A broad term that can refer to all forms of gender identity and gender expression and includes people who may identify as for example trans, transgender, genderqueer or gender questioning. It refers to people whose gender expression or identity differs from the gender identity associated with the sex assigned them at birth or society's expectations. The person may identify as neither male nor female, or as both.

Later in the document, the 4% figure is associated with being transgender, for the authors explain (p.30):

For about 4% of people their gender may not align with the sex they were assigned at birth and that's OK.

If that were so, then every high school class with 25 or more students would have at least one transgender child. Even if the broader definition of 'gender diversity' were used to include the gender confused or questioning, then every high school of 1500 students would have 60 transgender or gender diverse young people. Every teacher in Australia would have been dealing for years with how to care for

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<sup>45</sup> International statistics are found in G. De Cuyper et al. 'Prevalence and demography of transsexualism in Belgium' (2007) 22 *European Psychiatry* 137. There are substantial geographical variations in the prevalence of transgender identity.

<sup>46</sup> See e.g. J. Veale, 'Prevalence of transsexualism among New Zealand passport holders' (2008) 42 *Australia and NZ Journal of Psychiatry* 887; M. Ross, J. Walinder, B. Lundstrom & I. Thuwe, 'Cross-cultural approaches to transsexualism: a comparison between Sweden and Australia'. (1981) 63 *Acta Psychiatrica Scandinavica* 75.

<sup>47</sup> *All of Us*, p.8.

<sup>48</sup> *All of Us*, p.52.



transgender young people, just as they have to deal with children who have dyslexia or ADHD. Yet I expect that many school teachers have never knowingly come across a transgender or 'gender diverse' child or youth, or have rarely done so, and that the vast majority of children have not done so either.

So is there any research evidence to support this claim? The only citation given is a recent New Zealand study.<sup>49</sup> It does not make such a claim. The researchers report:<sup>50</sup>

About 1% of students reported that they were transgender (a girl who feels like she should have been a boy, or a boy who feels like he should have been a girl...). Ninety-six percent were not transgender and approximately 3% were not sure.

To count the 3% who answer 'not sure' as being 'gender diverse' is academically irresponsible. People who answer 'not sure' in surveys do so for a variety of reasons, one of which is that they don't understand what the questioner is asking. Furthermore, teenagers can hardly be expected to answer all such questions seriously.<sup>51</sup>

Other estimates of the number of transgender 'cases' in the population are a small fraction of the Safe Schools estimate.<sup>52</sup> A meta-analysis of 27 prevalence studies demonstrates the importance of definition. From this study, 9.2 people per 100,000 population have had surgical or hormonal therapy. Of studies assessing self-reported transgender identity, the figure was 871 per 100,000 population, but this result was influenced by a single outlier study from Taiwan using a very loose definition of what it is to be transgender. After removing that study, the prevalence was 355 per 100,000, or 0.35% of the population. Slightly higher figures have emerged from a new study in the United States. A survey conducted in 19 States asked the question: "Do you consider yourself to be transgender?" If an explanation was sought for the question, the interviewer was asked to explain that if, for example, a man feels he is woman or lives like a woman, he is transgender'; 0.52% of respondents answered this question in the affirmative.<sup>53</sup>

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<sup>49</sup> Clark et al above n.18.

<sup>50</sup> Ibid, p.25.

<sup>51</sup> X. Fan, et al, 'An exploratory study about inaccuracy and invalidity in adolescent self-report surveys' (2006) 18 *Field Methods* 223; Savin-Williams and Joyner, above n. 33.

<sup>52</sup> For a recent and comprehensive review of the literature see J. Ristori and T. Steensma, 'Gender dysphoria in childhood' (2016) 28 *International Review of Psychiatry* 13.

<sup>53</sup> A Flores et al, *How Many Adults Identify as Transgender in the United States?* (Williams Institute, UCLA, 2016) p.7 at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

The proportion of those who answer such a question in a survey cannot be equated with the number who experience gender dysphoria in the clinical sense. A gender identity disorder cannot be diagnosed by survey. It is a medical diagnosis requiring careful medical assessment. Gender dysphoria is given a precise definition in the *Diagnostic and Statistical Manual of Mental Disorders 5*, published by the American Psychiatric Association. In the DSM 5, rates for natal adult males are estimated at 0.005% to 0.014%, and for natal females, from 0.002% to 0.003%.<sup>54</sup> Gender dysphoria cannot, or rather should not, be dumbed down into a survey question. It requires evaluation and diagnosis.

