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28/1/23

ALRC Inquiry into Religious Educational Institutions and (Federal) Anti-Discrimination Laws (By email attachment)

Reference: Attorney-General's referral & terms of reference dated 4/11/22 & ALRC's Consultation Paper dated 27/1/23.

Dear President & Commissioners,

There has long been a legislative inconsistency by which the Commonwealth Government appoints itself sole authority to ratify International Agreements yet sometimes permits State & Territory Governments to legislate in areas covered by the Agreements. The Sex Discrimination Act 1984 (SDA) & the Racial Discrimination Act 1975 (RDA) refer.

A *raison d'être* for both Acts is to legislate to put into effect the Convention on the Elimination of all Forms of Discrimination against Women & the International Convention on the Elimination of all Forms of Racial Discrimination, respectively.

In the SDA the Convention is held as an object. The RDA '(gives) effect to the (International) Convention'. Both Acts include the applicable Convention as Schedules.

As all religious educational institutions are located in a State or Territory there seems, to me, little to be gained by the ALRC inquiring & reporting on possible changes to Commonwealth anti-discrimination laws "to ensure, to the extent practicable (that they) reflect the Government's commitment (on educational institutions) in a manner consistent with the rights & freedoms recognised in the International Agreements to which Australia is a Party" **if** certain State & Territory Parliaments are permitted to continue freelancing in the areas covered by the two Conventions.

s.109 of the Constitution reads – "When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, & the former shall, to the extent of the inconsistency, be invalid."

The Commonwealth Government, concomitant with any changes it may make to its anti-discrimination laws resulting from this referral, should also obtain the Commonwealth Parliament's agreement to repeal those sections of the SDA & the RDA which permit certain State & Territory Parliaments to legislate their own compliance with international agreements already ratified by Canberra.

With regard to the Consultation Paper - I support Proposition A to be implemented by Proposal 1 i.e. to retain s.38(1) & (2) of the SDA. If retaining s.38(3) is the only way of ensuring Australia's compliance with Article 18(4) of the ICCPR (the right of parents to ensure that the religious & moral education of their children conforms with the parents' convictions) then s.38(3) should be retained,

not repealed. Australian parents have the right not to send their children to a religious school where policy permits the employment of teachers or teaching contractors whose sexual preference or gender identification do not align with their convictions. Religious schools whose policy(ies) do permit such employment, can expect to run themselves out of fee-paying parents.

Yours faithfully,

Paul Nolan

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30/1/23

ALRC enquiry into Religious Educational Institutions and (Federal) Anti-Discrimination Laws. (By email attachment)

Reference: Attorney-General's referral , terms of reference & Report request dated 4/11/22.

Dear President & Commissioners,

Please accept this supplementary submission to the one dated 28/1/23.

The terms of the Government's referral read like 'mission impossible' to me. Australia ratified the International Covenant on Civil & Political Rights in 1980 which, at Article 18(4), "ensures parents the religious & moral education of their children in conformity with their own convictions."

Despite Australia agreeing to abide by Article 18(4), the Government wants the ALRC to pretend it does not exist and, rather, to advise it on how best to change the applicable Commonwealth anti-discrimination law (the Sex Discrimination Act 1984) so that religious schools are able to employ teachers & teaching contractors whose sexual preference or gender identification do not align with the convictions of parents who send their children to those types of school.

In my view it would have been perfectly proper for the ALRC to have advised the Government in November 2022 that it finds the 4/11/22 terms of reference so impracticable as to render in-executable the requested Report.

Yours faithfully,

Paul Nolan