

A submission by Sydney Missionary & Bible College to the Australian Law Reform Commission in response to the consultation paper, *Religious Educational Institutions and Anti-Discrimination Laws*

We thank the ALRC for grappling with the complex issues encompassed in the consultation paper. We are especially grateful for the ALRC for drawing our attention to the pastoral issues at stake as we train students for Christian ministry in Australia and for global cross-cultural contexts. Our student body is diverse culturally, as well from different protestant denominations. Moreover, we have students training for Christian ministry who experience same-sex attraction and/or gender incongruence and who are seeking to be faithful to the Scriptures of the Christian faith. So the consultation paper touches on a core value of Sydney Missionary & Bible College, which is that we are community-oriented.

We also recognise that the ALRC has a complex task trying to encapsulate in one paper issues pertaining to religious and sexual anti-discrimination across a broad variety of religious education contexts within Australia. This paper addresses faith-based schools that teach from K–12, as well as the university like Australian Catholic University, and theological colleges like Sydney Missionary & Bible College. While these are examples, each of these educational contexts has distinctive purposes and so we understand that putting forward propositions and technical proposals that address all three contexts at once is an intricate task. With this said, our response below addresses eight concerns from the perspective of a theological college with the detail of the propositions, their examples, and the related technical proposals. After these eight concerns are addressed, two broader concerns about the principles that shape the propositions are raised.

Eight Concerns with the Detail of Propositions A–D

- 1. The use of the phrase “religious ministers” is incongruent with the organisational task of many Australian protestant theological colleges.**

Recommendation: The phrase “religious minister” could be interpreted too narrowly in Propositions A and B. We suggest broadening this phrase to read as, “current or prospective religious practitioner.”

Rationale

In propositions A and B, the phrase “religious ministers” when referring to the training of men and women in a theological college is out of step with most Australian protestant theological colleges. Proposition A2 states, “Religious educational institutions should be permitted to train religious ministers and members of religious orders, and regulate participation in religious observances or practices, unfettered by sex discrimination laws.” This statement expresses permission for theological colleges to train their students without hindrance from sex discrimination laws. Yet, this statement narrows the task of theological colleges to the training of “religious ministers.” There are three issues here. First, the statement assumes that the students are accepted to train as religious ministers when they are at theological college. While this might be the case for some students and theological colleges, for example, in the Anglican Diocese of Melbourne and research students, this is not the case for the majority of students who undertake discernment processes alongside their training. The more precise phrase would be “be permitted to train current and prospective religious ministers.” Second, the phrase “religious ministers” can be defined very narrowly as those training to be ordained, or it could be understood very broadly to mean any student who is training to serve in a religious context. However, there is limited case law presently that guides whether the intent is narrow or broad. Third, the majority of Australian protestant theological colleges train their student bodies for the broader understanding of “religious ministers.” For instance, when our students graduate, they are employed as church planters, ordained ministers, elders, women’s ministry workers, pastoral care workers, children and youth workers, school chaplains, Bible translators,

missionaries, and cross-cultural workers in local and overseas contexts. Other students choose to use their training in their local church as practitioners while working in their secular jobs. While this list is not exhaustive, it is indicative that we train students, both men and women, for a wide variety of religious contexts that is broader than the word “minister”.

This concern about the use of “religious ministers” is true for the ninth bullet point under the examples for Proposition A. In its current form, the implication is that theological colleges may only continue to discriminate on the grounds of sexual orientation or gender identity when they are training those who will be ordained as ministers. This, however, only applies to some of our students at Sydney Missionary & Bible College. Ordained ministry, or equivalents in other denominations and religions, is a very narrow understanding of a vocational religious worker. We would argue that the same reasoning applies to Proposition B2.

If left to case law to determine whether a religious minister refers to a narrow definition or a broad definition, it would leave theological colleges who train students to serve vocationally in a broad variety of contexts exposed. For this reason, we suggest that the phrase “religious minister” be revised as “religious practitioner.” This revision would describe the full scope of training that protestant theological colleges provide in Australia and so allow for A2 and B2 to function as is intended, while respecting the ALRC’s view that broadening the exception would not be in accordance with students’ rights.

2. The lack of definition about the differentiation between a school and a theological college in propositions A–D leaves theological colleges exposed in future case law.