Some indication of the incidence of young people actually changing their self-identified gender (with or without any hormone treatment or survey) comes from the National Longitudinal Study of Adolescent and Adult Health in the United States. There were 10,120 participants who were surveyed in all four waves of the study over some 13-15 years. Among them, 14 participants changed their identified sex, which was 0.14 % of the total.<sup>55</sup>

Clinically diagnosable gender dysphoria conditions requiring or justifying some kind of medical or therapeutic intervention are comparatively rare and can surely be dealt with in schools on an individualised basis.

## Intersex Issues

Children and young people who have an intersex condition live with a medically diagnosed or diagnosable condition involving their sexual identity which involves having a combination of male and female physical characteristics. The definition of 'intersex' in the *Sex Discrimination Act 1984* (Cth) s.4 is as follows.

**"intersex status "** means the status of having physical, hormonal or genetic features that are:

- (a) neither wholly female nor wholly male; or
- (b) a combination of female and male; or
- (c) neither female nor male.

The authors of *All of Us* say that 1.7% of the population are 'intersex', but their definition is extraordinarily wide and certainly much wider than this legal definition. The definition used is: "people who are born with natural variations in

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<sup>54</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-5*, (5<sup>th</sup> ed, 2013) p. 454.

<sup>55</sup> Hu et al, above n.37.

genital, chromosomal or other physical characteristics that differ from stereotypical ideas about what it means to be female or male."<sup>56</sup>

In support, the authors cite one study.<sup>57</sup> That study does estimate that 1.73% of all live births are of children who "deviate from a Platonic ideal of sexual dimorphism" at the chromosomal, genital, gonadal, or hormonal levels.<sup>58</sup> The *All of Us* materials give the example of a young person, Phoebe, with Androgen Insensitivity Syndrome.<sup>59</sup>

True hermaphrodite conditions are rare. The research article cited by *All of Us* says that: "There are no published population-wide estimates of the frequency of true hermaphrodites (individuals born with both testicular and ovarian tissue)."<sup>60</sup> Based upon estimates from other data, the researchers estimated the prevalence of true hermaphroditism to be 0.0117 in every 1,000 live births, while the prevalence of sexually ambiguous genitalia from unknown causes is 0.009 children in every 1,000 live births.<sup>61</sup> Combining those two groups, around one in 50,000 children are born with a combination of both female and male genitalia or otherwise have sexually ambiguous genitalia. These fall clearly within the statutory definition in the *Sex Discrimination Act 1984* (Cth).

Other conditions which involve a departure from "Platonic ideals of sexual dimorphism" may well not be visible to others, as there are natural overlaps between males and females in such areas as height, build and depth of voice.<sup>62</sup> Some are likely to require more medical intervention than others, but arguably few of them fall within the statutory definition of being intersex.

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<sup>56</sup> *All of Us*, p.52.

<sup>57</sup> M. Blackless et al, 'How sexually dimorphic are we? Review and synthesis', in (2000) 12 *American Journal of Human Biology* 151.

<sup>58</sup> *Ibid* at 159, 161.

<sup>59</sup> Terming this as an example of someone who is "intersex" may not be universally accepted. Authors of a recent review in the medical literature comment: "Many patients were traditionally labelled intersex (especially when the external genitalia are ambiguous at birth), but those affected and their families find the term pejorative. Consequently, a new nomenclature and classification system has been designed for disorders that cause genital abnormalities or a phenotype at variance with the genotype. This system is known as the Chicago Consensus, which discarded the term intersex in favour of the term disorder of sex development. Disorders of sex development are congenital disorders in which development of chromosomal, gonadal, or anatomical sex is atypical... These changes in long-standing terminology and the subsequent new classification system have been universally accepted by health professionals and scientists working in the specialty." I. Hughes et al, 'Androgen insensitivity syndrome' (2012) *The Lancet*, 380: 1419.

<sup>60</sup> Blackless et al, above n.57, 157.

<sup>61</sup> Blackless et al, above n.57, 159.

<sup>62</sup> *Ibid*, 161.

