

Submission regarding the ALRC consultation paper on Religious Educational Institutions and Anti-Discrimination Laws

Please find below my submission regarding the consultation paper on Religious Educational Institutions and Anti-Discrimination Laws.

It is unfortunate that the timing of release of the consultation paper, and the short period of consultation, coincided with the commencement of the school year when educators are especially busy and have less time to devote to a carefully considered submission.

Dr Gerry Beimers

Mount Evelyn Christian School

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Background

I work for the Association for Christian Education Mount Evelyn Inc. (the Association). The Association operates Mount Evelyn Christian School which is a Kindergarten – Year 12 independent school, and also operates Ranges TEC which is a Year 10 – 12 vocational training campus.

The purposes of the Association are:

1. Establish and maintain campuses to provide Christian education in accordance with the principles expressed in these purposes and in compliance with any relevant law or statute in force in the State.
2. Serve the community by providing education which is honouring to God. That is, through unfolding God's world with pre-school and school aged students in the educational domain, students understand that they are God's creative handiwork, unique, precious and loved, made in God's image and gifted in many ways. They also learn how to work and play within the world, and what God asks of them. As students understand themselves, their world, and have a healthy view of the calling God has for them, they are well equipped and positioned to engage as active participants in society and as disciples of Jesus Christ.
3. Each campus conducted by the Association is a community which exists to partner with parents to equip their children for effective, God-glorifying lives as Christians in the world both while they are at school and after they leave by:
 - equipping students with an understanding of the meaning and implications of the Gospel of Jesus Christ in all areas of life, that is, what it means for them to be 'salt and light' in the world and for them to be transformative disciples in and for the world;
 - enabling them to be serve God and love their neighbours (local and global) as a loving response to the love of God;
 - establishing an educational environment that is characterised by faith, hope, love, joy, peace and service;
 - preparing them to be responsible and caring stewards of God's good, but fallen, creation;
 - encouraging them to identify, develop and excel in the use of their own God-given abilities for God's kingdom, and to recognise and respect those of others.
4. Provided that its primary purpose toward Christian parents and guardians is not compromised, each campus conducted by the Association may also partner with those who do not have Christian faith and yet are willing to enter a genuine supportive partnership with us when they enrol their child/ren.
5. Employ Christian teachers and other Christian staff necessary to achieve the purposes of the Association.
6. The Association affiliates with and supports the national organisation known as Christian Education Nation Ltd. (CEN). The Association accepts the general ethos and philosophy of CEN and values the consultative and advisory role of CEN.
7. The Association espouses an Educational Creed as its foundational statement of beliefs under pinning the purposes of the Association.
8. Organise and conduct Christian religious and public services and meetings.
9. The Association is a religious and educational body for the purposes of State and Federal Government legislation.

Given its identity as an Association established for biblically based Christian education, I take the following expressions of rights to be of great significance in making our submission.

International Covenant on Civil and Political Rights

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Education and Training Reform Act 2006 (Victoria)

Section 1.2.1 Principles underlying the enactment of this Act

...

- (d) parents have the right to choose an appropriate education for their child;

Charter of Rights and Responsibilities Act 2006 (Victoria)

Section 14 Freedom of thought, conscience, religion and belief

- (1) Every person has the right to freedom of thought, conscience, religion and belief, including—
 - (a) the freedom to have or to adopt a religion or belief of his or her choice; and
 - (b) the freedom to demonstrate his or her religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private.
- (2) A person must not be coerced or restrained in a way that limits his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

Section 38 Conduct of public authorities

- (1) Subject to this section, it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

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(2) Subsection (1) does not apply if, as a result of a statutory provision or a provision made by or under an Act of the Commonwealth or otherwise under law, the public authority could not reasonably have acted differently or made a different decision.

(3) This section does not apply to an act or decision of a private nature.

(4) Subsection (1) does not require a public authority to act in a way, or make a decision, that has the effect of impeding or preventing a religious body (including itself in the case of a public authority that is a religious body) from acting in conformity with the religious doctrines, beliefs or principles in accordance with which the religious body operates.

(5) In this section *religious body* means—

(a) a body established for a religious purpose; or

(b) an entity that establishes, or directs, controls or administers, an educational or other charitable entity that is intended to be, and is, conducted in accordance with religious doctrines, beliefs or principles.

Submission in relation to Proposition A

Discrimination against students on the grounds of sexual orientation, gender identity, marital or relationships status, or pregnancy

Comment:

Mount Evelyn Christian School does not discriminate against its students on these grounds. However, anti-religionists may seize on this proposition to argue that the traditional views many of our families hold on these matters are inherently discriminatory.

Item 3 under this proposition reads:

3. Religious educational institutions should be permitted to teach religious doctrines or beliefs on sex or sexual orientation in a way that accords with their duty of care to students and requirements of the curriculum.