Recommendation: The term “school” within the examples for each proposition could be interpreted broadly to encompass theological colleges, which could leave theological colleges exposed in future case law. We suggest:

- clarifying the definitions of school and theological college to distinguish each type of education provider and their distinct functions in society for the purpose of clarity in future legislation and guidance notes.
- pointing to the Higher Education Standards Framework (Threshold Standards) 2021 in future legislation and guidance notes for definitions of university and university college (see HESF 2021 B1).

Rationale

In propositions A–D, the phrase to describe a religious education provider is “religious educational institutions” and the propositions are expressed in such a way where they apply to all religious educational institutions. The exceptions to this are where the propositions explicitly identify the training of religious ministers, which implies that the religious education institution being addressed in that particular proposition (see A2 and B2) are theological colleges. However, the examples then distinguish between schools and theological colleges, especially where a theological college may have a narrow exemption for the training of religious ministers where schools may not. Yet, this narrow exemption relies on the example and is not necessarily clear in the proposition. There is no definition for a school that narrows its scope to the teaching of K–12 and for a theological college that is a higher education provider. There is a legal distinction between the two types of schools since K–12 schools are regulated by both federal legislation and state-based education regulatory bodies and theological colleges are regulated by TEQSA and need to conform to the Higher Education Standards Framework Threshold Standards 2021. This legal distinction between the two types of schools acknowledges that a K–12 school and a theological college have two different functions within society. Yet, the lack of definition in the paper could lead to the exposure of

theological colleges. Technically, a theological college is a type of “school” if “school” is interpreted broadly in future legal proceedings. An example that is applied to a school may later, whether it be in guidance notes or in case law, be applied to a theological college. For instance, in the examples for Proposition B, the first bullet point states, “a school could no longer refuse to hire a teacher on the grounds that they are LGBTQ+,” yet the final bullet point states “a theological college could continue to select staff on the basis of sex or sexual orientation where the staff member was to be involved in the training of ministers.” Putting aside the need to revise the phrase “training of ministers” as highlighted in Point 1 above, without the specific definition of school meaning K–12 schools, a theological college is exposed since it is a type of school and not all theological colleges train “ministers” (also noted in Point 1 above). If “school” is defined broadly, theological colleges may be required to employ lecturers who are highly qualified and yet who do not share the confessional basis of the theological college to teach biblical studies units. This has several implications:

- the lecturer would struggle to train the students to apply their knowledge and skills to their discipline, which is required by learning outcomes regulated by section 1.4 in the HESF 2021.
- students would not benefit from being trained by a lecturer who has experience in the context for which they are being trained. This affects the quality of training and also the effectiveness of training since it is training for a vocational purpose.

To limit the exposure of theological colleges, we recommend that any future versions of this paper, future legislation based on this paper, and guidance notes, clearly define and set out how these propositions apply distinctly to theological colleges as opposed to K–12 schools.

3. A1 could lead to the failure of theological colleges to train students to be effective religious practitioners in their ministry contexts.

Recommendation: We suggest allowing theological colleges to retain freedom to address behavioural issues with current students regarding gender, gender identity, relationship status, while curtailing the freedom of theological colleges to discriminate against current and prospective students based on pregnancy, breast-feeding and marital status.

Rationale

The rationale below addresses the above recommendation in two stages. The first stage is to address the reasons for allowing theological colleges to retain freedom to discriminate based on relationships and relational status. The second stage then explores the reasons for discrimination based on gender and gender identity.

As a theological college, we are training men and women for spiritual leadership in church, university, school, hospital, and cross-cultural contexts, where there are boundaries in codes of conduct set by employers and College stakeholders (e.g., Anglican Diocese of Sydney, City to City Australia, Baptist Union NSW, Australian Fellowship of Evangelical Students). These codes of conduct, such as the [Anglican Church of Australia’s Faithfulness in Service](#), directly address issues of sexual behaviour, faithfulness in marriage, and relationships outside of marriage. The reason these codes of conduct address issues of sexual behaviour is to ensure that the lives of those in spiritual leadership positions reflect doctrine shaped by the Christian Scriptures and to protect religious communities from relational breakdown and harm caused by professional standards failure of a religious leader regarding his or her sexual behaviour. Our stakeholders expect that training students in appropriate relational boundaries is part of training students for their vocational work as religious practitioners and leaders. While an argument could be made that the theological college needs to leave these issues to the student’s local church and governing body, the training about these relational boundaries starts at the theological college level when students are learning skills for pastoral

ministry. We would fail in our duty to train students for the contexts in which they will minister and serve if our freedom is curtailed to address relational issues with students.

