

**CATHOLIC WOMEN’S LEAGUE OF VICTORIA AND WAGGA WAGGA INC.
SUBMISSION**

**CONSULTATION PAPER
RELIGIOUS EDUCATIONAL INSTITUTIONS AND ANTI-DISCRIMINATION
LAW (Jan 2023)
Australian Law Reform Commission**

We believe that the Australian Law Reform Commission (ALRC) recommendations - four general propositions with 14 technical proposals - **are a violation of international treaties Australia has signed.**¹ Subjecting religious educational institutions to the Australian Human Rights Commission Act 1986 (Cth) (AHRC), would make unlawful certain religious beliefs, particularly in the area of sexuality and gender identity ideology, effectively mandating a state religion/ideology in relation to those matters.

Freedom of religion

As Australia is a signatory to the International Covenant on Civil and Political Rights (ICCPR), we must protect the right to freedom of religion. The freedom to manifest religion or belief can be curtailed “where this is necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”, however, immediately following this qualification, the UN Human Rights Committee continues:

Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.²

In our egalitarian Australian society, we support all the other faith-based religious institutions, be they Jewish, Islamic, Hindu and Sikh, to teach on issues of marriage, family and relationships. What is at stake is an undermining of principles of inclusion, diversity, respect for the rights of others on which our open and free civil society rests:

- How is it inclusive to make it unlawful for citizens who hold particular religious beliefs to be able to send their children to schools that teach and live in accordance with those beliefs? Anyone who doesn’t hold those beliefs is forced or compelled to send their children to those schools.

Political parties are not forced to admit to membership people who do not agree with their policies.

- How does it accord with the idea of diversity to make it unlawful for religious schools to manifest particular religious beliefs which may not be held by others not of those beliefs? It is not diversity if only one legally mandated belief is allowed.
- How is it respecting the human rights of those with religious beliefs in relation to sexual and gender identity and on marriage and family to make it illegal to manifest those beliefs in their religious schools? It is a denial of the right to religious freedom. It is discrimination against those of that religious belief.

During the Victorian parliamentary debates on the Equal Opportunity (Religious Exceptions) Amendment Bill 2021 - which subsequently narrowed exceptions to equal opportunity laws - nineteen faith leaders from various religious communities wrote an open letter to the Andrews' Labor government expressing "grave concerns" about the government Bill.³ After the passing of this legislation in Victoria, the remaining hope for religious institutions to teach their beliefs and uphold their ethos lay in the federal law.⁴ The retention of the religious exemptions in the federal Sex Discrimination Act is essential to the protection of freedom of religion in Australia.

Parental rights

The UN Human Rights Committee has clearly stated their position on parental rights:

The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18 (4), is related to the guarantees of the freedom to teach a religion or belief stated in article 18 (1).⁵

The general public is accepting of the right of religious educational institutions to promote their ethos. In the 2022 Parliamentary Joint Committee on Human Rights, a survey of 48,107 people were asked, "Do you believe that parents should be able to choose to send their children to a school of their choice which aligns with their religious values?" the overwhelming response (98.5 %) was "yes".⁶ Would any Australian political Party present these ALRC recommendations as a policy at a general election? Not likely!

Parents have the right to choose the school they want their child enrolled in and it is expected when they join a Catholic school that the faith will be taught, and it is expected

that the school leadership and teachers will be on board. In 2021, Catholic Archbishop of Sydney Anthony Fisher said, “We have to keep preparing our teachers to be counter-cultural. They’ve got to think of themselves like missionaries in the classroom.”⁷

The executive officer of Australian Association of Christian Schools, Vanessa Cheng, and the director of public policy, Christian Schools Australia, Mark Spencer, wrote about a school teacher who was sacked from a Christian school after revealing to her employer that she no longer supported the religious doctrine on sexual morality:

We know there are different views about a range of matters within the Christian faith and our schools are transparent about what they believe. It is clearly outlined as a condition of employment and staff sign their agreement with the school’s Statement of Belief when they are employed.⁸

The ALRC recommendation number 11 states that the *Australian Human Rights Commission Act 1986* should be amended so that religious educational institutions are subject to the Act, giving the AHRC power to proactively conduct an investigation into “systemic discrimination” in religious institutions. There will not even need to be a formal complaint to the AHRC. This further power seemingly seeks to punish those who instruct on the Christian view of sex and sexual morality.

When the federal *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* passed in November 2022, the test for a finding of sex-based harassment was lowered. Now it is not solely harassment of a sexual nature but even a comment about a “characteristic that appertains generally to persons of the sex of the person” which could constitute harassment.⁹ Could this new law encapsulate a person suggesting that menstruation is a female characteristic? Might this be construed as being offensive?

Gender Identity ideology

The teaching of the Catholic Church on human sexual identity and dignity is clear – sex is binary, male and female. However, distress or confusion around feelings about these matters is acknowledged as needing sensitive and sympathetic pastoral care and support. It is a matter for schools to work out protocols how to sensitively deal with issues that arise in a manner that is respectful of the needs of a particular student /staff member and of *all* the other members of the school community as well, in a way which does not conflict with the religious beliefs of the school in regards to these matters. Religious schools have the right to conduct the schools in conformity with the deeply held beliefs of the religion of the school. Australia is under an obligation to protect that right in any Australian law.

In the ALRC Consultation report, the protected attribute of gender identity has been added to the other protected-attributes of sexual orientation, marital or relationships status, and pregnancy. Church documents refer to gender as binary, while still acknowledging confusion around sexual identity as a reality. In 2019, the Congregation for Catholic Education issued a document “Male and Female He Created Them: Towards a path of dialogue on the question of gender theory in education.”¹⁰ The Congregation for Catholic Education highlighted the principles of human dignity, difference, and complementarity.

Australia’s obligations under the ICCPR mean that religious schools also have a right to the protection of the law (as at present provided by the religious exemptions) to preserve the religious ethos of the school if targeted by activism (as distinct from the personal distress of an individual student/staff member) demanding the school take a position or conduct itself in a way that is contrary to the school’s religious beliefs.

Conclusion

There is no compelling justification for the abolition of federal protections for religious educational institutions. Very few Australians would even be aware of these ALRC recommendations (drafted by a Committee of three Commissioners and a number of legal officers) and we believe that a majority of the public would disagree with those recommendations if they knew about them.

The Albanese federal government should **reject the ALRC’s four general propositions and retain the religious exemptions to ensure the protection of the right to freedom of religion in Australian law** as required by Australia’s international obligations.

REFERENCES

1. United Nations Human Rights Status of Ratification – Interactive Dashboard - [OHCHR Dashboard](#)

Australia is a signatory to the:
 - International Covenant on Civil and Political Rights: Article 18 [International Covenant on Civil and Political Rights | OHCHR](#)
 - Universal Declaration of Human Rights: Article 18 (1), and
 - U.N. Convention on the Rights of the Child, Article 14 which guarantees the child’s right to freedom of religion. [Convention on the Rights of the Child | OHCHR](#)
2. Human Rights Committee, General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 48th sess, UN Doc CCPR/C/Rev.1/Add.4 (20 July 1993) Page 3, Paragraph 8. [General comment adopted by the Human Rights Committee under article 40, paragraph 4, of the International Covenant on Civil and Political Rights.](#)
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