It is really not clear why it is thought that year 7 or 8 children need to learn anything about such rare conditions. There are many birth abnormalities which might be taught to schoolchildren if it was thought desirable to educate them about different medical conditions. While intersex conditions are rare, autism spectrum disorders are much more common in mainstream schools and are likely to be a far greater cause of bullying than being intersex (a condition which may be entirely hidden to other children). Perhaps the only justification for teaching years 7 and 8 children about intersex conditions is that the 'I' is part of a socio-political movement.

## Gender Fluidity as a Belief System

What then could be the explanation for the exaggerated statistics promoted by the Safe Schools Coalition? A likely explanation for the exaggeration of transgender and intersex conditions is that it is regarded as necessary to support the authors' belief system to show that gender is "fluid" and can even be chosen.

This idea has its origins not in science but in philosophy. Leading gender theorist Judith Butler, for example, wrote in 1988 that<sup>63</sup>

"...gender is in no way a stable identity or locus of agency from which various acts proceed; rather, it is an identity tenuously constituted in time - an identity instituted through a stylized repetition of acts... Feminist theory has often been critical of naturalistic explanations of sex and sexuality that assume that the meaning of women's social existence can be derived from some fact of their physiology. In distinguishing sex from gender, feminist theorists have disputed causal explanations that assume that sex dictates or necessitates certain social meanings for women's experience."

The differentiation made between sex and gender, and the notion that gender is fluid and may be socially constructed, lie at the heart of the Safe Schools program. Here is a passage from *All of Us* instructing teachers on how to explain this idea to 7 and 8<sup>th</sup> grade students:<sup>64</sup>

Explain that sex is about the body you are born with (male, female or intersex), while gender is about your identity, or how you feel inside. Gender refers to the way that you feel on the inside. It might be expressed by how you dress or how you behave and for some people these things may change over time.

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<sup>63</sup> J. Butler, 'Performative acts and gender constitution: an essay in phenomenology and feminist theory' (1988) 40 *Theatre Journal*, 519 at 519-520.

<sup>64</sup> *All of Us*, p.30.

This is now quite a widespread belief system, especially in parts of the western world.<sup>65</sup> This belief system is deeply held by some, and has many characteristics of being a religious belief. As with religions, there is a new language, helpfully explained in detail in *All of Us* for the uninitiated. The 99.5% (or more) of us who do not think we are transgender are “cisgender”, as if we represented just one type of gender identification. A vast array of terms have been developed to allow people to describe themselves as neither male nor female, and such terms have been adopted by social media such as Facebook.<sup>66</sup>

The belief system also has its rituals. When students introduce themselves at formal meetings in university student unions across Australia (such as debating events), they are asked to say what their name is, the gender with which they identify, and their preferred pronoun. It could be he, she or ‘they’ (the plural is now an acceptable substitute for the singular if gender is a little too complicated). The Safe Schools program insists upon the same etiquette for young adolescents. The teaching materials, *All of Us* (p.32) advise:

Use of the correct pronoun is very important to many transgender people, but it is not always apparent from the way someone appears which pronoun is appropriate. Whether by accident or deliberately, using the wrong pronoun that does not match a person’s gender identity is called misgendering.

University student unions are also not too certain about the identification of men as men and women as women either. The University of Sydney Union is not unusual in that it sets aside a “Wom\*n’s Space” which is for both “wom\*n” and ‘female identifying’ students.<sup>67</sup>

The idea that gender is not a matter of nature but of human description is reinforced by the oft-used language that people have a sex “assigned” to them at birth rather than one which is quite simply a matter of observation of the genitalia. In the relatively rare cases of children who have a mixture of male and female body tissue or whose sex is ambiguous at birth, it may be reasonable to speak of a sex being “assigned”. However, the language of sex being “assigned’ is much more widely used.

This new language, these rituals and these deeply held beliefs have all helped to create a climate in which it is seen as normal for children and young people with feelings of gender dysphoria (or just a desire to cross-dress) to transition into living as if they are the other gender and to be supported in that transition. The

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<sup>65</sup> See e.g. <https://www.theguardian.com/commentisfree/2016/mar/23/gender-fluid-generation-young-people-male-female-trans>.

<sup>66</sup> <http://www.telegraph.co.uk/technology/facebook/10930654/Facebooks-71-gender-options-come-to-UK-users.html>

<sup>67</sup> <https://www.usu.edu.au/Get-Involved/Spaces.aspx>.