Sadly, we are all too aware that sexual failure (e.g., an affair outside of marriage) in church leadership is a real problem and society is aware of this since many of these cases are publicly paraded in the media. Moreover, many churches in Sydney are presently caring for members of a particular church where there has been much harm done as result of sexual failure by church leaders. This harm is real. At Sydney Missionary & Bible College, we have frameworks in place to help students create strategies in their personal lives to protect them and their families from future professional misconduct as a result of sexual failure. We do this in good faith as a preventive measure and in such a way that prioritises our duty of care for students pastorally. We would have to stop these strategies as a result of the propositions and proposals in the consultation paper if they shaped future legislation, guidance notes, and case law. For the wellbeing of students and for the future people that they minister to, we ask that freedom be retained by theological colleges to address genuine pastoral issues, in good faith, relating to sexual and relational behaviour with students.

While the above explains the reason for allowing theological colleges to retain the freedom to discriminate on the grounds of relationship and relationship status, this does not consider the reason for theological colleges to retain the freedom to discriminate on the grounds of sexual and gender identity expression. In addressing the issue of discriminating on the grounds of sexual and gender identity expression, we wish to recognise that this is a deeply personal issue for many and can be profoundly painful. We wish to offer this explanation with the pastoral compassion that we wish to model as we train students for Christian ministry. First, it is helpful to clarify what we do not mean. Our present practice is not to discriminate against students based on whether a student is male or female. We train both men and women as religious practitioners. Also, we do not discriminate against students based on whether they experience same-sex attraction. We do, however, with pastoral support provided, ask students to respect that sexual engagement belongs within a marriage relationship between a man and a woman. We make this request in good faith so that we can train students to identify and respect the relational boundaries necessary to be effective and faithful religious practitioners. This is consistent with our policy regarding single heterosexual students who are similarly asked to abstain from sexual intimacy with a person of the opposite sex and to uphold marriage as the context for sexual intimacy. We deem these boundaries to be both reasonable and proportionate within the context of the college, and so we ask that freedom remains for the college to address the issues of gender expression and relational status with students who are both same-sex attracted and heterosexual.

However, where we, as a theological college, need to remain free to discriminate based on gender identity and expression is with prospective students who identify as a gender different from their biological sex at birth and/or those who are transitioning genders in order to present as a gender different from their biological sex at birth. If we are required by law to accept students in these circumstances, then we would be put in a position where we would fail in our duty of care to them, would fail to train them effectively for vocational ministry, and would no longer be compliant with HESF 2021.

To accept such a student would also mean that we are taking their money for tuition, but that they would not be employable in the ministry contexts for which our graduates are trained. Most, if not all, employers of our graduates and stakeholders of the college do not employ those who identify as a gender different from their biological sex or who express a transgender identity. We would fail in our duty of care for the student to train them for a vocation where they are unemployable based on their gender identity and gender expression. This is an even more significant issue for the ARLC to consider, especially since it is deemed a right within the consultation paper, informed by the International Covenant on Economic, Social, and Cultural Rights, for employment to be a human

right. Moreover, setting up a student for failure upon graduation is not caring for that student. The most caring and supportive action we can take as a college is not to accept the student in the first instance. To be able to act accordingly, we need to retain the freedom to make this decision and to care for the prospective student in a way that is reasonable and proportionate in our context.

As flagged above, if we were required to accept, for instance, a transgender student, then we would no longer be compliant with Higher Education Standards Framework (Threshold Standards) 2021 (HESF 2021). Part of HESF 2021 is that there is a direct correlation between course outcomes and graduate outcomes. That is, as part of a course outcome, the college is required to equip students with the “knowledge and skills required for employment” (1.4.2c). To measure these correlations, the Australian College of Theology, of which we are an affiliated college, is required by TEQSA to send out a Graduate Outcomes Survey (GOS), which measures the effectiveness of students’ training for their employment outcomes. The expectation by TEQSA is that students who are enrolled in a course are trained with the ability to gain employment after graduation. If future legislation and guidance notes are implemented based on this consultation paper, we would no longer be able to comply with these requirements in good faith because the college would be placed in an untenable position of accepting students into a course where they would not be able to achieve the graduate outcomes for which they have been trained.

