

# **CONSULTATION PAPER: RELIGIOUS EDUCATIONAL INSTITUTIONS AND ANTI-DISCRIMINATION LAWS<sup>1</sup>**

## **SUBMISSION FROM DEREK WALTER**

### **Introduction**

This submission is made in response to the call for submissions on the ALRC's website. The submitter is an Australian citizen and a practising Christian, and the submission is made in a strictly private capacity.

The submitter's two children attended an independent Christian high school in Tasmania, and he and his wife were very satisfied with both the academic standard of the school and its Christian basis. The submitter is gravely concerned that the proposals of the Commission described in the Consultation Paper, if put into effect, would erode the Christian basis of the school, disadvantage the parents of present and future students, and be detrimental to students themselves. Despite the Paper's protestations to the contrary, a serious and unwarranted infringement of religious freedom would result. The submitter's concern extends to all Christian schools and to schools with other religious bases – Islamic, Jewish, Hindu and other.

### **Principles**

The principles stated on page 9 of the Paper are tendentious. They are biased towards personal sexual freedom and against religious freedom. They also display a fundamental lack of understanding of the relationship between religious faith and personal morality. By implication they underestimate, or even disregard, the importance of personal morality in committed religious faith.

The Commission apparently fails to understand that all of the major religions hold that there is a natural order in the world, that human beings should live in accordance with that order and that they depart from it at their peril. The order extends to sexual behaviour, gender and family structure. The differences between religions on these matters are relatively minor.

The Paper's principles reflect a point of view that has become current only recently, and only in western world. This point of view holds that personal sexual freedom and the right to self-identify are paramount, that all other freedoms must give way to them, and that any social control in this area must be dismantled. Such a viewpoint would have been anathema to the general public in this country until only a couple of generations ago, and remains unacceptable in most of the non-western world.

The Commission evidently does not understand the strength of the desire of parents with religious faith to see their children raised in an environment consistent with that

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<sup>1</sup> ALRC, January 2023

faith, including the school environment. What the Commission proposes would be a serious infringement of religious freedom. This freedom is well expressed in Articles 18 and 26.3 of the *Universal Declaration of Human Rights*, to which Australia is a signatory. Most people of religious faith, and many others, would not see the Commission's proposals as a necessary or proportionate infringement of human rights.

The philosophical bias in the Commission's principles has pre-determined its conclusions and recommendations.

### **Reforms in relation to students (Proposition A)**

Proposition A will be unacceptable to some faith-based schools. The blanket prohibition proposed in paragraph 1 will be seen as irreconcilable with religious freedom. Other faith-based schools may find it acceptable in principle, but will be dissatisfied unless it is accompanied by an effective right to counsel students (and their parents) who have lifestyles that are inconsistent with the teachings of the relevant religion, and to persuade them to change.

At first sight paragraph 3 would appear to address this issue, but it is disturbingly vague and appears to be disingenuous. If religious educational institutions will only be permitted to teach religious doctrines or beliefs on sex or sexual orientation in a way that accords with their duty of care to students, anti-discrimination law could presumably be used to rule out teaching any religious doctrine that offends students who are living in an immoral way or who claim an irregular orientation or identity. Such students (or their parents) could claim that the school is discriminating and not meeting its duty of care by permitting such teaching. In any case, the "teaching" of beliefs probably wouldn't include counselling, in a legal sense.

Similarly, the condition that teaching of religious doctrines or beliefs on sex or sexual orientation be in accordance with requirements of the curriculum could fall foul of the anti-discrimination laws. The curriculum itself could be ruled offensive.

What is proposed in paragraph 2 may seem reassuring to religious seminaries and theological colleges, but it is ultimately meaningless if the graduates of such institutions will not have the freedom to teach religious beliefs on sexual and family matters in schools or other contexts.

### **Reforms in relation to staff (Propositions B, C and D)**

#### Proposition B

The problems with Proposition B are much the same as those with Proposition A, but it is likely that nearly all faith-based schools will oppose the paragraph 1 proposal.

