



Submission to the Australian Law Reform
Commission on the Religious Educational
Institutions and Anti-Discrimination Laws:
Consultation Paper (2023)

Presbyterian Church of Australia

Friday, 24 February 2023



Who we are

The Presbyterian Church of Australia (PCA) consists of over 500 congregations meeting in all Australian States and Territories. It also operates more than 20 schools and pre-schools, and three theological colleges. The Presbyterian Church has been part of Australian society since 1803 and formed as the PCA in 1901.

By its constitution, the PCA holds to the Bible as its supreme standard in all matters of faith and life and holds to the Westminster Confession of Faith (read in the light of the Declaratory Statement of 1901) as a subordinate standard and an explanation of how we interpret the Bible. These doctrinal standards commit us to ethical standards, including views on marriage, sex and gender. The General Assembly of the PCA in 2019 adopted the “Statement on Sex, Gender and Marriage” which summarises these views.

This submission has been prepared by the Church and Nation Committee of the PCA General Assembly.

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Our Position

1. The Presbyterian Church of Australia urges the Commission to reconsider its proposals and to recommend a legal framework that will allow religious schools to operate as communities of faith that can express their religious commitments holistically, thus enabling the genuine formation of students.
2. We urge the Commission not to recommend the removal of the exemptions or balancing clauses that currently exist in the legislation and allow religious educational institutions the freedom to operate according to their convictions.
3. The Presbyterian Church is committed to offering distinctively Christian and holistic education as part of our ministry to our members and to the wider community. To fulfil this commitment it is essential that our educational institutions have the freedom to employ staff who are not merely in agreement with our ethos but who also live in a manner consistent with that ethos.
4. Our schools regularly enrol students and families who do not agree with the teaching of the Presbyterian Church on sexuality and gender. The schools aim to deal with these differences sensitively and pastorally, and the vast majority of these students and families appreciate the education and care they receive from our schools.
5. Our schools do not refuse or terminate enrolment for students on the basis of sexual orientation.
6. We welcome the Commission's recommendation to retain exemptions for religious institutions in s 37(1). This, it would appear, will allow theological colleges and other training institutions to continue to teach and model Christian convictions. We would welcome clarification on this recommendation such that it is clear that theological colleges should be free to pursue their mission to train people for a range of callings, not only for ordination.
7. In line with the recommendations of the Ruddock inquiry, we encourage the Commission to recommend that a positive affirmation and protection of religious freedom in Australia should be inserted into law at the same time as any changes are made to the Sex Discrimination Act. This protection should clearly affirm the liberty of religious organisations such as schools and colleges to employ staff who adhere to the doctrine and moral code of the religion and to teach that doctrine and moral code to their students.

The Presbyterian Church of Australia endorses submissions to the ALRC by:

- The Presbyterian Church of Victoria,
- The Presbyterian Church of New South Wales,
- Presbyterian Schools,
- Freedom for Faith,
- Anglican Church Diocese of Sydney.

Introduction

We welcome the opportunity to participate in consultation on this critical issue. We thank the ALRC and its staff for their work on the Consultation Paper and for providing mechanisms for consultation.

Education is a vital aspect of most religious traditions and is certainly part of Christianity. In Presbyterian churches, parents make vows at the baptism of their children that they will raise them as followers of the Lord Jesus. For Presbyterians, this implies raising children with a whole world-and-life view from a Christian perspective.

This submission refers to Christian education in the Presbyterian tradition. Many other Christian traditions hold a comparable view of education, and other religions share similar concerns. While our submission focuses on our approach to education, the concerns expressed are held widely.

The liberty of parents to raise their children according to their religious and moral convictions is recognized as parental rights by Article 18.4 of the ICCPR and Article 5.2 of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. This freedom requires that religious communities have the freedom to establish schools that deliver an education consistent with their tenets and in accordance with the religious and moral convictions of parents.

Schools under the banner of the PCA educate around 13,000 students. These schools provide an education that is greatly valued by families and is marked by a distinctive Christian commitment. Former students from our schools serve the Australian community in a host of ways, many informed by the Christian moral vision developed during their schooling. This contribution to the Australian community is one that should not be compromised. Further, there are more than 300 Christian schools in Australia operating under the banner of Christian Schools Australia (CSA) and Christian Education National (CEN), serving nearly 200,000 students. A significant number of families which are part of the Presbyterian Church of Australia enrol their children in these schools because they want a distinctively Christian education.

Many families with Christian convictions want their children to attend schools with authentic Christian community and a consistent Christian ethos. This is only possible if schools are able to select staff who both believe and live out the Christian faith. The proposals in the Commission's paper will compromise the ability of Christian schools to provide what many Christian parents desire for their families, and thus will undermine the liberty of parents to raise their children in consistency with their Christian faith.

The Presbyterian church has always valued an educated clergy and has consistently established theological colleges for this purpose. It is also committed to educating church members in the faith. In recent years our theological colleges have trained many people who serve in churches in non-ordained roles, paid and unpaid, and who apply their theological education in a wide range of vocations beyond church life.

The Approach of the Consultation

The Consultation paper fails to provide a feasible proposal.

In the first instance, rather than exploring ways in which education institutions could maintain their ethos and mission through the recruitment of staff who hold appropriate convictions, the review suggests steps that will instead make this impossible. At this fundamental point, the Commission has failed to meet the brief it was given.

