

SUBMISSION:

ALRC Inquiry into Religious Educational Institutions and Anti-Discrimination Laws

AUSTRALIAN CHRISTIAN LOBBY

About Australian Christian Lobby

Australian Christian Lobby's vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With around 250,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

acl.org.au

Australian Law Reform Commission



24 February 2023

Dear Sir/Madam,

On behalf of the Australian Christian Lobby (ACL), I welcome the opportunity to make a submission regarding the [Consultation Paper \(Paper\)](#) for the Australian Law Reform Commission's (ALRC's) [Inquiry](#) into Religious Educational Institutions (REIs) and Anti-Discrimination Laws (Inquiry).

Our submission discusses that, in our view:

1. The Paper makes overtures towards the human right of freedom of thought, conscience and to religion but is pervaded by an attitude that minimises it and suggests little understanding of or respect for religious communities. It also consistently subjugates it to non-discrimination rights, which is inconsistent with the [International Covenant on Civil and Political Rights \(ICCPR\)](#) and ultimately also the Terms of Reference (TOR).
2. The Paper fails to adequately meet the third limb of the TOR of ensuring that REIs can “continue to build a community of faith” through religious preferencing. In fact, the Paper fails to provide any mechanism by which REIs may operate consistently with the faith they were established to advance, destroying any practical basis for the operation of authentic religious schooling.
3. The Paper overrides the substance of long-standing orthodox religious doctrines regarding gender, sexuality, marriage and family. All of its propositions are completely untenable for any REI which holds such doctrines. The Paper also fundamentally undermines the authority and legitimacy of REIs as institutions which can interpret and apply their own religious doctrines. The ALRC proposals will lead to unwarranted State intrusion into religious matters.
4. The Expert Panel into Religious Freedom chaired by the Hon Philip Ruddock (Ruddock Review) comprehensively considered discrimination laws and international law in 2018. Despite its expertise and wide-ranging consultation, the Paper seemingly disregards the recommendations of the Expert Panel and in fact publishes material completely contradicting its findings.

We make the following submissions to urge the ALRC to rewrite the Paper and rectify these failures. The timelines for the Inquiry should also be extended to facilitate a new public submissions process and allow the ALRC to actually consult ‘in good faith’ with people of faith, religious stakeholders and REIs. The ALRC should also consider the Ruddock Review recommendations, consult with experts in international and domestic human rights laws and expressly consider the terms of a federal Religious Discrimination Bill (RDB) in conjunction with its proposals to amend the [Sex Discrimination Act 1984 \(Cth\) \(SDA\)](#). Given the evident failures of the ALRC, the Government should preferably also amend the TOR to expressly incorporate such requirements and also prioritise consideration of a draft RDB.

We would be very willing to meet with the ALRC to discuss these submissions.

Yours Sincerely,

A large black rectangular redaction box covering the signature area of the letter.

Wendy Francis
National Director of Politics

EXECUTIVE SUMMARY

The ACL is fundamentally interested in the outcome of this Inquiry. It seeks to represent the views of Christians all across Australia, many of whom engage with, work at or send their children to REIs.

Ultimately, we do not support the removal of the important discrimination protections for REIs in the SDA. However, if the SDA is to be amended, we particularly note the below TOR extracts regarding the Government's commitment to amend the SDA and anti-discrimination laws (**bold emphasis ours**):

- in a way which will "...**ensure** that an educational institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed ... **can continue to build a community of faith by giving preference, in good faith, to persons of the same religion** as the educational institution in the selection of staff" [ie. the 'third limb' of the TOR]; and
- in a way which will "...**ensure**, to the extent practicable, Federal anti-discrimination laws reflect the Government's commitments ... **in a manner that is consistent with the rights and freedoms recognised in the international agreements to which Australia is a party** including the [ICCPR]".

In summary, the ACL's submissions discuss that the Paper:

1. is inconsistent with the ICCPR (and therefore also the TOR) regarding the 'right to religion';
2. fails to adequately meet the third limb of the TOR and inhibits authentic religious schooling;
3. conflicts with religious doctrines and will lead to State intrusion in religious matters; and
4. publishes material directly contradicting the recommendations of the expert Ruddock Review.