Safe Schools Coalition has a document providing guidance to schools on helping young people make this transition.<sup>68</sup> Remarkably, nowhere in this document is there any reference to the need for any advice from a psychologist, doctor or psychiatrist, let alone anyone expert in the field. There is no requirement even to involve parents. The leaflet provides:

Consideration should be given to the age and maturity of the student and whether it would be appropriate to involve the students' parent(s) or guardian(s) in each decision. Assess the support given by a student's family members or carers, and think through the needs of any siblings, especially those attending the same school. If a student does not have family or carer support for the process, a decision to proceed should be made based on the school's duty of care for the student's wellbeing and their level of maturity to make decisions about their needs. It may be possible to consider a student a mature minor and able to make decisions without parental consent.

The school surely has a duty of care to ensure that people wholly unqualified to manage gender dysphoria are not involved in assisting the child or young person to make immensely important decisions that may have all kinds of consequences, including alienating them from parents. The document also recommends changes that have consequences for other students, such as use of bathrooms, changing rooms and participation in gender-segregated sports. While reference is made to the assessment of the maturity of a minor, the document does not establish any process, such as certification by a developmental psychologist, that the child has a sufficient level of maturity so as to obviate the need for parental consent.

The same document also recommends changes to school records to record a different gender identification, without parental consent. Under NSW law, gender identity can legally be changed only once a person is an adult and only if certain stringent criteria are met, including having had gender reassignment surgery.<sup>69</sup> The notion, in a government-sponsored document, that a young adolescent can choose to change their name and gender, and for this to be entered into school records without parental consent or some other lawful basis for so doing, is very troubling.

Other materials have been developed with assistance from the Safe Schools team to explain transgender issues to very young children.<sup>70</sup> The message is that:<sup>71</sup>

"Only you know whether you are a boy or a girl. No one can tell you."

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<sup>68</sup> [http://www.safeschoolshub.edu.au/common/downloads/guide-to-supporting-a-student-to-affirm-or-transition-gender-identity-at-school\\_oct-2015.pdf](http://www.safeschoolshub.edu.au/common/downloads/guide-to-supporting-a-student-to-affirm-or-transition-gender-identity-at-school_oct-2015.pdf)

<sup>69</sup> *Births, Deaths and Marriages Registration Act 1995*, Part 5A.

<sup>70</sup> <http://www.safeschoolscoalition.org.au/is-the-gender-fairy-in-your-school-library-5>

<sup>71</sup> <http://www.thegenderfairy.com>.

This belief system that whether you are male or female is a matter of internal conviction and not external genitalia or the nature of one's capacity to reproduce is not the more rational because it is a belief that is sincerely held. Sincere people hold all sorts of strange beliefs.

Should such odd and unscientific beliefs, emanating from philosophy and gender studies departments rather than medical faculties, be taught as fact to primary and secondary school age children? There would be uproar if the beliefs of Scientologists that the personality or essence of oneself is distinct and separate from the physical body or the brain were being taught in state schools through state-funded programs.<sup>72</sup> Yet the belief system that what gender you are is a matter for you to determine without reference to your physical and reproductive attributes may not be dissimilar in kind.

That, however, is not the biggest concern. It is that the normalisation of transgender experience combined with a radical and fringe belief system concerning gender identity could cause unnecessary confusion in young people, especially those who are experiencing mental health difficulties or who do not have a stable and supportive home environment giving them a secure sense of self-identity.

## **The child protection issues for gender-confused young people**

One reason for great caution about what we teach children is that gender dysphoria may be transitory. There have been a number of studies of childhood gender dysphoria which have followed up these children over time. Ristori and Steensma, in a recent review article, summarise the research evidence as follows:<sup>73</sup>

The conclusion from these studies is that childhood GD is strongly associated with a lesbian, gay, or bisexual outcome and that for the majority of the children (85.2%; 270 out of 317) the gender dysphoric feelings remitted around or after puberty.

An illustration of this is a study of children seen for childhood dysphoria in an expert University Clinic in the Netherlands. The researchers found in a follow-up study a few years later that a substantial majority of the children who could be traced had ceased to be troubled by gender dysphoria. All the girls who ceased to be troubled, and half of the boys, reported having a heterosexual orientation. The

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<sup>72</sup> <http://www.xenu.net/archive/infopack/6.htm>.