The paragraph 3 proposals have the same failing as in Proposition A, i.e. what appears to be an exemption for the teaching of doctrine and beliefs would probably be negated by other anti-discrimination law. But additionally, it is ludicrously incompatible with

paragraph 1. It would obviously be unworkable for a religious educational institution to require a staff member to teach religious beliefs about sexuality and family that are inconsistent with the lifestyle of that teacher. The teacher would be very reluctant to do so, would do it insincerely if compelled to, and the teaching would not be credible to the students.

Again, paragraph 2 seems reassuring but could ultimately be meaningless.

### Proposition C

Most faith-based schools will oppose the first dot point of paragraph 1. It should remain open to schools to preference staff with any role, based on the staff member's religious belief or activity. Preferential recruitment should not be limited to persons engaged in the teaching, observance, or practice of the religion. The religious ethos of a school cannot be maintained unless all persons involved in its operation share the ethos. It is particularly important that any staff who have significant contact with students share the school's ethos and accede to the relevant religious beliefs. Students can be just as much influenced by general conversation with a mathematics teacher (for example) as by the formal teaching of a teacher of religion. The requirements of the first dot point of paragraph 1 could even preclude preferencing in the case of a school chaplain – a chaplain may be devoted to counselling and may not be directly involved in the teaching, observance, or practice of the religion. This would be an absurd situation in a religious school.

The third dot point of paragraph 1 will be completely unacceptable to most faith-based schools. This point highlights the Commission's lack of understanding of the relationship between religious faith and personal morality. The two cannot be divorced. A person living a lifestyle that is contrary to the teachings of a religion cannot uphold those teachings, or the ethos of any institution of that religion, because the beliefs and ethos will inevitably encompass personal morality.

### Proposition D

This proposition suffers from a similar internal inconsistency to Proposition B. It is unworkable for a religious educational institution to require a staff member to respect its institutional ethos if that ethos is based upon a religion with beliefs about sexuality and family that are inconsistent with the lifestyle of the staff member. The staff member would be very reluctant to support such an ethos and would not be credible to the students.

Paragraph 3 is slightly amusing in any case. The Commission seems to assume that religious schools routinely permit and even require staff to hide their own lifestyles if those lifestyles are inconsistent with the relevant religious beliefs. To the best of knowledge of this submitter, such covering-up has rarely occurred within Christian schools. Where personal lifestyle issues have come to light, the staff member concerned has usually been required to amend his or her life such that it conforms to Christian standards, or to face dismissal (sometimes the option of resignation is permitted, as is common practice in many workplaces).

## Conclusion

In its proposals, the Commission seems to have made an attempt to achieve a compromise between competing religious and personal rights. That compromise will not work, for the reasons stated above. Religious freedom, as it is commonly understood and enshrined in the *Universal Declaration of Human Rights*, cannot be reconciled with the sexual and relationship freedoms that have become accepted in Australia in recent years. Any attempt to force religious institutions, including religious schools, to accept the legitimacy of those sexual and relationship freedoms will ultimately fail, and will cause great trouble. We could even see school principals in gaol for acting according to their consciences in the operation of their schools.

Because of the manifest impracticality of what the Commission proposes, its proposals could easily be viewed as just a disingenuous attempt to bring about the demise of religious schools. The steady growth of non-government schools (most of which are religious) has irked some people on the social left of politics. Non-government school enrolments now stand at 35.5% of students. In 2022 alone, government school enrolments recorded a fall of 0.6% and non-government school enrolments recorded an increase of 2.0%<sup>2</sup>.

Viewed another way, the Commission's proposals are just another step along the road that western society has been taking for several decades now, towards the exultation of individual rights and identity (particularly sexual rights and identity) at any cost. Australia has already begun to experience that cost, with its epidemic of mental illness, family breakdowns and the steadily growing suicide rate.

The Commission should withdraw its proposals, and conduct a further review that takes into account all relevant factors including those discussed above. The Commission should ask the Government to amend its terms of reference if necessary.

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<sup>2</sup> ABS website 24 February 2023: <https://www.abs.gov.au/statistics/people/education/schools/latest-release>