Comment:

While on face value this seems like a reasonable statement, it is in fact fraught with difficulty because different people will have different understandings of what constitutes a duty of care. A person of no faith, who may be inimical to any religion, will consider it a breach of duty of care to teach that religion to students.

Submission in relation to Proposition B

Discrimination against staff on the grounds of sex, sexual orientation, gender identity, marital or relationships status, or pregnancy

...

2. *Religious educational institutions should be able to select staff involved in the training of religious ministers and members of religious orders, and regulate participation in religious observances or practices, unfettered by sex discrimination laws. Where applicable, religious educational institutions should also continue to benefit from the exception available to charities in relation to the provision of accommodation.*

Comment:

Item 2 of this proposition relies on a dualistic dichotomy. That is that trainers of religious ministers or members of religious orders are somehow different from the rest of the followers of that religion in terms of what they should believe and how they should behave. The State appears to be adjudicating on religious matters in this item.

3. 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.

Comment:

While on face value this seems like a reasonable statement, it is also fraught with difficulty because different people will have different understandings of what constitutes a duty of care. A person of no faith, who may be inimical to any religion, will consider it a breach of duty of care to teach that religion to students.

Submission in relation to Proposition C

Preferencing 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.*

- 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.*

I note also Item 58 on page 23

- 58 The nature and religious ethos of the institution should be considered relevant to determining whether participation of the person in the teaching, observance, or practice of the religion is a genuine requirement of the role. For some educational institutions, religion is infused through all school life, for others it is taught and practised separately from the other aspects of education. The use of the word 'genuine' requires an objective inquiry into the actual nature of the role in light of the practices of the institution.*

Comment:

I affirm the statement in item 58, "For some educational institutions, religion is infused through all school life,". This statement is an accurate reflection of the way my educational community thinks about its Christian school. As such, it is the view and the practice, well documented, that all staff members working for Mount Evelyn Christian School and Ranges TEC must embrace Christian faith as outlined in its Educational Creed and other foundational documents of the school.

It remains to ask therefore, "By what criteria will authorities determine if some roles have, or not have, a genuine requirement of conformity with the faith and practice of the institution?"

It is our view that no legislative or bureaucratic instrument will be able to define which roles have a genuine requirement for the teaching, observance, or practice of the religion. Consequently, this task will, in Victoria, in all likelihood fall to bodies such as VCAT or the Equal Opportunity and Human Rights Commission (EOHRC) when disputes arise. Such bodies will not be in a position to truly determine when conformity with religious beliefs and practices is genuinely required because they cannot approach the matter as a person of faith. They will inevitably default to the prevailing view within society which is dualistic, separating the sacred and the secular.

Unfortunately, in general, Australian society relegates religious belief to the domain of private views. However, for people with a genuine Christian identity their faith is something inherent to every aspect of their life, not merely a private add on (this would be equally true for people of other faiths). This is a key aspect of why my school requires all of its employees to have genuine faith and as such believes that conformity with our religious beliefs is a genuine requirement for all workers.

Ultimately, I am concerned that authorities will not accept my school's integral view of faith and override its beliefs if a dispute arises.

Submission in relation to 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.*

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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.

Comment:

This proposition seems to attempt to convey a sense of protection to faith based educational institutions. Unfortunately, the standard is set very low – to not undermine.

I believe that the proposed reforms would substantially interfere with the religious freedom of Christian educational institutions and the many parents that choose them because they hold traditional values regarding gender and sexuality. I appreciate the reference by the commission in A.11 in the appendix noting that religious freedom is always seen in the context of the communal life of religious communities. This notion is explained somewhat in a 2013 UN report on the intersection between religious freedom and gender equality, by UN Special Rapporteur Bielefeldt as follows:

“This is not just an external aspect of marginal significance. Religious communities, in particular minority communities, need an appropriate institutional infrastructure, without which their long-term survival options as a community might be in serious peril, a situation which at the same time would amount to a violation of freedom of religion or belief of individual members.”

It is therefore somewhat puzzling that the rights of faith-based communities in the domain of their beliefs about sexuality and gender seem to be rather inadequately protected by a proposition that merely calls for respect along with not undermining. Whereas, communities centred around faith-based educational institutions want their employees and volunteers to embrace and promote their worldview in all its fullness, mere respect is manifestly inadequate.

Concluding comments

Members of our school community have communicated to me that they are anxious that these proposed reforms will result in the erosion of the faith-filled essence of the school.

This submission, due to shortage of time, has only been able to respond to the four propositions. I would welcome an opportunity to make an additional submission if there is an extension of time. I would also welcome the opportunity to speak in person with the Commission or any government authorities that may be given the task of implementing changes.

Dr Gerry Beimers

Administration Manager
Mount Evelyn Christian School

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