<sup>73</sup> Ristori & Steensma, above n.52 at 15.

other half of the boys in this group had a homosexual or bisexual orientation.<sup>74</sup> Although studies vary on the extent of persistence in childhood gender dysphoria, the evidence is uniform that for a substantial majority of children, gender dysphoria resolves itself before adolescence.

Given that for the great majority of children, feelings of gender dysphoria resolve themselves around or after puberty, it is disturbing that a senior official from the NSW Education Department should have reported that children as young as four years old are going through gender transitioning.<sup>75</sup>

Ristori and Steensma identify three different approaches to the management and treatment of childhood gender dysphoria. One is therapy to assist the child to accept his or her natal gender. Another is to support the child and alleviate social risks while keeping options open. This is known as “watchful waiting”. The third is to encourage and assist the child to transition. This is the approach taken by the Safe Schools Coalition, without reference to other approaches. Ristori and Steensma (2016, p.17) explain this approach:

This third approach is focused on affirming the child’s (trans)gender identification and helps the child to build a positive self-identity and gender resilience. In particular, the child is supported in transitioning to the desired/experienced gender role. The rationale for supporting social transition before puberty is that children can revert to their originally assigned gender if necessary since the transition is solely at a social level and without medical intervention. Critics of this approach believe that supporting gender transition in childhood may indeed be relieving for children with GD but question the effect on future development. The debate thereby focuses on whether a transition may increase the likelihood of persistence because, for example, a child may ‘forget’ how to live in the original gender role and therefore will no longer be able to feel the desire to change back; or that transitioned children may repress doubts about the transition out of fear that they have to go through the process of making their desire to socially (re)transition public for a second time. The fact that transitioning for a second time can be difficult was indeed shown in the qualitative study by Steensma et al. (2011) where children who transitioned early in childhood reported a struggle with changing back to their original gender role when their feelings desisted, with the fear of being teased or excluded by their peers reported as the main reason for this.

It may not be at all helpful to many children with gender dysphoria issues to encourage them to embrace an identity of being ‘transgender’ when for so many, it may be a transitory stage on their journey towards a sexually and mentally healthy adulthood.

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<sup>74</sup> M. Wallien & P. Cohen-Kettenis, ‘Psychosexual outcome of gender-dysphoric children’ (2008) 47 *Journal of the American Academy of Child and Adolescent Psychiatry* 1413.

<sup>75</sup> Greg Prior, Deputy Secretary of School Operations and Performance, said in a parliamentary committee hearing: “We have a four-year-old who is transitioning to kindergarten next year who has identified as transgender”. Hansard, General Purpose Standing Committee No. 3 Legislative Council, 29<sup>th</sup> August 2016, p.13.



The position with adolescents may be different,<sup>76</sup> but what is clear from all the literature is that gender dysphoria in adolescence requires careful and expert clinical management involving psychological and medical interventions. For these reasons, international clinical guidelines recommend great caution in offering irreversible treatments and suggest a staged process to keep options open.<sup>77</sup> Genital surgery should not be carried out until patients reach the legal age of majority to give consent for medical procedures and have lived continuously for at least 12 months in their desired gender.

Much of the controversy about Safe Schools has been because of the perception that, through its endorsement of the Minus 18 website and various materials, it encouraged children and young people to engage in self-help remedies like chest-binding. As a result of federal government-initiated changes, there is no longer reference to third party materials, but the guidance on transitioning to another gender without expert medical and psychiatric care, and perhaps without parental consent, ought to disturb even those politicians who are ardent supporters of the Safe Schools program. Such advice ought to be taken down from websites and officially retracted by Ministers of education and health, as soon as possible.

Furthermore, having school-wide programs normalising transitioning from one gender to another, and supported by radical gender theories, surely creates a risk that some children and young people will become confused about their gender unnecessarily. It is one thing to respond with the best appropriate care for children and young people who experience long-term and serious gender dysphoria. It is another to cause gender confusion by promoting the belief that there is no necessary connection between natal sex and gender.

Gender dysphoria in childhood and adolescence is far too complex to be addressed by pop psychology or internet-based self-help materials. If the Safe Schools materials were confined to advising expert medical and psychiatric assistance for children and young people with gender confusion, and gave accurate information about it, then it might be unobjectionable.