Second, the consultation does not understand the nature of religious education. Religious education, certainly Christian education in the Presbyterian tradition, is not merely the communication of certain facts and the development of relevant skills. Rather it presents students with a holistic worldview that should shape every aspect of their lives. This requires educators and other staff who not only hold convictions but also live them out. The proposed restrictions on recruitment, such that freedom in recruitment will only apply to teachers involved in religious education, fail to recognise the way Christian schools present a Christian ethos across all key learning areas. It also fails to recognise the impact of ancillary and support staff on the life and values of the school community.

Third, the Consultation Paper does not recognise the relevance of several of the protected attributes in the Sex Discrimination Act to an individual's ability, and willingness, to work well in a Christian community. Based on biblical teaching, Christian churches have consistently held that marriage is a life-long and exclusive union between a man and a woman and the only proper setting for sexual activity. They have also held that the human body is created by God as male or female and that biological or natal sex rightly determines a person's gender identity. (Church communities have always included members who find it difficult to live consistently with these views, and churches have sought to care for them well). Thus, issues of sexual orientation, expressed in sexual relationships, gender identity, and marital or relationship status, are highly relevant to a person's Christian conduct and their place in a Christian community. The Paper, however, incorrectly assumes that a person can hold to the Christian faith and seek to live as a Christian without regard to their sexual relationships or the gender identity they express.

Fourth, the Paper has not given proper regard to the commitments Australia has made to freedom of religion under international legal instruments. Article 18.1 of the International Covenant on Civil and Political Rights affirms the right to freedom of thought, conscience and religion, including the “freedom to have or to adopt a religion or belief ... and freedom, either individually or in community with others and in public or private, to manifest ... religion or belief in worship, observance, practice and teaching”. This right includes freedom for parents and guardians “to ensure the religious and moral education of their children in conformity with their own convictions”. The proposals from the Commission would interfere with the capacity of religious education institutions to provide such education and so would abrogate the rights of many Australians to access appropriate education for their children.

Students

The proposed changes to the Act seek to ensure that students will not be refused enrolment in educational institutions on the basis of sex, sexual orientation, gender identity, marital or relationships status, or pregnancy. Christian schools have not sought to do this. Schools run by the Presbyterian Church educate and care for students who make a range of choices about lifestyle and actions, and who hold a wide variety of personal beliefs. We are not seeking to protect a right to refuse enrolment or to expel students solely on the basis of their sexuality or sexual orientation.

Nevertheless, we would point out that, as is clear from the examples in the Review, the removal of Section 38 (3) of the Sex-discrimination Act will do more than remove the right for educational institutions to discriminate with respect to enrolment. Section 21 provides that discrimination may include refusing admission as a student or expelling a student, but may also involve terms or conditions of admission, denying or limiting access to any benefit or “subjecting the student to any other detriment”. This raises the prospect that schools may be subject to complaints under the Act for policies relating to student behaviour in the area of sexual expression generally: uniform requirements, the provision of bathrooms, changerooms and accommodation, as well as requirements that students attend chapel and take classes which teach classic Christian views of sex, marriage and gender. The example given in the Review of an LGBTQ+ student being elected as school captain is a case in point. If this student were in an active same-sex relationship, they would not be able to give appropriate Christian leadership in a Christian school which requires modelling Christian living. This would also be the case for a student in a sexually active unmarried heterosexual relationship. In both cases, the proposal removes from schools the ability to determine an ethos by selecting appropriate leaders.

Staff

The Presbyterian Church has been committed to establishing schools with Christian teachers since its origins in 16th-century Scotland. For many centuries it was common that teachers were ordained clergy because it was understood that the Bible spoke to all areas of life and that the character and devotion of the teacher were as important as the curriculum.

In the modern era, Presbyterians have insisted that Christianity offers a “world and life view” that applies to every area of thought and learning. We expect teachers to connect Christian convictions to all areas of teaching. We also recognise that students are formed by their participation in a community to which every staff member makes an important contribution. If schools lose the capacity to consider the active faith and consistent life of applicants for staff positions, this will undermine the educational mission of our schools.

Presbyterian schools are not seeking to select or exclude staff simply based on their sexual orientation, marital status or gender identity. Rather, they aim to employ staff who embrace and live out the whole Christian faith consistently. This includes, but is not limited to, a commitment to following the classic Christian ethic in relation to marriage, sex and gender. The Commission’s proposals introduce an artificial “carve out” such that schools could prefer staff who share their religious convictions but could not take into account their views and practice in relation to marriage, sex and gender. This makes it impossible for schools to consistently develop an all of life approach to their education.

Theological Colleges and training institutions

The Presbyterian Church operates three theological colleges which teach at tertiary level. It also has various institutions which provide training for Christian service for church members and others. We welcome the recommendation to retain exemptions for religious institutions in s 37(1) which would allow theological colleges and other training institutions to continue to teach and model Christian convictions and to apply require standards to staff and students.

The proposal is not clear that theological colleges would retain exemptions when students are not training to be “ministers”. At least, the proposal is not clear how broadly the term “ministers” would be understood. In practice, theological colleges have students in their programs who are training for a range of vocations within church life and beyond. Each of these students enrolls seeking the theological and spiritual formation offered by the college and its community. Colleges must be able to continue to offer a consistent and holistic education to all students who wish to enroll. This cannot feasibly be limited to training for ordination or ministry (understood narrowly as working for a church).