4. By limiting the institutional autonomy of theological colleges, Proposition A requires theological colleges to act inconsistently with the historic Christian faith that they uphold by conviction.

Recommendation: We suggest allowing theological colleges to retain freedom to act consistently with the worldview of the historic Christian faith since the Christian faith is not merely a faith that is confessed but is an embodied faith.

Rationale

We recognise that the ALRC wishes to elevate the rights of students and, by doing so, is suggesting that institutional autonomy be restricted. We would be amiss though if we did not point out that our belief, as shaped by the Christian Scriptures, is that sexual activity belongs within the boundaries of marriage between a man and a woman. We also believe that God created humanity male and female. We also believe that humanity’s rejection of God’s purposes for his world has brought many forms of brokenness to our human condition. For some, this brokenness takes the form of a struggle with their biological sex and the experience of gender dysphoria. Again, we have students within our college who experience this painful struggle; they are not discriminated against, but instead receive pastoral support as they are trained for future employment. These students have chosen not to express a gender identity contrary to their biological sex, but manage their gender dysphoria in other ways. These students represent a different scenario to the one described above in point 3. Point 3 considered the scenario where a prospective student wishes to express a gender identity contrary to their biological sex. This is a very different scenario to that of students who struggle with their biological sex and yet choose to live in line with their biological sex. The reason our current students choose this path is that they know that the Christian faith is an embodied faith. As a community, we are not just about confessing our beliefs, but we seek to embody our Christian worldview. We would ask that the ALRC and future legislation would allow theological colleges who hold to a historic view of human anthropology and the relationship of sex to gender to retain their freedom to act consistently with the beliefs of historic Christianity.

5. There is a need to define the scope of what is reasonable and proportionate since this scope will affect the shape and detail of future legislation and guidance notes.

Recommendation: We suggest that further consideration is needed about what is reasonable and proportionate within Australian theological colleges that uphold a historic view of marriage and faithfulness within marriage.

Rationale

Paragraph 26 gives guidance about how to assess proportionality stating in the third bullet point, “the extent of any interference with human rights — the greater the interference the less likely it is to be considered proportionate”. Throughout the propositions, explanations, and examples, the phrase “reasonable and proportionate in the circumstances” is repeatedly used. We acknowledge that the ALRC understands proportionality to be a vital measure as championed by the United Nations. However, there is very little clarity as to what this phrase means in practical terms for a theological college training men and women for spiritual leadership in a variety of religious contexts. Theological colleges are not isolated entities, but rather work in close partnership with employees and stakeholders. This lack of clarity represents a concern as our freedom to train students could be seriously curtailed by what is deemed “reasonable and proportionate in the circumstances.” For instance, under the present propositions and proposals, a student has a right to conduct a sexual affair with another married woman while being a student training for pastoral ministry at a theological college. For religious reasons based on the historic understanding of the Christian Scriptures, the student’s behaviour would be deemed inappropriate and would result in disciplinary action. In this example, what would be considered reasonable and proportionate in future legislation and guidance notes is unclear. We would argue that a theological college disciplining students for sexual and relational misconduct is reasonable *and* proportionate within our situation. Yet, as the paper stands, paragraph 26 and Proposition A appear to suggest that asking a student to desist from that affair and submitting to disciplinary consequences could be perceived as restricting their rights in such a way that is not proportionate. Sadly, this leaves theological colleges exposed when they undertake disciplinary action for sexual and relational misconduct, which is part of training students to be religious practitioners.

