



24 February 2023

Religious Educational Institutions and Anti-Discrimination Laws  
Australian Law Reform Commission  
PO Box 12953,  
George Street Post Shop  
Queensland 4003

Submission uploaded to: <https://www.alrc.gov.au/inquiry/anti-discrimination-laws/submission/>

To whom it may concern

**Re: Religious Educational Institutions and Anti-Discrimination Laws**

We welcome the opportunity to make a submission to the Australian Law Reform Commission's Consultation Paper regarding Religious Educational Institutions and Anti-Discrimination Laws.

ACON is NSW's leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders. Established in 1985, ACON works to create opportunities for people in our communities to live their healthiest lives. We have services based in NSW, and nationally.

We wish to note that we strongly support measures to prevent students and employees from being discriminated against because of their gender or sexuality. We have advocated strongly for this in [submissions to the previous Government's Religious Discrimination Bills, in NSW legislation](#), and in our [election platform for the NSW 2023 State Election](#).

We commend the Consultation Paper for its cross-jurisdictional summary of exceptions for religious educational institutions. This Table clearly establishes the situation in NSW, where the broadest exceptions exist.

In other jurisdictions in Australia, where Commonwealth law may currently fail to protect students and staff, state and territory laws may apply to ensure protection from discrimination. This means that students and staff in NSW are the most susceptible to discrimination in religious educational institutions.

This must change. We applaud the steps the Federal Government is taking to amend this, but we equally call on the NSW Government to commit to comprehensive reform of the *NSW Anti-Discrimination Act (1977)* ("the ADA").

We also wish to note that while beyond the scope of the current inquiry, in NSW, under Section 56(d) of the ADA, religious organisations are able to discriminate not just in religious educational institutions, but also in healthcare, accommodation, and housing, disability and other social services.<sup>1</sup> This has particular ramifications for LGBTQ+ people accessing services in NSW, a further reason we seek urgent review of the ADA.

Furthermore, it is important to note that obligations to non-discrimination are not the same as providing welcoming and inclusive services. Negative experiences at health, education and social services are a

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frequent occurrence for LGBTQ+ people, who experience judgement, assumptions, and ignorance about who we are, and what we need. This can result in barriers to accessing services in the future, which can have lifelong impacts on our health and wellbeing.

Public-funded services should be committed to providing a safe and welcoming environment for all of the public. Government procurement policies should be ensuring that the services receiving public funding are not merely non-discriminatory, but they are also committed to the safety and inclusion of all who use that service.

With regard to the current consultation paper, ACON supports Equality Australia's view that Proposals 7-10 should not proceed in their current form.

With regard to Proposal 7, we are concerned that allowing curriculum content to be exempt from the *Sex Discrimination Act* could have substantial adverse effects for sexuality and gender-diverse communities.

In NSW in 2020, the proposed *Education Legislation Amendment (Parental Rights) Bill* sought to prohibit teaching of 'gender fluidity' in schools, effectively entrenching negative health outcomes for trans and gender-diverse people. ACON detailed our concerns with that Bill [in a submission to NSW Parliament](#). The Bill was ultimately not supported by the NSW Government.

The unsuccessful Bill contradicted non-discrimination obligations in the *Sex Discrimination Act 1984 Cth* ("the SDA"). Should the SDA be amended so that curriculum content is not subject to the Act, this would allow for the possibility of individual schools introducing curricula like that proposed in the Education Legislation Amendment, for example teaching that LGBTQ+ people are wrong or sinful. This has immeasurable harm for young LGBTQ+ people, but also contributes to the shaping of a discriminatory society.

ACON is concerned that Propositions C and D are overly broad and liable for misuse. For example, one of the in-practice examples for Proposition C – which allows for preferencing of staff on religious grounds – suggest that "a school where all teaching staff were required to lead home-rooms for students where acts of religious observance or practice were expected to be carried out could preference applicants on religious grounds." This example invites institutions to create such requirements of their staff, effectively reinstating the existing legislation by applying a broad exemption where there is no need.

Proposition D allows for the termination of employees who fail to 'respect the religious ethos of the educational institution'. This also has the potential to be misused, because it can be imposed in circumstances that are "reasonable and proportionate", which is not clearly defined.

The examples note that "a school could not terminate the employment of a lesbian teacher on the grounds that she was actively undermining the religious ethos of the institution merely by entering into a marriage with a woman". The use of the word 'merely' seems to indicate that were this teacher to do more, such as bring a wedding photo to school for her desk, this could be considered 'actively undermining', as it would depend on what is reasonable and proportionate in the circumstances, which is not clearly defined.



## Notes

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<sup>1</sup> Public Interest Advocacy Centre (2021). *Leader to Laggard: The case for modernising the NSW AntiDiscrimination Act*. Sydney: PIAC