

Monday, 30 January 2023

Hon Justice Stephen Rothman AM
Chair
ALRC Inquiry, *Religious Educational Institutions and Anti-Discrimination Laws*,
Australian Law Reform Commission,
PO Box 12953, George Street Post Shop,
Queensland 4003

Dear Justice Rothman:

Please receive this letter which briefly explains why I have no other contribution to make to the ALRC Inquiry, *Religious Educational Institutions and Anti-Discrimination Laws*, than this letter and the attachments thereof. Please refer to the attached copy of my letter (19/11/22) to the Federal Parliament's Attorney General, concerning your inquiry, as well as the reply (10/1/23) of his office which, you will see, does not address the issue I have raised.

So, this is to respectfully point out that the proposed legislative outcome of your inquiry must already presuppose the maintenance of an unjust discrimination written into the Marriage Act 2017 against a significant number of married citizens, married and not yet married. I am referring to those who have not ceased to live by their lawful and public marriage vows after the passing of that Act, or who have not been dissuaded from adherence to such vows for when the time comes for them to be married. As long as the Marriage Act 2017 fails to explicitly affirm public-legal due respect for husband-wife marriage, marriage belief and marital sexuality, and the vows thereof, the written and published form of the Marriage Act is unjust *in its wording*. The Marriage Act 2017 fails in that it improperly and speciously presumes that due public respect for marriage, marriage belief and marital sexuality and the vows thereof can be justly rendered by a "catch all" generic definition of the marital union in terms of "two persons", and by a corresponding presumptuous and exclusionary public announcement mandated by the Federal Parliament for civil wedding celebrants at such ceremonies. It cannot render due respect in such terms.

The egregious legislated mistake as it now appears in the Act's written form needs correction.


Then there will be greater certainty for a just investigation concerning unjust discrimination, as it may take place in *all* educational institutions, without the singling out of "religious" bodies for their evident failure to affirm particular beliefs about human sexuality, and indeed about human identity itself (to which "both sides" of politics have now accommodated), to which these "religious" bodies have already publicly signalled their lawful dissent.

Without the Marriage Act's correction as I have indicated above, this inquiry seems predicated on a compromising lack of judicial fairness that arises from that flawed Act.

I can well imagine that those setting up the inquiry will say I am much mistaken, but I trust you will understand why this brief explanation suffices for my response.

Thanking you for your attention to these vital matters.

Yours sincerely,



Bruce C Wearne (BA, MSocSci, PhD)

Saturday, 19 November 2022

Hon M. A. Dreyfus KC MP
Attorney General,
PO Box 6022, Parliament House
CANBERRA ACT 2600

Dear Attorney General:

Recently, your office announced that the Australian Law Reform Commission will be conducting an inquiry into "Religious Educational Institutions and Anti-Discrimination Laws". It will be releasing a discussion paper for general comment on 27/1/23, with responses to be submitted by 24/2/23.

I have not decided whether I will make a submission. Before that time, however, may I simply note that we, as a polity, already function in a context in which public discussion about freedom of religion/freedom of belief has already been confused and made very difficult, pre-eminently by the furtive and dishonest conduct of the major political parties at Federal and State levels.

Our Commonwealth has been impacted by a bi-partisan political failure with respect to the Marriage Act, as amended in December 2017. The major parties have stayed resolutely silent about the lack of due respect ascribed to husband-wife marriage and husband-wife marriage belief in the amended Act. That "bi-partisan" silence confirms their failure to do other than passively comply when there are efforts made to discriminate against those holding (inconvenient) husband-wife marriage beliefs.

The Act's failure should be interpreted in terms of the Federal Parliament's failure to insist upon qualified juristic opinion *before* the Marriage Act, as amended, was passed into law. Instead, the Parliament concurred with the pragmatic strategy of the former Prime Minister, to appoint the panel of jurists to be convened by Philip Ruddock *after the controversial changes were enacted*. That only made the confusion generated by the wording of the Act even more confusing.

Mr Ruddock's panel undertook their work with the newly minted definition of marriage in the law as the jural context in which they were to deliberate. The panel did not see anything problematic in the prescribed liturgy and its "monitum" for a civil wedding even though explicit due respect for husband-wife marriage belief and union is now no longer to be found anywhere in the Act's wording.

Moreover, the long-term consequences for freedom of religion in relation to the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 were not covered. That may not be so surprising since those long-term legal consequences were not openly and candidly canvassed by those so decidedly in favour of "marriage equality" during the public debate that concluded with the bogus Australian Marriage Law Survey administered by the ABS.

