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The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

Via email: freedoms@alrc.gov.au

Dear Commissioners

RE: Traditional Rights and Freedoms— Encroachments by Commonwealth Laws.

We refer to the Interim Report (ALRC report 127) in relation to the Commission's *Inquiry into Traditional Rights and Freedoms— Encroachments by Commonwealth Laws*. In particular we refer to the discussion regarding *Proportionality and religious freedom*.

As indicated in our earlier submission we support the need for balancing rights. It is critical, however, that the impact on the exercise of the respective rights should be fully considered as part of the balancing process.

A Christian school is a faith community in which every staff member is required to celebrate, teach and modelling the beliefs, doctrines and practices of the faith. Faith is as much caught as it is taught, and CSA member schools integrate a Christian worldview across the whole life of the school.

Teachers of all subjects are required to have thought deeply about the nature of their discipline in light of their personal understanding of the Christian faith. Every teacher is involved in teaching the tenets of the faith whether in their subject specialty, in a home room or pastoral care group. All staff members participate fully in the religious celebration, worship and prayer life of the school community. Each staff member is required to demonstrate the personal and professional moral attributes characteristic of a genuine adherent of the faith. We note that the freedom expressed in the international instruments is not just the freedom to hold a religious belief, but to manifest that belief. This is a key issue for faith-based institutions in Australia, such as Christian schools.

If we consider, for example, removing the ability of Christian schools to employ staff who share the school's values and beliefs this would undermine the essential nature of the school as a place where families can access their right to a religious education. The right to receive a religious education, an internationally recognised human right, is what is at stake here.

Arguably the teacher looking for employment within that Christian school has his or her 'right' to employment subjected to a similarly absolute impact if, as a non-adherent, they are not able to access employment in that setting. However this claim needs to be assessed against the context. While the teacher is likely to have other opportunities for employment, the families seeking a faith - based education have no access to their right, if employment or other policy constraints frustrate the establishment and operation of religious schools.

At the broad level the latest, 2014, data from the Australian Bureau of Statistics on the full-time equivalents of all staff within schools indicates that:

- Government school staff FTE, 235,964, constituted 63% of the FTE positions in schools in Australia;
- Catholic school staff FTE, 70,822, constituted 19% of the FTE positions in schools in Australia;
- 'Independent' school staff FTE, 66,515, constituted 18% of the FTE positions in schools in Australia.

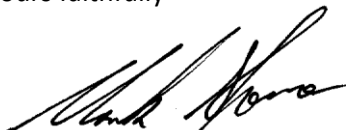
On the overstated assumption that all 'Independent' schools were faith based and Catholic schools share similar restrictions, which is generally not the case, restrictions on the availability of employment would only apply to a third of the total positions available. The widespread nature of Government schools virtually ensures that there will be a Government school within the vicinity of every Christian school.

Even in the rare case where a faith based school is the 'sole-provider' of education in a location, the competing rights needs to be judiciously balanced. Is it more reasonable, for example, to expect a teacher to relocate or maybe commute to seek work than to impose a fundamental change in the essential character of a school, denying families access to a religious education? Certainly comparison with other industries would suggest that there is no explicit or implied right to work in a location of an individual's choosing.

On this basic analysis it is clear that in many cases a simple proportionality test will demonstrate that the impact of equality prevailing over religious freedom produces an obviously disproportionate effect on the school and its community. The balancing of rights must recognise and reflect this type of test.

We look forward to the Commission's consideration of this area. In the meantime if you have any particular questions please do not hesitate to contact our CEO, Stephen O'Doherty, (ceo@csa.edu.au), or myself (m Spencer@csa.edu.au).

Yours faithfully



Mark Spencer

Executive Officer, National Policy