6. **Proposition A and its technical proposals extend and elevate duty of care to students. By doing so, they place theological colleges in a difficult and compromising position where genuine training in the areas of sex and gender identity may be perceived by the student as being harmful.**

Recommendation: We suggest that the following wording specific to a theological college be considered alongside the standard, “in a way that accords with their duty of care to students and requirements.” The suggested rewording for future legislation and guidance notes are:

- Additional point to A3: *Religious educational institutions that train current and prospective religious practitioners should be permitted to teach religious doctrines, beliefs, and pastoral practice on sex, sexual orientation, and relationships, to fulfil the requirements of a curriculum and in such a way that supports the safety and wellbeing of students.*

Rationale

We hold our duty of care to both students and staff as a high priority within our college community and by suggesting these recommendations, we are not trying to undermine our duty of care. As part of how we function as a college, we have pastoral structures and resources in place where students are cared for and where their needs are addressed. We do this primarily because a theological college is concerned with more than content and competency training; theological education is about the formation of the whole person for a lifetime in Christian ministry. A second reason is that, as a theological college of a University College (Australian College of Theology), we are compliant with the Higher Education Standards Framework (Threshold Standards) 2.3 that informs our practice about the wellbeing and safety of students. As a theological college, our commitment is to address difficult issues like domestic violence and abuse, gender, and sexuality, in such a way that trains students for being practitioners in a religious setting and at the same time models how to approach these complex issues when students are employed in their vocational religious contexts. Addressing these issues is a genuine necessity for their training and is in the long-term interests of our students.

Presently, the way that we operate by raising issues about sexuality and gender within a caring community is by acting in such a way that “accords with [our] duty of care.” However, since the priority in the propositions is the student’s rights, what happens when a student perceives that even raising these issues is harmful and contrary to the college’s duty of care? In this instance, which is not out of the realm of possibility within our cultural context, a theological college that is genuinely seeking to train students to be religious practitioners will face increased risk of exposure by a change in legislation aligned with the propositions and technical proposals in the ALRC’s consultation paper. For this reason, we suggest that future legislation directly addresses the duty of care in the context of theological colleges with the suggested wording outlined above.

7. Proposition B and its corresponding technical proposals do not promote a school’s duty of care to staff and could cause moral injury when applied alongside Propositions C and D.

Recommendation. We suggest that:

- schools, as well as theological colleges, retain the ability to employ teaching and lecturing staff who hold convictions about sex, relationships, and gender identity consistent with the school ethos and its curriculum.

OR

- for B3, and any related proposition, to be removed from the propositions and technical proposals that inform future legislation and guidance notes.

Rationale

While it is unclear as to whether Proposition B applies to theological colleges, there is clarity that this applies to K–12 schools. While we are not responding as a K–12 school, we do work in partnership with Christian schools, and we are concerned about the impact of Proposition B on the organisational cultures of these schools.

Proposition B3 reads, “Religious educational institutions should be able to require staff involved in the teaching of religious doctrine or belief to teach religious doctrine or belief on sex or sexuality as set out by that institution and in accordance with their duty of care to students and staff, and requirements of the curriculum.” This proposition occurs in the context of Proposition B1 that recommends “religious educational institutions should not be allowed to discriminate against any staff (current or prospective) on the grounds of sex, sexual orientation, gender identity, marital or relationship status, or pregnancy.” On the one hand, a school is not allowed to discriminate in the employment of teaching staff based, for instance, on LGBTQ+ issues and yet could require a teacher who identifies as LGBTQ+ to teach the school’s position that could be contrary to the teacher’s lifestyle and convictions. This places a teacher in this position in a situation where they are teaching students a set of convictions and values that are contrary to their own. For some teaching staff, this could lead to moral injury because damage is being done to their own moral compass caused by the dissonance between the convictions they personally hold and what they are required to teach. If not moral injury, this could be demoralising for those teachers and would not create a situation where they could flourish. Therefore, Proposition B, alongside Propositions C and D, could place schools unwittingly in a position where they break their duty of care to staff and where teaching staff are harmed.

8. The absence of an awareness in the consultation paper about theological colleges being regulated by the Higher Education Standards Framework (Thresholds Standards) 2021 is a glaring omission.

Recommendation: We suggest that future legislation and guidance notes considers the HESF 2021 when legislating about theological colleges.

Rationale

Most Australian theological colleges and their providers, with the exception of Nungalinga College in Darwin, are regulated by TEQSA and come under the HESF 2021. These standards shape our curriculum in terms of unit and course learning outcomes, for instance. They also define university college and the two categories of universities, as well as the standards for the support of students' wellbeing. Presently, the consultation paper treats K–12 schools and theological colleges as though they are part of the same educational provider categories. However, each belongs in two distinct categories, which should impact how each is considered in relation to future anti-discrimination legislation regarding issues to do with religion, gender, sexuality, relationships, pregnancy, and breastfeeding. An example is that Learning Outcomes have three categories: knowledge, skills, and application. When the propositions talk about what a theological college does in relation to the training of religious practitioners, the focus is on doctrines and beliefs (knowledge) and religious ritual. However, it fails to recognise that as a higher education provider, we are required to train students with the skills and the ability to apply learning to their religious contexts. The propositions as they stand would hinder the ability of theological colleges to integrate knowledge, skills, and application in accordance with HESF 2021.