## **The legal advice in the Safe Schools Program**

The Safe Schools program does not only offer general advice which ought really to be given on a case-specific basis by clinicians, it also purports in various documents to give legal advice which ought really to be given on a case-specific

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<sup>76</sup> S. Leibowitz and A. de Vries, 'Gender dysphoria in adolescence' (2016) 28 *International Review of Psychiatry* 21.

<sup>77</sup> World Professional Association for Transgender Health, Standards of Care (2011). <http://www.wpath.org>.

basis by lawyers. For example, citing the federal Sex Discrimination Act 1984, *All of Us* says:<sup>78</sup>

Indirect discrimination against transgender and gender diverse people is also potentially against the law when it has a negative impact on a person. Things like not being able to wear the clothes or uniform that match your gender identity or not having access to a toilet safe to use may be considered indirect discrimination.

This is, at least, carefully worded. The authors use the word ‘may’ and the passive tense “be considered”. Teachers may understand this to be legal advice about how the courts will interpret the legislation, but it could equally be just what the authors of the text “consider” to be the case. The legislation, and a Human Rights Commission factsheet,<sup>79</sup> are cited in support. The legislation is in very general terms, and the Human Rights Commission factsheet does not claim that the law requires students to be allowed to cross-dress if they ‘identify’ as being transgender.

Giving wrong legal advice is a problem, especially if the people so doing are completely unqualified. Reports on training events associated with the implementation of the Safe Schools program in school staff meetings have indicated that legal advice is being given that anyone opposed to the implementation is breaking the law.<sup>80</sup>

One of the problems with vaguely worded statutes is that legal opinions are likely to differ concerning the reach of the legislation and where the boundaries lie. Those lawyers seeking expanded protections may well give very broad interpretations of the statute in the absence of authoritative guidance from the courts. What the legislation actually says is this (s.5B):

For the purposes of this Act, a person (the **discriminator**) discriminates against another person (the **aggrieved person**) on the ground of the aggrieved person's gender identity if, by reason of:

- (a) the aggrieved person's gender identity; or
- (b) a characteristic that appertains generally to persons who have the same gender identity as the aggrieved person; or
- (c) a characteristic that is generally imputed to persons who have the same gender identity as the aggrieved person;

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<sup>78</sup> *All of Us*, p. 32.

<sup>79</sup> Australian Human Rights Commission, ‘Sexual orientation, gender identity & intersex status discrimination’ (2013), <https://www.humanrights.gov.au/ourwork/sexual-orientation-sex-gender-identity/projects/new-protection>

<sup>80</sup> <http://www.dailytelegraph.com.au/rendezview/girls-who-are-girls-but-not-girls--its-time-to-stop-the-safe-schools-subterfuge/news-story/bf3a5633c20dbfee6a6a57596b153cd8>

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who has a different gender identity.

(2) For the purposes of this Act, a person (the **discriminator**) discriminates against another person (the **aggrieved person**) on the ground of the aggrieved person's gender identity if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons who have the same gender identity as the aggrieved person.

The test in subsection (2) in relation to indirect discrimination is subject to a reasonableness test. If a “condition, requirement or practice is reasonable in the circumstances” it does not count as discrimination.<sup>81</sup>

What amounts to direct or indirect discrimination against someone who has a state of mind that their personal identity differs from their natal sex is an issue which may take some time to work out in Commonwealth law. However, state laws which address the issue are of assistance. In NSW, for example, it is unlawful under the *Anti-Discrimination Act 1977*, to discriminate on the grounds of transgender status.<sup>82</sup> A distinction is drawn between ‘recognised’ transgender status and unrecognised status. Recognition is where the birth certificate has been formally changed. This requires an application by someone over 18, supported by two doctors who certify that the person has undergone a sex affirmation procedure.<sup>83</sup> It is unlawful to treat an aggrieved person, being a recognised transgender person, as being of the person’s former sex.

What of the teenager who does nothing more than declare a mental state of seeing himself or herself as being of the opposite gender? The Anti-Discrimination Board explains:<sup>84</sup>

If you are not a recognised transgender person, you can't legally force people to treat you as your preferred gender, but they must still treat you fairly.

There is no right to be treated as being of the opposite sex if you are not so in a legal sense.

That is likely to be the accepted position in Commonwealth law as well. If a boy who has desires to cross-dress is required to wear the school uniform of his gender, he is not thereby being treated differently from any other boy. Does he have the right to be treated as if he were female? Were it so, then boys would be

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<sup>81</sup> Section 7B.

