

24 February 2023

The Honourable Justice Rothman AM  
Commissioner  
Australian Law Reform Commission  
PO Box 12953  
George Street Post Shop  
Queensland 4003

Via email: [antidiscriminationlaw@alrc.gov.au](mailto:antidiscriminationlaw@alrc.gov.au)

Dear Justice Rothman AM

## **AUSTRALIAN LAW REFORM COMMISSION REVIEW INTO RELIGIOUS EDUCATIONAL INSTITUTIONS AND ANTI-DISCRIMINATION LAWS**

### **SUBMISSION BY ASSOCIATED CHRISTIAN SCHOOLS LTD**

We refer to the Australian Law Reform Commission's (ALRC) Review of Religious Educational Institutions and Anti-Discrimination Laws, and specifically your invitation for individuals and organisations to provide submissions in response to your Consultation Paper.

Associated Christian Schools (ACS) represents over 45 independent Christian Schools throughout Queensland (referred to as "member schools"). With almost 30,000 students attending member schools, this represents approximately 20% of the independent school students in Queensland. Whilst each of our member schools are independently governed, they choose to collaborate together through ACS in the areas of public policy, advocacy, strategic thinking and research.

### **INITIAL OBSERVATIONS**

We make the following initial observations, which forms the basis of our responses to the Consultation Paper and your four Propositions.

#### **Christian Faith and Practice is the essence of why our member schools exist**

At the outset, it is important to understand that our member schools consider their educational activities to be a direct extension of their Christian calling and ministry. It is the Christian faith of the school (and by extension, the Christian faith of those persons who are the governors, leaders and employees of the school) that underpins the primary reason for the school's existence. Put simply, our member schools exist to be **Christian** schools (where Christian faith and beliefs are central to the purpose and activities of the school). They do not exist, and were not created, to be schools that are simply motivated or influenced by Christian faith. Their Christian faith runs much deeper and forms the essence of the school and the purpose for its existence.

It is for this reason that the Christian faith of those called to work within a member school (whether as a governor, teacher, administration or maintenance worker) is an essential characteristic of their employment. Our member schools consider it essential that their right to select staff based on Christian faith be retained.

Additionally, our member schools believe that an individual's Christian faith (what they believe) underpins the individual's Christian practice (the outworking of the person's Christian faith). Our member schools consider that a person's outward conduct and behaviour is a direct expression of that person's Christian faith, and should be consistent with that Christian faith. Faith and practice cannot simply be separated; rather practice (conduct and behaviour) is directly informed and motivated by faith.

Of course, this does not only relate to issues of sexuality and marriage. It also extends to issues of honesty, integrity, pride, servant leadership, exhibiting genuine love and care for students, etc. These are equally important Christian practices that our member schools expect staff to exhibit to students.

Herein lies our primary concern with the Consultation Paper. You have artificially separated a person's "practice" from that person's faith and beliefs. For our member schools, practice and faith cannot be separated, as one flows directly from (and is directly influenced by) the other. Essentially, a person's practice (their conduct and behaviour) should seek to be consistent with the person's faith (what they believe).

As we have already stated, this is what forms the essence of our member schools – that staff strive to exhibit behaviour and conduct that is consistent with what staff (and the school) believe. Our research indicates that this is what attracts parents and students to our member schools (specifically, 92% of Queensland parents who send their children to a faith-based school support the right of the school to employ teachers and other staff who support the clearly stated values and beliefs of the school<sup>1</sup>).

## **Choice of Schooling**

As stated above, enrolment of students within our member schools is a choice made by the parents, having regard to the values and ethos of the school. Our member schools are upfront regarding their Christian beliefs and values, and this usually forms part of the Enrolment Contract that parents sign when accepting an offer of enrolment.

This is an important feature: parents choose to enrol their children in a member school because of these beliefs and values. Parents will often make this choice because the member school's beliefs and values align with their personal beliefs and values.

