

SUBMISSION

Thankyou for the opportunity to comment on the ALRC Consultation Paper: *Religious Educational Institutions and Anti-Discrimination Laws* January 2023.

In the brief amount of time available for comment – which does not permit me to address this issue adequately – I wish to make the following points.

The five Principles upon which the Consultation Paper is based are commendable.

However, the focus of the Consultation Paper upon the narrow topic of some vested interests at the expense of others distorts the concept of human rights and draws discriminatory conclusions to the detriment of Christian families and institutions who are condemned guilty at the outset. For instance, Article 26.3 of the Universal Declaration of Human Rights, states: *Parents have a prior right to choose the kind of education that shall be given to their children,*ⁱ which is the current situation in Australia, and should be maintained.

The Bielefeldt and Wiener (2020), book referred to in the Paper (p.9.), is described as:

Religious Freedom Under Scrutiny argues that without freedom of religion or belief, human rights cannot fully address our complex needs, yearnings, and vulnerabilities as human beings. Furthermore, ignoring or marginalizing freedom of religion or belief would weaken the plausibility, attractiveness, and legitimacy of the entire system of human rights.ⁱⁱ

Further considerations are noted below:

- Positive discrimination exists in law, for example: *A hairdresser gives discounts to customers with a Seniors Card.*ⁱⁱⁱ Hence, Christian schools should be able to operate using their own discretion for those whom they serve, on the basis of Articles 1; 2; 18; 25.2; 26.2,3; 29.2, among others.
- I suggest that human rights are those held in common by all people, the “brotherhood of man” (Art. 1, UDHR 1949^{iv}), if not common to all humans, then that “right” can be assessed as not a “right”, but something else.
- Regarding limitations: “Human rights are not a utopian dream; they are for the real world. Yet the main function of limitation clauses is not to allow certain limitations, but to set up criteria by which *to limit the scope of permissible limitations.*”^v The end goal is “freedom, justice and peace in the world”.^{vi}
- Article 26 3., states that: “Parents have a prior right to choose the kind of education that shall be given to their children.” This right, in the Christian education context, implies that Christianity will be the foundation for teaching and praxis within the school community. As the nation of Australia has been founded upon such principles and served well historically in the domain of education, then continuing such education can only be of further benefit to society.
- Regarding the limitations addressed in point 25 of the Paper (p.11.): It is not mandatory for students to attend Christian schools, or for those seeking employment to apply for roles with that sector; there are other options. Therefore anyone not aligning with the ethos of a Christian institution can seek education or employment elsewhere. Their equality of opportunity is not affected. Australia offers a variety of educational institutions; a single institution does not need to be all things to all people.

To end with a further insight from Prof. Bielefeldt:

Pitfalls of “Balancing” ... There is another danger connected with the image of the weighing scales. It can suggest a zero-sum-logic between the (seemingly or factually) conflicting interests... For instance, ample experience demonstrates that restrictive measures, which cut down on human rights and fundamental freedoms, do not always improve public safety. Instead of focusing strictly on the real threats, such measures sometimes arbitrarily target broader communities, exacerbate existing or emerging fault lines and create an atmosphere of mistrust, often at the expense of minorities, critics and dissidents. Obviously, none of this would serve purposes of trust-building and peace.^{vii}

“Only free articulation of faith is authentic faith. So in the end, this is also in the interest of the majority.”^{viii}

I submit that this Consultation Paper be rewritten and replaced with a truly Human Rights’ perspective that builds trust and peace in Australian society.

ⁱ UDHR (1949): <https://humanrights.gov.au/our-work/commission-general/universal-declaration-human-rights-human-rights-your-fingertips-human>

ⁱⁱ <https://www.booktopia.com.au/religious-freedom-under-scrutiny-heiner-bielefeldt/book/9780812251807.html>

ⁱⁱⁱ <https://humanrights.gov.au/quick-guide/12078>

^{iv} UDHR (1949): <https://humanrights.gov.au/our-work/commission-general/universal-declaration-human-rights-human-rights-your-fingertips-human>

^v Bielefeldt, H. (2020). Limiting Permissible Limitations: How to Preserve the Substance of Religious Freedom In: *Religion & Human Rights* 23 Apr 2020 https://brill.com/view/journals/rhrs/15/1-2/article-p3_2.xml?language=en

^{vi} <https://humanrights.gov.au/our-work/commission-general/universal-declaration-human-rights-human-rights-your-fingertips-human>

^{vii} Bielefeldt, H. (2020). Limiting Permissible Limitations: How to Preserve the Substance of Religious Freedom. *Religion & Human Rights* 15, 1-2, 3-19, Available From: Brill <https://doi.org/10.1163/18710328-BJA10001> [Accessed 22 February 2023]

^{viii} <https://www.facebook.com/F2F.INFO/videos/heiner-bielefeldt-if-jehovahs-witnesses-are-extremists-i-think-we-all-are/1050298725346176/> [2:48]