



24 February 2023

The Hon Justice Mark Moshinsky  
Acting President  
Australian Human Rights Commission  
PO Box 12953  
George Street Post Shop QLD 4003

By email: [antidiscriminationlaw@alrc.gov.au](mailto:antidiscriminationlaw@alrc.gov.au)

Dear President

### **Religious Educational Institutions and Anti-Discrimination Laws**

Pride in Law thanks the Australian Law Reform Commission ('ALRC') for the opportunity to provide a submission in response to the Consultation Paper titled 'Religious Educational Institutions and Anti-Discrimination Laws' ('Consultation Paper').

Pride in Law is Australia's first and only national non-political legal association, aimed at connecting lesbian, gay, bisexual, transgender, intersex, queer and questioning, and asexual ('LGBTIQA+') members of the legal community and their allies. We work to increase visibility, education and advocacy on LGBTIQA+ issues in the law and legal profession. Pride in Law has chapters in three Australian states: Queensland; Western Australia; and, Victoria). We are currently establishing a chapter in New South Wales.

The question whether to continue to exempt religious educational institutions from various anti-discrimination protections (and if so, in what manner) inevitably sets up a conflict of rights; that is, a conflict between the rights of students and teachers to freely express their sexuality and/or gender identity, and the rights of religious educational institutions to operate in a way that concords with their doctrines, tenets, beliefs or teachings.

We commend the Australian Government for its referral of these matters to the ALRC to ensure that religious educational institutions operate in a way that is both reflective of contemporary community standards and compatible with fundamental human rights. We sincerely hope this process will lead to a workable piece of legislation that is free from unintended consequences and addresses the substantive policy intent of the desired reforms.

We have had the benefit of receiving a draft of the submission made by Equality Australia and wish to endorse the comments made by Equality Australia and the recommendations contained therein.

We make the following brief comments on each technical proposal.

#### **Technical Proposals 1 to 5**

We support technical proposals 1 through to 5.

#### **Technical Proposal 6**

We also support technical proposal 6 but consider this should be widened and extend to 'associates' who have a protected attribute. This protection must also extend to staff, and we consider this crucial to addressing recent examples of discrimination against non-LGBTIQA+ staff members who affirm LGBTIQA+ members of their family and networks.

### Technical Proposal 7

We do not support technical proposal 7 on the basis it is unnecessary and may lead to unintended consequences and uncertainty in its application. We recommend this proposal be deleted.

### Technical Proposal 8

We recommend caution be adopted in relation to the need for a 'genuine occupational requirement' and direct the ALRC to the detailed comments of Equality Australia on this issue.

### Technical Proposals 9 and 10

We are strongly opposed to the creation of a new right to terminate employees who 'actively undermine the ethos of the institution'. This right is apt for misuse and turns a shield for the employee into an employer's sword. It will result in uncertainty in its application: who decides what is the institution's ethos? What does one need to establish to show an employee has 'actively undermined' the ethos? What if the ethos is supported by some in the institution but not others? We recommend these proposals be deleted.

If you have any queries regarding the contents of this letter, please contact us by email at [REDACTED].

Yours sincerely,

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