As we highlighted above, the beliefs and values of our member schools is primarily dependent on the beliefs and values of their employees (and that the practices of their employees are consistent with these beliefs and values). It follows that to deny our member schools the ability to operate consistently with these beliefs and values (including being able to employ staff who act consistently with these beliefs and values) is to deny parents their right of choice.

## **Limitation of human rights and the Siracusa Principles**

We note your commentary in the Consultation Report regarding the limitation of human rights and the Siracusa Principles, particularly where rights are intersecting (at paragraphs 23 to 28 of

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<sup>1</sup> Poll on Attitudes to Christian Schooling, conducted by Compass Polling, 24-26 October 2022, copy attached

the Report). We appreciate that the ALRC's Inquiry does need to address the intersecting rights of children, parents, employees and religious institutions. We also appreciate that, where rights are intersecting, there needs to be a willingness on all parties to be respectful and consider appropriate compromises.

In this regard, our member schools regularly make significant adjustments to accommodate the individual needs of students (whether that relates to a student's gender identity, sexuality, disability or other characteristic or attribute). We agree with your observation that duty of care considerations (particularly in respect of children) is a significant consideration for schools to be mindful of. However, our member schools are not simply motivated by legal obligation (whether that be a school's duty of care or other obligation under discrimination legislation). They make these adjustments primarily because of their genuine care and concern for all students (which is a key value of our member schools, flowing out of their Christian beliefs).

However, where individuals choose to be part of a school's community (whether as a parent, student or employee), there is a legitimate expectation of respect for the beliefs and values upon which the school is founded and operates. In this respect, our member schools do not operate in a vacuum, such that their schools are the only available educational option. In every region where our member schools operate, there are a diverse range of schools operating (which are based on different beliefs and values – whether derived from religion or a secular viewpoint). Individuals have a choice regarding where they decide to study or work.

A legitimate question is therefore whether the limitation imposed on our member schools (and their right to practice religion) is necessary and/or proportionate, when other equally legitimate study and work options exist in the same locality.

Our concern with the ALRC Propositions, as drafted, is that they will restrict our member schools to such an extent that it will significantly impair their ability to fulfil their activities consistently with their beliefs and values. It follows that the measures, as currently recommended, are neither **necessary** nor **proportionate**, particularly where alternative education options are available.

## **RESPONSE TO THE ALRC PROPOSITIONS**

Having regard to these opening statements, we turn to the four Propositions in the Consultation Paper and make the following observations.

### **Proposition A – Students**

We generally do not have any concerns with this Proposition. We agree that a student should not be discriminated against because of their (or their parents') sexuality or gender identity, subject to our comments in the dot points below. In our experience, this does not occur within our member schools.

In saying this, we do make the following observations which will require further consideration and allowance for religious schools, having regard to the Siracusa Principles:

- Firstly, it is important that religious observances and practices continue to be unfettered by discrimination laws. In the context of our member schools, this would include school chapel services, worship, administering the sacraments/communion, and public prayer. Participation in those observances/practices should not be affected by discrimination laws. However, this should also extend to students who are appointed to roles of Christian leadership within the school. All religious schools (including our member

schools) should have the freedom (at the discretion of the religious school) to select students for these functions who share (and practice) the religious beliefs of the school. To not permit this freedom would unreasonably devalue the religious observance and practice.

- Secondly, given religious school premises are owned by a religious institution (whether that be the religious school or an overarching church), it is reasonable for the religious institution to require that the premises be used in a manner consistent with their beliefs and values. It would be disproportionate to the rights of the religious institution to allow the premises to be used for a purpose that is clearly inconsistent with these beliefs and values (for example, to allow a group or individual to use school facilities to propagate an alternative religion or beliefs that are clearly contrary to the school's religious beliefs). Again, to not permit this freedom would devalue the religious beliefs of the religious institution.
- Thirdly, we agree that religious schools should be permitted to teach their specific beliefs on sex, sexuality and gender. We note the limitations suggested regarding duty of care, accreditation and curriculum requirements. In the context of an accredited school, these expectations would apply as a matter of course, and do not require separate legislation. Discrimination legislation is not the place to address school curriculum.