What was never adequately disclosed was how the proposed change to the Marriage Act would fit comfortably with, if not positively discriminate in favour of those who *believe* that marriage should be abolished and who *believe* that male and female are merely arbitrary and dogmatic points on a *homo sapiens* spectrum of variant hormonal chemistry. For such believers, "marriage equality" was and is a lie that should be supported because it is but a step on the way to the ultimate demolition of marriage and family.

Now, those who believe otherwise (i.e. those with husband-wife marriage and sexuality beliefs) simply have no firm point of reference by which to defend their

right to due public respect in the Marriage Act itself, as they might have done previously by reference to the earlier amendment of the Act in 2004 (with bi-partisan agreement when “both sides” obsequiously sought electoral support from Christian churches and voters).

And so the *beliefs about marriage* (whether “religious” or not) of those who were already bound by public vows giving expression to husband-wife marriage belief and union, let alone those who may wish to do so in the future, are conveniently ignored and discriminated against by the *wording* of the Marriage Act. It simply ignores such beliefs and unions. And all the while the change was defended under the specious rubric of “marriage equality”.

I do not propose to persistently rehearse the matters I have repeatedly raised with Mr Ruddock and his panel, as well as successive Attorneys General and other Parliamentarians, such as yourself, since before December 2017. The issue I have raised in my letters is ignored; my letters in most cases have been unacknowledged and unanswered.

And that then leads me to conclude that the bi-partisan silence, and the lack of political discussion of this matter, suggests that any further formal inquiry and public discussion about discrimination *per se*, is already railroaded.

And the public statements and conduct we have witnessed that discriminate egregiously against those courageous enough to admit publicly that they hold onto a husband-wife marriage belief, whether they are married or not, as well as the view of sexuality associated with that, suggests to me that those convening the proposed “Religious Educational Institutions and Anti-Discrimination Laws” inquiry should not expect enthusiastic submissions.

Those who, like myself, wonder whether it is worth the effort to write a submission, will already anticipate, at best, the likelihood of being ignored. Schools and colleges founded in religious conviction may choose to give an open and forthright statement of their genuine beliefs, (e.g. as to why a gardener, maintenance person or maths teacher is a full participant of the academic community in support of the school’s curriculum) but will they not be concerned with the bi-partisan and vilifying innuendo given publicly in recent times by senior political leaders from “both sides”? Why shouldn’t citizens of this polity see that intemperate and over-reaching innuendo as a sign of lawless discrimination?

Yours sincerely,

Bruce C Wearne (BA, MSocSc, PhD)



Australian Government
Attorney-General's Department

10 January 2023

Mr Bruce Wearne
[REDACTED]

Dear Mr Wearne

Thank you for your correspondence of 19 November 2022 to the Attorney-General, the Hon Mark Dreyfus KC MP, regarding the Australian Law Reform Commission (ALRC) inquiry into Religious Educational Institutions and Anti-Discrimination Laws. The Attorney-General has requested that the Attorney-General's Department respond to you on his behalf.

The Australian Government is committed to extending the federal anti-discrimination framework to ensure Australians are not discriminated against because of their religious beliefs or activities – just as Commonwealth law currently prohibits discrimination on the basis of age, disability, race, sex, gender identity, sex characteristics and sexual orientation. That is why the Government announced that it will introduce legislative amendments to prevent faith-based discrimination during this term of Parliament.

The Government also remains committed to amending federal anti-discrimination law to:

- protect all students from discrimination on any grounds; and,
- protect teachers and other staff from discrimination at work, while maintaining the right of religious schools to preference people of their faith in the selection of staff.

As you noted in your letter, on 4 November 2022 the Attorney-General asked the ALRC to review exemptions for religious educational institutions for this purpose. The inquiry is being led by the Hon Justice Stephen Rothman AM of the New South Wales Supreme Court and the ALRC will provide its advice to the Government by 21 April 2023.

This ALRC inquiry is a crucial first step towards implementing the Government's commitment to extending anti-discrimination protections to more Australians, including to people of faith and to staff and students in religious schools, while maintaining the right of religious schools to preference people of their faith in the selection of staff.

I understand that you are considering making a submission to the ALRC during their inquiry. The ALRC has indicated it will release a consultation paper on 27 January 2023 and, from that time, will be accepting submissions until 24 February 2023. If you would like to make a submission to the ALRC inquiry, further information is available on the ALRC's website here: <https://www.alrc.gov.au/inquiry/anti-discrimination-laws/>

The Government is committed to enhancing protections in a way that brings Australians together. The Government believes that strengthening our anti-discrimination laws in this way is an opportunity to unite the nation, rather than to divide it.

Thank you again for sharing your concerns with the Government. I trust this information is of assistance.

Yours sincerely

Yours sincerely

Colin Minihan
Director
Human Rights Branch