<sup>82</sup> Part 3A.

<sup>83</sup> Part 5A of the Births, Deaths and Marriages Registration Act 1995.

<sup>84</sup>

[http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1\\_antidiscriminationlaw/adb1\\_types/adb1\\_transgender.aspx](http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_antidiscriminationlaw/adb1_types/adb1_transgender.aspx)

entitled to enrol in girls' sports, and attend all-girls' schools. Men who have a mental state of wanting to be female, or considering themselves to be so, would be entitled to join all women's gyms or to apply for jobs that are for women only. That would be an extreme and unreasonable position.

It is not in any event clear that all those who self-identify as transgender actually think of themselves as being of the opposite sex. In a study of 381 self-identified trans people in France who filled in an anonymous survey, researchers found that there was considerable variance in how participants defined themselves. Only 56% of those born male self-identified as "women". 24% adopted the term "trans women"; 13.5% identified as "trans" and 4% as "other". Among those born female, 56.5 % self-identified as "men", 26% identified as "trans men;" 12% were "trans" and 4% were other.<sup>85</sup>

Less than 30% had undergone sex reassignment surgery and 22% had undergone a sterilisation procedure. Of those who hadn't done so, only about 70% were intending to do so in the future. That is, some "trans" individuals were content not to have surgical interventions. Yet even those who had undergone sex reassignment surgery did not necessarily consider themselves to have completed a transition to the other gender. Only 75% reported that their transition was complete.<sup>86</sup>

It follows that for some people at least, identifying as 'trans' means identifying as another category of gender which does not equate with being male or female. This is reflected in categorisations such as gender X or "other". Laws which prohibit discrimination therefore need to be interpreted in such a way as to take into account this changing meaning of being 'transgender'. An employer who dismisses an employee without reasonable cause because he or she changes name and gender identification is thereby discriminating against that person. However, a club, school, gym, sports team or other body that is for a single sex is not discriminating against someone who has not, through legal mechanisms, changed his or her legal gender status. In other words, being transgender may be a different legal category from being male or female.

Issues about uniforms and bathroom usage in schools are perhaps better left to individual context-sensitive decision-making taking into account expert medical and psychological advice. The law can be a very blunt instrument for dealing with sensitive matters of this kind. In this context also, the language of 'human rights' is unlikely to be helpful. As an advocacy strategy, people claim all manner of

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<sup>85</sup> A Giami & E. Beaubatie, 'Gender identification and sex reassignment surgery in the trans population: a survey study in France' (2014) 43 *Archives of Sexual Behavior* 1491.

<sup>86</sup> *Ibid.*

'human rights' but the source of their authority to do so is often less than clear. Article 24 of the United Nations Convention on the Rights of the Child is as follows:

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

The response to children and young people who experience gender confusion is perhaps best informed by this right.

## **Bullying young people who do not accept the Safe Schools belief system**

The Safe Schools program has encountered a lot of opposition from parents, teachers and others who do not accept the premises on which it is based. The Chinese-Australian population in New South Wales circulated a petition against the program which attracted over 17,000 signatures.<sup>87</sup>

Australian children and young people grow up in a rich variety of religious and cultural milieu. Much of the population has much more traditional values than the designers of this program. That does not mean that they are "homophobic" or "transphobic". It does mean that they seek to inculcate moral values in their children concerning sexual relationships, that they may forbid their children to date before a certain age, and that they may not be comfortable with the boyfriend or girlfriend of their school-age teenager sleeping overnight in the same bed. They may also think that young people should not be encouraged to believe that they are lesbian or gay when they are as young as 14.

People with such cultural values may well accept that same-sex couples should have equal rights to heterosexual couples in situations where the law has hitherto based rights and obligations upon marital status, but they worry about changing the definition of marriage and losing its identification with centuries-old cultural and religious understandings.

These are not such radical or old-fashioned values. A generation or two ago they were very widely held. Among first generation migrants to Australia, which represent over a quarter of the population, they remain very widely held, as they do amongst many other sections of the population.

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<sup>87</sup> <http://www.abc.net.au/news/2016-08-23/safe-schools-mp-lodges-petition-against-program-signed-by-17000/7777030>.