### Propositions B, C and D – Staff

Given the inter-relationship between Propositions B, C and D, we will address these jointly.

As we have already stated, our primary concern with these Propositions is that they fail to appreciate the connection between Christian faith and Christian practice. They also fail to properly protect the right of the religious school to operate in accordance with their religious beliefs, by preferencing the beliefs of others (for example, the individual beliefs of staff) above the genuinely held religious beliefs of the school. We submit that the beliefs and practices of staff, particularly when expressed in the course of their employment, should be consistent with the beliefs of the school (subject to accredited curriculum requirements).

Firstly, it is reasonable and appropriate for religious schools to preference staff of the same faith as the religious school. In our view, religious schools should not be fettered in the application of this principle. We note that the Attorney-General's Terms of Reference to the ALRC (at Paragraph C) specifically contemplate that religious schools "can continue to build a community of faith by giving preference, in good faith, to persons of the same religion as the educational institution in the selection of staff". Our member schools operate in this way, and oppose any restriction of this to, for example, teachers of religious studies.

In this regard, we are concerned that Proposition C significantly undermines what is contemplated by paragraph C of the Terms of Reference (that a religious school "can continue to build a community of faith by giving preference, in good faith, to persons of the same religion as the educational institution in the selection of staff"). Paragraph C only imposes an obligation on the educational institution to act in "**good faith**" (for example, to not act for an ulterior purpose or with malice).

However, Proposition C goes **much** further than is contemplated in Paragraph C, by introducing considerations regarding the role of the employee (that the employee be participating in teaching, observance or practice of religion) and proportionality. The onus of proof in this regard will likely fall on the religious school, and it will ultimately be a decision of a judicial body regarding whether a school should have the benefit of the exemption. In our view, this is significantly beyond the stated Government Policy intention, and is an unreasonable fettering of the religious school's right to conduct a religious school drawing upon an entire community of

faith. It also funnels religious schools into a litigation environment to defend their religious freedom, imposing undue and unreasonable costs on charities.

In our submission, Proposition C should reflect Paragraph C of the Terms of Reference, and enable religious schools to give preference to staff of the same religion without unnecessary burdens (other than the existing expectation that schools act in good faith).

We note and support the intent of Proposition D, whereby staff are required to respect the religious ethos of the educational institution. Our Member Schools generally require staff, in the course of their employment, to uphold the religious beliefs of the school and to not act inconsistently with these religious beliefs. In our view, this expectation is consistent with implied duties of loyalty and fidelity.

However, our concern with Proposition D is the proposal that Proposition B will over-rule it. By this suggestion, the ALRC is attempting to make certain religious beliefs valid, and other religious beliefs (such as beliefs pertaining to sexuality and gender identity) invalid. This act of only validating certain beliefs, and invalidating other beliefs (in accordance with popular opinion), is an unreasonable infringement of the religious institution's right to freedom of religion.

Provided the religious school has clearly set out their religious beliefs (and the reasonable conduct expectations that flow from these beliefs), it should be able to oblige staff to uphold those beliefs and ensure their deliberate conduct is consistent with the school's expectations.

For example, religious schools should be able to oblige staff to teach consistently with the religious beliefs of the school, and not to actively undermine these beliefs by teaching an opposing view (unless this was clearly part of the accredited curriculum). To allow otherwise would significantly damage the relationship of loyalty, fidelity, trust and confidence between the employer and the employee.

