

Human
Rights
Law
Centre.

**SUBMISSION TO AUSTRALIAN LAW REFORM
COMMISSION CONSULTATION PAPER ON
RELIGIOUS EDUCATIONAL INSTITUTIONS
AND ANTI-DISCRIMINATION LAWS**

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Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

The Human Rights Law Centre acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

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1. Introduction

Thank you for the opportunity to make a submission on the consultation paper on religious educational institutions and anti-discrimination laws.

The Human Rights Law Centre supports reform of the current exemptions to anti-discrimination laws and welcomes the thorough analysis contained in the consultation paper to ensure that all proposals are consistent with Australia's international human rights obligations. Such reforms would be a significant but still limited step in protecting the rights of people, including children and young people in educational institutions and their families. For this reason, this submission focuses on the value of an Australian Charter of Human Rights, also known as a Human Rights Act, which is described on page 37 of the *Australian Law Reform Commission, Religious Educational Institutions and Anti-Discrimination Laws: Consultation Paper (2023)* in Stage 2 of future staged reforms.

We urge the Commission to consider and recommend a Charter in its final report alongside the important reforms to anti-discrimination laws. A Charter of Human Rights is a comprehensive human rights framework that ensures the whole range of human rights are being considered and factored into government laws, policies and services, including the education sector. This is backed up by the experience of the state-based Charters and Human Rights Acts in Victoria, Queensland and the Australian Capital Territory that have been in action for between three and eighteen years.

Our submission outlines the main features and benefits of a Charter in placing the values of freedom, equality, compassion and dignity at the heart of our laws. That is how we can work towards being a democratic society in which fundamental human rights are respected by all and legally protected.

2. Charter of Human Rights

2.1 What is a Charter of Human Rights

No matter who we are or where we are, our lives are better when we all treat each other with fairness and respect and when we can all enjoy our rights and freedoms. But politicians and corporations don't always respect people's rights. Charters of Human Rights help to level the playing field by promoting respect for human rights and by giving people power to take action if their rights are breached.

Charters of Human Rights ensure the actions of our governments are guided by values of freedom, equality, compassion and dignity. Charters foster respect for human rights and help everyone, from school children to people who decide to call Australia home, to understand the rights and freedoms that we all share. Charters reflect our values and help to articulate the kind of society we all want to live in.

Charters prevent human rights violations by putting human rights at the heart of decision making when governments are developing laws and policies and delivering services. Importantly, they also provide a powerful tool to challenge injustice, enabling people and communities to take action and seek justice if their rights are violated.

Yet, Australia has no national Charter of Human Rights that comprehensively protects people's human rights in law. We are the only Western democracy without a national Charter or similar law.

There are three Charters of Rights operating successfully at the state and territory level; in the Australian Capital Territory (ACT) since 2004, Victoria since 2006, and Queensland since 2020. These Charters have been quietly improving people's lives, in small and big ways. They have helped to ensure that people are treated with greater fairness, dignity and respect, stopping families from being evicted into homelessness, ensuring people with a disability receive appropriate support and so much more.

The Victorian Charter and the Queensland and ACT Human Rights Acts all work in a similar way. They protect and promote people's rights when dealing with governments; the Victorian Government, Queensland Government and the ACT Government respectively. They also promote transparency in the way the governments and parliaments deal with human rights issues.

They require public authorities, including government departments, public servants, local councils, police and other agencies, to:

- Properly consider human rights when making laws, developing policies, delivering services and making decisions; and
- Act compatibly with human rights.

They require that new laws must be assessed in Parliament against human rights standards. In some circumstances, a parliament can expressly choose to override human rights.

In some circumstances, they allow governments to limit or restrict human rights. The considerations applied in the Commission's analysis acknowledge the tension between the rights of individuals working in or attending religious educational institutions and the extent to which freedom of religion contains elements which are exercised collectively or by an institution. The Commission's application of the consideration regarding necessity to achieve a legitimate aim and the proportionality of the proposed restrictions, are excellent demonstrations of the approach which should govern all public decision-making.

Beyond the scope of the specific protections envisaged by the proposed reforms, if a government doesn't act compatibly with human rights or properly consider human rights, a Charter would provide a direct cause of action to remedy human rights violations that may not be covered by specific anti-discrimination laws.

The experiences of Victoria, Queensland and the ACT have shown the importance of these broader human rights frameworks. These charters have:

- Helped governments to identify and address human rights issues affecting people at an early stage of policy development.
- Ensured transparency around how governments and parliaments have considered people's human rights.
- Promoted better understanding of human rights.
- Prevented human rights issues from escalating.
- Provided a way for people to resolve human rights issues by raising them with government and other agencies.
- Given people the power to take action and address human rights issues affecting them through complaint mechanisms and in the courts.

2.2 Charters and anti-discrimination law

Charters provide a framework to fairly apply anti-discrimination laws because it outlines the full range of human rights that everyone in our society has, and seeks consideration of those rights when making decisions or judgements. This means Charters provide the flexibility to cover specific situations, and navigate situations where rights may compete. However, it is important to note that a Charter isn't a substitute for comprehensive and fair anti-discrimination laws as they serve complimentary, but not identical purposes.

That is why, alongside the essential reforms needed to the broad exemptions in anti-discrimination laws, there should also be a Charter.

3. Conclusion

Charters embed human rights into the DNA of all branches of our government, meaning people are placed at the heart of laws, policies and public services including education. Protecting all people's human rights, including the particular rights of children and young people in educational institutions, is in all our interests as Charters help to make life better for everyone.

Recommendation

That the Australian Law Reform Commission prioritise recommending the development of an Australian Charter of Human Rights to complement and strengthen reforms to exemptions to anti-discrimination law for religious educational institutions.