Two Broad Concerns

1. The role of theological colleges to deliver theological education for the training of religious practitioners is wider than content and competency. Theological education for the training of religious practitioners is primarily formative where the formation of character and convictions is just as important, if not more so, than content and competency.

Recommendation: We suggest that future legislation and guidance notes considers the nature of theological education that is necessary and genuine for the training of current and prospective religious practitioners.

Rationale

As noted in point 7 above, the propositions refer to religious beliefs and doctrines, which focuses on the content of training prospective and current religious practitioners. This fails to recognise that theological education is wholistic and is not solely about content or ritual competency. There are two fundamental reasons theological education is wholistic:

- a. Vital to the Christian faith is that we do not simply confess our beliefs about God and his world as shaped by the Christian Scriptures, but we live with integrity where our beliefs about God and his world shape our worldview and the whole of our lives. If this is the calling of every Christian believer, then our theological education providers that train men and women to be Christian leaders need to be able to model the integration of what we confess to be true, our worldview, and how we live in the everyday. This includes our choices about sex and gender expression, and relationships generally. By modelling this integrity, we also equip students to integrate their beliefs with their character, convictions, and behaviour. This is essential considering that they are training to lead others in various religious contexts.

b. Part of what we believe is that the leaders of church communities will be held to account for how they conduct themselves in their leadership responsibilities. Part of training religious practitioners involves addressing pastoral issues about life and conduct that have the potential to derail their ministries, cause harm to those they serve, and cause harm to themselves and their families. To protect the life of the church from sexual misconduct and abuse, we need to have the freedom to train students wholistically, while we ourselves practice the same level of pastoral care to students that we expect them to replicate in their ministry settings.

2. The curtailing of the freedom for schools and theological colleges to employ people with the same confessional conviction undermines the common goals of those schools and theological colleges.

Recommendation: We suggest that future legislation and guidance notes do not curtail the freedom of schools and theological education providers to employ staff who hold to the same confessional conviction as the school or college.

Rationale

While we acknowledge that the ALRC repeatedly states that the freedoms of religious education institutions should be limited in order to elevate students' rights and freedoms, we still maintain that the loss of this freedom will impact the ability of schools and theological colleges to achieve the common goals of their institutions. While we appreciate that the propositions try to alleviate anxiety by stating that staff will be required to respect the ethos of the institution, this does not address the concern. Requiring staff to "respect" an ethos does not mean that they are working towards the common goal of the institution in both attitude and energy. An employee can say all the right things, but their body language and tone of voice communicates too. There is no other legislation that would ask any other organisation to employ people who are not working towards the common goal of that organisation. For instance, Australian law does not require a NDIS provider to hire a receptionist who by conviction thinks the federal funding of people with disabilities is wrong. While the receptionist might say all the right things to clients, their attitude will likely communicate a particular message that may undermine the common goal of the organisation. A person might have the capacity, knowledge, and competency for a role, but attitude is key for the achieving of organisational common goals and for working with others towards those goals. For this reason, we would argue that schools and theological colleges ought to have the same freedom as every other Australian organisation, which is freedom to employ staff who value-add to the organisation's common goals and who will work in attitude, capacity, knowledge, and competency, towards the achievement of those goals.

Again, as a theological education provider that would be affected by legislation and guidance notes based on the ALRC's consultation paper, we are thankful for the opportunity to submit this response and to raise our concerns. While we have suggested some minor and major changes to the substance of the paper, we agree that relating to others with kindness and dignity irrespective of their gender, sexual orientation, and relationship status is crucial for how we operate as a college. We offer these suggestions in the hope that the paper will be strengthened in relation to the genuine freedoms needed by schools and theological education providers, while also promoting the dignity and worth of every person irrespective of their gender, sexual orientation, and relationship status.

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