As we state above, Proposition D should not be overruled by Proposition B. We consider that both could co-exist. If the religious school has clearly set out their beliefs and conduct expectations, and a staff member deliberately acts to undermine these beliefs, the school should be able to bring the employment relationship to an end. Importantly, this decision is not **by reason of, because of, or on the basis of** the employee's sex, sexuality, gender identity, marital/relationship status or pregnancy. Coming back to the real reason for the adverse action taken against the employee, it would be because of the employee's deliberate decision to undermine the religious beliefs of the school.

Likewise, if the comparator test were to be applied (and the comparator was a staff member without the applicable characteristic and who deliberately undermined the religious beliefs of the school), the first mentioned staff member is not treated less favourably than the comparator staff member.

If an Indirect Discrimination test were to be applied, the legislation will need to recognise that the religious school is *prima facie* acting reasonably in expecting staff to not undermine clearly defined beliefs of the school.

The employee would likely still have the protections of Unfair Dismissal legislation (specifically, whether the dismissal is fair in all the circumstances, including for example, whether natural justice was afforded to the employee and was the direction clearly given and understood by the employee). However, the decision would not be **by reason of, because of, or on the basis of**,

the employee's sex, sexuality, gender identity, marital/relationship status or pregnancy. It would therefore not enliven a discrimination complaint by the employee.

We return to the Consultation Report's contemplation that a teacher should be permitted to teach their personally held alternative views on sexuality, etc, notwithstanding the religious beliefs of the school. This is an unacceptable outcome to our member schools, and would significantly damage the relationship of loyalty, fidelity, trust and confidence between the employer and the employee. To be clear, if a teacher decided to teach alternative viewpoints on sexuality and marriage, and this was contrary to a clear direction from the school, the school should be entitled to bring the employment relationship to an end. Again, **the reason** for bringing the employment to an end is not the employee's attribute or religious beliefs, but rather the employee's deliberate decision to undermine the religious beliefs of the school.

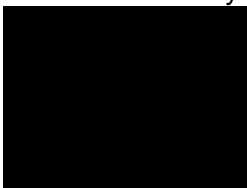
## CONCLUSION

Religious schools (including Christian schools like our member schools) have been part of the educational fabric of this country for hundreds of years. Throughout this time, religious schools have delivered valuable education services to the community and demonstrated genuine care and commitment to their students. Religious institutions (including our member schools and the churches associated with them) have invested their own significant resources (including significant financial resources) in a sacrificial manner, because of their desire to educate and develop the next generation. In our submission, this is a highly valuable and sacrificial contribution to the wider community that should be respected and encouraged.

However, the reality of the Consultation Paper and the ALRC Propositions is that it would place religious schools under considerable threat of being able to continue to be the genuine communities of faith that they currently are. This is manifestly unfair and unjust to our member schools, in light of their sacrificial contributions to date.

We urge the ALRC to have regard to our concerns, and the concerns expressed by other faith groups, and make substantial changes to the Propositions so that the valuable work of religious schooling can continue.

Yours sincerely



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Queensland

# Poll on Attitudes to Christian Schools

## Executive Summary

Colour Key

No

Unsure

Yes

More than  
**8 out of 10**

Queenslanders support the right of a religious school to employ teachers and other staff who support the clearly stated values and beliefs of the school



This rises to

**92%**

support amongst Queensland parents with children in a faith-based school



Nearly  
**2/3**

of Queensland Christian school parents support terminating the employment of staff if they no longer share these beliefs



Since 2019, over

**2/3**

of Australians consistently believe that Australian laws should protect the right to hold and practice religious beliefs – this is slightly higher amongst Queenslanders at 69%



**66%**

Support for these laws, amongst younger Queensland voters (18-24) reflects the national average of two thirds in support, with the support highest across Queensland amongst those with university qualifications



Over  
**94%**

of Queenslanders actively practicing a religious faith supported these protections, but they were still supported by a majority of Queensland voters without any religious faith



**83%**

of all QLD voters

support the right of parents to choose a school that reflects their strongly held values and beliefs



**84%**

of all QLD voters

support the right of all students to receive some level of taxpayer funding, with consistent majority support across voters for all party affiliations



