

ALRC SUBMISSION

The Manager, The Australian Law Reform Commission,
Dear Sir/Madam,

Re: The ALRC Consultation Paper released on 27/1/2023,

Having read the Consultation Paper, considered its contents in relation to my experiences in a number of Religious Educational Institutions from Kindergarten to dual Bachelor University degrees, and the experiences of my children, grandchildren, nieces and nephews, I write in opposition to both the request from the Federal Attorney General to the ALRC for a plan to remove exemptions from Religious Educational Establishments and the proposal released by the ALRC on 27/1/23.

The then Opposition did not announce any intention to make such a request prior to the last election.

And while the ALRC has produced a document exploring a number of legal issues, both national and international, and purporting to balance the claims of various stakeholders, I believe that the considerations it makes have not been properly tested, and the choices which it offers do not represent justice for the central stakeholders, that is the institutions themselves, their students, teachers, parents and supporters.

On page 7 of the document ("CONSULTATION PAPER RELIGIOUS EDUCATIONAL INSTITUTIONS AND ANTI-DISCRIMINATION LAWS"), the second sentence of the Introduction, including it's first two subsections (which deal with the Government's political objectives) is as follows:

"The Terms of Reference require the ALRC to conduct this review in a manner that gives effect to the Australian Government's commitment (emphasis added) that 'an educational institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed':

. must not discriminate against a student on the basis of sexual orientation, gender identity, marital or relationship status, or pregnancy;

.must not discriminate against a member of staff on the basis of sex, sexual orientation, gender identity, marital or relationship status, or pregnancy; "

This part of those objectives is contrary to the existing and long term (well in excess of 120 years) rights of religious schools to regulate their own governance. These schools are in effect communities of students, parents, teachers and school boards in continuous existence for many decades; some approaching, or even having passed one and a half centuries. Depending on the range of classes taught, in the case of a Grade1-Grade12 range, the average time spent at the school by a student may be of the order of 9 years, and similarly for a teacher. Parents, students and teachers know the deal when they freely apply to join this community and know that behaviour contrary to the school's ethos is incompatible with staying at the school.

Other communities and organisations, including political parties and professions, have their own expectations which can frequently be completely different. But behaviour contrary to the ethos is similarly cause for terminating the relationship.

It is a reasonable expectation that the operation of any new law or international treaty which does not at the time of introduction explicitly expunge prior rights, laws and practices will rank lower than those pre-existing prior rights, laws and practices in such a way as not to challenge or displace them. Further reasonable expectation is that the operation of any international treaty will not override national sovereignty, including prior rights, laws and practices, and that continuation to affirm such treaties is at the continuing pleasure of the government of the day.

Bearing these things in mind, I appreciate the work undertaken by the law reform commission to integrate the Government's intent with the various national and state laws and international treaties.

However, the problem lies in the Government's intent, which is directly contrary to the points made above in paragraphs 3,4 &5.

OBJECTIONS ARE DESIGNATED BY RULING THROUGH THE SECTIONS OBJECTED TO (WHICH ARE IN BOLD TYPE).

AN ADDITIONAL WORD IS PLACED IN ITALICS AND UNDERLINED

PROPOSITION A 1. Discrimination against students on the grounds of sexual orientation, gender identity, marital or relationships status, or pregnancy
1. Religious educational institutions should not be allowed to discriminate against students (current or prospective)-on the grounds of ~~their sexual orientation, gender identity, marital or relationship status, or pregnancy, or on the grounds that a family member or carer has one of those attributes.~~**62**

PROPOSITION B 1 Discrimination against staff on the grounds of sex, sexual orientation, gender identity, marital or relationships status, or pregnancy ~~1. 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.~~**72**

PROPOSITION C Preferring staff involved in the teaching, observance, or practice of religion on religious grounds
1. In relation to selection, appointment, and promotion, religious educational institutions should be able to preference staff based on the staff member's religious belief or activity. ~~where this is justified because:~~

~~– participation of the person in the teaching, observance, or practice of the religion is a genuine requirement of the role;~~
~~– the differential treatment is proportionate to the objective of upholding the religious ethos of the institution; and~~
~~– the criteria for preferencing in relation to religion or belief would not amount to discrimination on another prohibited ground (such as sex, sexual orientation, gender identity, marital or relationship status, or pregnancy), if applied to a person with the relevant attribute.78~~

90. Proposal 7 responds to concerns that have been raised by some stakeholders about the potential consequences Proposal 1 could have on the ability of religious schools to teach their religious beliefs. Some stakeholders are concerned that teaching of their doctrine or beliefs on human sexuality and relationships could be held to be discriminatory to, for example, LGBTQ+ students.


2. The nature and religious ethos of the educational institution should be taken into account in determining whether participation of the person in the teaching, observance, or practice of the religion is a genuine requirement of the role.

PROPOSITION D Ongoing requirements on all staff to respect the religious ethos of the educational institution

1. Religious educational institutions should be able to expect all staff to respect their institutional ethos. A religious educational institution should be able to take action to prevent any staff member from actively undermining the institutional ethos of their employer.

2. Religious educational institutions should be able to impose reasonable and proportionate codes of staff conduct and behaviour relating to respect for the institution's ethos, subject to ordinary principles of employment law. ~~and prohibitions of discrimination on other grounds.~~

3. Respect for an educational institution's ethos and codes of conduct or behaviour should not require employees to hide their own sex, ~~sexual orientation, gender identity~~, marital ~~or relationship~~ status, or pregnancy in connection with work or in private life, ~~or to refrain from supporting another person with these attributes.~~

Thank you,
Paul Bellhouse, 
24/2/2023