Many young people, growing up in such cultural and religious milieu, share those values. How do they react to the Safe Schools program and to related events such as Wear it Purple Day or teacher-led discussions strongly advocating for same-sex marriage? How do their peers react if they express disagreement with particular views that are expressed by teachers and seem to represent the 'groupthink' of the school leadership?

Anecdotal evidence suggests cause for concern that these children and young people may feel bullied or marginalised if they do not go along with the prevailing view. There is a need for research on how common these experiences are. One father felt the need to pull his children out of a Victorian state school because of the program. He reported that his 15 year old daughter felt "excluded, disrespected and inferior because she was opposed to gay marriage and gender theory".<sup>88</sup> At one north-west Sydney school, around parents in around 20 families wrote a letter expressing concern that students who choose not to participate in activities supporting sexuality and gender-diverse people could be marginalised.<sup>89</sup> As one parent put it:<sup>90</sup>

"It's important it goes both ways – that the people who support (the program) are respected and the people who choose not to are respected".

Much of this could be alleviated if the program was more balanced, and encouraged equal respect for all students whatever their beliefs.

## Getting the facts right

The erroneous information promoted by the Safe Schools program is now finding its way into government publications. For example, a NSW Government publication providing a toolkit for teachers, said this:<sup>91</sup>

According to research:

- Around 10% of people are same-sex attracted
- Around 4% of people are gender diverse or transgender
- Around 1.7% of people are intersex.

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<sup>88</sup> <http://www.theaustralian.com.au/national-affairs/state-politics/safe-schools-antibullying-ruling-forcing-us-to-go-private/news-story/97600edca567f75633e45d91f0995d6>

<sup>89</sup> <http://www.dailytelegraph.com.au/newslocal/northern-district-times/safe-schools-policy-concerns-cheltenham-girls-high-school-parents/news-story/f96b21762529d35d4e460c9f4ad149a4>

<sup>90</sup> Ibid.

<sup>91</sup> Department of Education, NSW Government, *Teacher Toolbox for delivering content relating to diversity of sex, sexuality and gender* (2016) p.4. It appears that the Minister has ordered the publication to be removed, pending a review of its contents, after being alerted to its content by a newspaper: <http://www.theaustralian.com.au/national-affairs/education/schools-told-to-teach-kids-that-sex-varies-like-the-weather/news-story/ccbd63c1a2a97ad073808425efbe8387>.

In light of these statistics, we can assume that around 15% of young people in schools (and, indeed, teachers and other school staff) are sexuality and gender diverse.

The research that is cited is the same as given in the *All of Us* material.

The dubious statistics cited are troubling, and present a reputational problem for La Trobe University.<sup>92</sup> Resources made available to train teachers and teach students should not present misleading and exaggerated claims. Resources emanating from university departments should not footnote to research that does not support the claims made.

## Conclusion

It is unlikely that the concern about the Safe Schools program will go away. Without significant changes, the Safe Schools program risks conflict between school principals and teachers, and between schools and parents. Large ethnic communities are likely to become more vocal in their opposition. If parents knew that their school would assist their child to change gender identification at school without their knowledge and consent and without any expert medical or psychiatric involvement, the vast majority would, I expect, be extremely concerned.

For the most part, politicians have defended the Safe Schools program because it is an anti-bullying program. If they continue to do so, without insisting on major reforms to it, they are likely to experience a severe political backlash in the more culturally diverse constituencies. Furthermore, the risk is that opposition to it will become so strong that eventually the baby will be thrown out with the bathwater and neither this program, or one like it, will continue to exist.

That would be detrimental. In any school there will be students who are struggling with aspects of their psychosexual development. There is a need to support same-sex attracted youth, especially those who are unable to discuss these issues in their families. Many will not be same-sex attracted ten years later, but while they struggle with their sexual orientation, they need support and reliable information about same-sex attraction in the appropriate classes in the school curriculum. So it is with young people experiencing gender confusion. Expert professional help from those with the relevant medical or psychological expertise is essential.

The program, or something like it, will no doubt do much good if it is brought back into the sensible centre. While a program of this kind may offer benefits for some

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<sup>92</sup> *All of Us* states (inside front cover): “All Of Us was initiated as a project of Safe Schools Coalition Victoria at La Trobe University”.

young people, there is reason to be concerned that it may cause harm to other young people who experience same-sex attraction or gender confusion. This is not good enough for an educational resource. The Safe Schools program needs to be rescued from its progenitors.