



Australian Law Reform Commission  
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**By email: [religion@alrc.gov.au](mailto:religion@alrc.gov.au)**

10 May 2019

Dear President

**Submission on the proposed ALRC review into the framework of religious exemptions in anti-discrimination legislation**

We welcome this opportunity to provide feedback on the scope and terms of reference for the Australian Law Reform Commission's (ALRC) inquiry into the *Framework of Religious Exemptions in Anti-discrimination Legislation (inquiry)*.

Equality Australia is a national LGBTIQ+ legal advocacy and campaigning organisation. We advocate for positive legal, policy and social change for LGBTIQ+ people and their families in Australia. We were established in January 2019 from the Equality Campaign with support from the Human Rights Law Centre.

We believe that outdated permanent statutory exemptions which allow religious education providers to turn away lesbian, gay, bisexual, transgender and queer (LGBTQ) students, teachers and staff need to be urgently removed. There is a clear public mandate and strong legal policy support for the position that these discriminatory exemptions have no place in our modern, inclusive communities.<sup>1</sup> In our view, these straightforward amendments should be progressed without further delay.

**Current inquiry unnecessary**

In our view the current inquiry is unnecessary. The Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth) already sets out the amendments necessary to remove discrimination against LGBTQ+ students in education. In addition, the removal of the exemption in relation to employment is straight forward. A number of submissions made to the Senate Legal and Constitutional Affairs Committee's inquiry into *Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff*

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<sup>1</sup> See e.g., The Essential Report, *Equality Australia* (December 2018) 72% of Australians surveyed supported students and teachers at faith-based schools being legally protected from expulsion or firing on the basis of them being gay or transgender.

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reflected a clear pathway forward to remove exemptions in relation to employment at religious educational institutions.<sup>2</sup>

### **LGBTIQ+ community input and inclusion**

If the current inquiry proceeds, we strongly recommend that the terms of reference, scope, guidelines and timeframe on consultation for the inquiry be amended to ensure that all relevant issues are considered and that all people affected by these unfair and discriminatory laws are properly consulted and their views heard.

#### *Terms of reference*

We recommend that the Terms of Reference be amended as follows:

- Insert an additional consideration of important limitations on human rights under international human rights treaties which Australia has ratified (e.g. limitations on the manifestation of freedom of thought, conscience, religion and belief in article 18(3) of the International Covenant on Civil and Political Rights) in recognition that balancing competing human rights is an important aspect of the international human rights framework.
- Insert a consideration of the importance of protecting the rights of all people to be free from discrimination in all areas of public life – including education, employment and accessing publicly funded services.
- Amend references to religious “ethos” – which is a broad, vague term with uncertain scope – and replace it with religious “beliefs”, in line with international human rights language and guiding jurisprudence.
- Amend the consideration on the interaction between Commonwealth, State and Territory anti-discrimination laws to ensure that consistency in religious exemptions promotes consistency with Australia’s international human rights obligations. The need for a human rights compliant standard and community standards to be reflected in commonwealth law overrides the need for consistency across state and territory laws.
- Remove the point on removing legal impediments to the expression of traditional views of marriage as between ‘a man and a woman’. These issues have already been dealt with during extensive debates on the Marriage Amendment (Definition and Religious Freedoms) Bill 2017 (Cth). Existing laws already allow for different views on marriage to be freely expressed by both sides of the debate without the need for legislative reform.
- Insert an additional consideration of vilification on the basis of protected attributes under international treaties which Australia has ratified and federal anti-discrimination laws.
- Amending or interpreting the reference to ‘the right of religious institutions to conduct their affairs in a way consistent with their religious ethos’ to

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<sup>2</sup> Senate Legal and Constitutional Affairs Committee, *Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff* (26 November 2018)

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Schooldiscrimination/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Schooldiscrimination/Report). See, for example, the submission of the Human Rights Law Centre authored by Anna Brown and Lee Carnie.

accurately reflect Article 18 of the International Covenant on Civil and Political Rights and international jurisprudence.

### *Scope*

We note the broad scope of the reference to consider anti-vilification laws as well as the impact of religious exemptions on a broad range of protected attributes under different federal, state and territory laws. We ask the ALRC to consider the impact of vilification on all protected attributes – not solely the attribute of religious belief.

As part of the reference, we ask that the ALRC have particular regard to the impact of broad, permanent religious and other exemptions which allow for discrimination against people accessing services, particularly publicly funded essential services. Government funded services – including family violence, social support, housing and health services – should be provided in a non-discriminatory, inclusive way for all members of our community. This is of particular concern for LGBTIQ people who are over-represented in statistics of poor health and mental health outcomes and homelessness, many of whom report being afraid to access support services provided by religious organisations out of fear of facing discrimination.

### *Consultation*

The existing guidelines on consultation require the ALRC to consult with governments, religious institutions, the education sector and “other civil society representatives”.

Religious exemptions under the SDA have a significant impact on LGBTIQ people. The ALRC should be required to consult with communities affected by federal religious exemptions as part of its inquiry, including LGBTIQ community organisations (including transgender organisations and intersex organisations) and relevant women’s organisations.

Religious exceptions under state and territory laws also allow discrimination on the basis of other protected attributes, including on the basis of race or disability. The ALRC should be required to consult with communities more broadly affected by religious exceptions under state and territory anti-discrimination laws.

Without adequate consultation, there is a serious risk that the ALRC’s inquiry and final report will not take into account the experiences of people affected by these religious exemptions, and will present a biased, unbalanced view of the core issues at play.

### *Timeframe*

The inquiry is currently required to report on 10 April 2020. This timeframe will cause unnecessary delays to resolving the issue of discrimination in religious educational institutions. During this time, LGBTQ students and teachers will continue to face unacceptable discrimination in schools and universities.

If this inquiry proceeds, we urge the Australian Government and the ALRC to substantially shorten the timeframes to ensure that the report is tabled at an earlier date to ensure these outdated and discriminatory exemptions dealt with as an urgent priority.

At a minimum, the ALRC should:

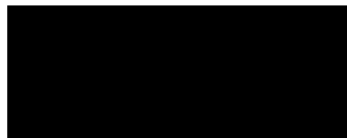
- Consult with LGBTIQ+ community advocates and organisations, and
- Ensure that LGBTIQ+ people are included on the Advisory Committee assembled to provide guidance and oversight of the inquiry process.

Please feel free to contact [lee.carnie@equalityaustralia.org.au](mailto:lee.carnie@equalityaustralia.org.au) if you have any questions in relation to this submission.

Kind regards



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