



29 April 2016

The Honourable Justice Sarah Derrington  
President  
Australian Law Reform Commission  
PO Box 12953,  
George Street QLD 4003

Dear President,

Re: Scope of Inquiry and Terms of Reference for Review of the Framework of Religious Exemptions in Anti-Discrimination Legislation

Thank you for the opportunity to comment on the scope of inquiry and terms of reference for this review.

I am an Associate Professor at UNSW Law. I primarily research property law, but I have also conducted research on children's rights. I taught the Faculty's *Children and the Law* course for a number of years. Although this may seem surprising, my research on property law, specifically strata title/body corporate communities, has led me to do extensive research on the appropriate limits that liberal democracies must place on private organisations in order to prevent those organisations operating in illiberal ways.<sup>1</sup> By way of example, property law addresses the question of whether private residential communities should be able to exclude members on the basis of race, religion, sexuality, disability or other personal attributes. These are the same kinds of questions that the Commission will be considering in the course of its review: to what extent do we allow private citizens, through organisations, to operate in accordance with the values of their organisation, and to what extent do we need to insist that those values correspond to those of the wider community?<sup>2</sup>

I think the terms of reference are generally adequate to address those questions. However, it will be crucial to balance consideration of "the liberty of parents and guardians (where applicable) to ensure the religious and moral education of their children in conformity with their own convictions" with the right of *all* children to be protected from sexual abuse by the provision of adequate education.

---

<sup>1</sup> C Sherry, "Privacy and Personal Autonomy", in *Strata Title Property Rights: Private governance of multi-owned properties*, Routledge 2017, pp165-197; C Sherry, "Does Discrimination Law Apply to Strata Schemes", *forthcoming*.

<sup>2</sup> L Alexander, "Illiberalism All the Way Down: Illiberal groups and two conceptions of liberalism", (2001-2002) 12(2) *Journal of Contemporary Legal Issues* 625.



In discussions of religious freedom, in particular religious schools' ability to teach in accordance with their own and parents' values, a recognition of the role of education in child protection is often missing. Some commentators do not seem to be aware that personal development classes or 'sex education' are one of the most important factors protecting children from sexual abuse.

School teachers who teach personal development say that it is routine for children to disclose sexual abuse after these classes. This is because personal development classes are often the first time a child has been told that what they hate happening to them is also wrong. Sadly, families sometimes inadvertently do not protect their children with education or if there are abusers in the family, they actively prevent their children from acquiring that information. I was once shocked to receive a letter from my daughter's public school asking parents to indicate if they did not give their consent to their 12-year-old child receiving personal development education. It seemed obvious that any parent who was abusing their child would withhold their consent, and their children were the ones who most needed those classes.

Children have a right to be protected from abuse by the provision of education. Under Article 19 of the *Convention on the Rights of the Child*, States Parties, which include Australia, have an obligation to

take all appropriate...educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

The right to age-appropriate information about sexual and personal relationships trumps a parent's right to educate their child in accordance with their religion. Under the CROC, the rights of the child are paramount. The damage done to a child by sexual abuse is often irreparable, a fact that was demonstrated repeatedly in the Royal Commission into Institutional Responses to Child Sexual Abuse.

Education must include the full spectrum of human sexual relationships, not just so children can learn that same-sex relationships are as legitimate and valuable as heterosexual relationships, but so children can be protected from all forms of abuse. At the same time a private Orthodox Jewish school in the United Kingdom was facing closure over its refusal to teach same-sex relationships, Australia was unsuccessfully attempting to extradite the former headmistress of an Orthodox Jewish school in Melbourne for sexually abusing the girls in her care. How can a child in that situation, who has no idea that it is possible for adults to have consensual, legal, same-sex relationships, understand that what is



happening to them is illegal and wrong because it should only occur between consenting adults?

In any discussion of parents' rights, it must be remembered that while the vast majority of parents care for their children wonderfully, children are not their parents' property, and parents cannot be the sole arbiters of what is good for children, even when motivated by sincere religious conviction. The consequence of that kind of reasoning can be seen in *Wisconsin v. Jonas Yoder*, 406 U.S. 205 (1972), in which the United States Supreme Court upheld three Amish fathers' right not to send their children to school beyond 8<sup>th</sup> grade on the grounds of religious freedom. I think it would be fair to suggest that few Australians would agree that a parent's religious conviction should legally allow them to deny their child an education. Australians would expect the State to step in and guarantee all children an education. By the same token, a parent's religious conviction should not be able to deny any child the right to personal development information that will help to secure them a safe, abuse-free childhood.

Yours sincerely,

Cathy Sherry  
Associate Professor  
UNSW Law