**ACS**

Associated Christian Schools  
Christian education for the common good



AUSTRALIAN  
ASSOCIATION  
OF CHRISTIAN  
SCHOOLS



CHRISTIAN  
SCHOOLS  
Australia



# Queensland Poll on Attitudes to Christian Schools

Do you support the right of a religious school to employ teachers and other staff who support the values and beliefs of the school, if those values and beliefs are clearly stated?

| Political Affiliation | Labor Party | Liberal Party | Nationalists | Greens | Independent | One Nation | Other | Totals      |
|-----------------------|-------------|---------------|--------------|--------|-------------|------------|-------|-------------|
| Yes                   | 81.0        | 89.0          | 92.0         | 62.8   | 55.9        | 94.0       | 74.7  | <b>81.1</b> |
| No                    | 19.0        | 11.0          | 8.0          | 37.2   | 44.1        | 6.0        | 25.3  | <b>18.9</b> |
| Totals                | 100%        | 100%          | 100%         | 100%   | 100%        | 100%       | 100%  | <b>100%</b> |

Do you believe that Australian laws should uphold and protect the universal human right to hold and practice religious beliefs?

| Political Affiliation | Labor Party | Liberal Party | Nationalists | Greens | Independent | One Nation | Other | Totals      |
|-----------------------|-------------|---------------|--------------|--------|-------------|------------|-------|-------------|
| Yes                   | 65.9        | 79.4          | 81.2         | 53.9   | 56.9        | 69.6       | 69.5  | <b>69.1</b> |
| Unsure                | 22.5        | 14.0          | 14.1         | 26.6   | 27.2        | 24.3       | 30.5  | <b>20.7</b> |
| No                    | 11.6        | 6.6           | 4.7          | 19.5   | 15.9        | 6.1        | 0.0   | <b>10.2</b> |
| Totals                | 100%        | 100%          | 100%         | 100%   | 100%        | 100%       | 100%  | <b>100%</b> |

Do you support the right of parents to choose a school that reflects their strongly held values and beliefs?

| Political Affiliation | Labor Party | Liberal Party | Nationalists | Greens | Independent | One Nation | Other | Totals      |
|-----------------------|-------------|---------------|--------------|--------|-------------|------------|-------|-------------|
| Yes                   | 79.4        | 88.2          | 79.7         | 75.4   | 76.5        | 93.9       | 100   | <b>83.2</b> |
| Unsure                | 12.0        | 6.6           | 10.9         | 17.0   | 11.2        | 3.1        | 0.0   | <b>9.9</b>  |
| No                    | 8.6         | 5.2           | 9.4          | 7.5    | 12.2        | 3.0        | 0.0   | <b>7.0</b>  |
| Totals                | 100%        | 100%          | 100%         | 100%   | 100%        | 100%       | 100%  | <b>100%</b> |

Do you support the right of all students to receive some level of taxpayer funding to support their education?

| Political Affiliation | Labor Party | Liberal Party | Nationalists | Greens | Independent | One Nation | Other | Totals      |
|-----------------------|-------------|---------------|--------------|--------|-------------|------------|-------|-------------|
| Yes                   | 82.9        | 89.3          | 83.8         | 76.5   | 68.9        | 87.3       | 92.9  | <b>84.1</b> |
| No                    | 17.1        | 10.7          | 16.2         | 23.5   | 31.1        | 12.7       | 7.1   | <b>15.9</b> |
| Totals                | 100%        | 100%          | 100%         | 100%   | 100%        | 100%       | 100%  | <b>100%</b> |



*This independent national research was completed by Compass Polling on behalf of the Australian Christian Schools Alliance using a national weighted sample of 1,701 via online panels. These Queensland results are drawn from a sample of 504 representatives of the Queensland population on key demographics reflected in the 2021 Census. The polling was conducted from 24 – 26 October 2022.*