Recommendations:

1. The Paper's propositions (including its technical proposals) are fundamentally flawed in principle and untenable for REIs in practice. The ALRC should rewrite the Paper to be consistent with international law frameworks in appropriately balancing religious rights with non-discrimination rights. This would meet the TOR, and be consistent with (and advance) the Ruddock Review findings, ultimately providing a practical basis for the practise of orthodox religious doctrine and continued operation of authentic religious schooling. As the Paper only reflects the ALRC's preliminary views,¹ it must be entirely reconsidered to rectify these failings. The relevant timeframes for the Inquiry should be extended to facilitate a new public submissions process and an extended deadline by which the ALRC must provide a final report.
2. The ALRC should not proceed with the Paper or release a new one until it has, at very least:
 - a. consulted 'in good faith' with people of faith, religious stakeholders and REIs;
 - b. consulted with experts in international and domestic human rights laws;
 - c. expressly considered the Ruddock Review recommendations and drafted material discussing its approach to this review for release and consideration by the public; and
 - d. expressly considered the draft terms of a federal RDB. This is intrinsically important in this context and must be considered in conjunction with any proposals to amend the SDA.
3. The Government should amend the TOR to ensure that the ALRC is more accountable to them. It should also prioritise consideration of a draft federal RDB.

SUBMISSIONS

1. **The Paper contains several statements about the importance of religious freedom and religion. It also specifically acknowledges the right to freedom of thought, conscience and religion (and the right to manifest it), and the rights of parents and guardians regarding the religious education of their children. However, despite these overtures, the Paper is minimises these rights and suggests little understanding of, or respect for, religious communities. While the ALRC acknowledges the burden of its propositions on such rights, it inexplicably denies that it traverses the essence of them. Inconsistent with the ICCPR framework and also the TOR, the**

¹ See, for example, paragraphs 8 and 43 of the Consultation Paper.

Paper consistently subjugates the ‘right to religion’ to non-discrimination rights with little argument or reasoning.

Introduction

Australia is a pluralist society, and over half of us identify with a religion.² As such, it is a mistake to give only empty platitudes to something that is important to most Australians. International law protects religious freedoms for good reason. To easily transgress them is a grave misjudgement.

The Paper pervasively minimises religious rights and the essence of them

The Paper concedes the importance of religious freedom and religion. It calls religious freedoms “important rights in a liberal society”, “of great importance in many people’s lives”, “fundamental”.³ It acknowledges the human right to freedom of thought, conscience and religion (and the right to manifest it).⁴ We agree with such statements. However, these overtures are followed by material which not only disregards religious freedoms but in fact comprehensively dismantles any ability for REIs’ beliefs to be authentically manifested in their religious communities. Overall, the Paper is pervaded by an attitude that minimises religious rights, and its general tone suggests little understanding of or respect for religious communities and the services REIs provide.

For example, while apparently acknowledging that Proposition B is a “significant” burden on institutional autonomy connected to (among others) the right of individuals to manifest religion or belief in community with others and parents’ freedoms regarding their children’s religious education, the ALRC indicates that “it does not burden the essence of the rights...”.⁵ This denial is inexplicable and likely also incorrect. In our view, the examples the ALRC provides about the effect of Proposition B in practice⁶ clearly and significantly burden the essence of such rights. The ALRC has severely minimised the substance of such rights. Surely the essence of such rights are lost if an REI, whose core purpose is to educate students in accordance with the tenets of a faith, cannot freely make decisions to ensure those teaching their students do not teach contradictory doctrines?

The ALRC also similarly states that Proposition A “does not interfere with the essence of the right to manifest belief through practice in community, or to teach religious doctrine, even if there is a potentially greater impact on freedom of association and the way religious doctrine is taught.”⁷ In our view, the examples which the ALRC provides about the effect of Proposition A in practice⁸ shows the interference with the essence of the right to manifest belief in religious communities across a wide scope of student matters. The fact that an REI “could continue to teach its religious beliefs or doctrine on matters of sexuality and relationships” does not change the fact it would be prevented from manifesting those beliefs in decisions about the student cohort. Again, the ALRC seems to have minimised the essence of such rights. REIs are set up with the purpose of reflecting their faith.

The ALRC also acknowledges⁹ that Proposition D “has the potential to interfere” with institutional autonomy connected to the right to manifest religion or belief in community and parents’ freedoms, and that Propositions C and D “impose some burden on the autonomy of [REIs]...”. However, it still suggests “...that religious belief can be manifested through teaching and practice...” when these propositions are taken together. We consider that Proposition D, as discussed further below, *does*

² See Australian Bureau of Statistics report on ‘Religious affiliation in Australia’ [here](#). In the 2021 Census, the most common religions were Christianity (43.9%), Islam (3.2%), Hinduism (2.7%) and Buddhism (2.4%). ‘No religion’ accounted for 38.9%.

³ See, for example, paragraphs 10 and A.42 of the Consultation Paper.

⁴ See, for example, paragraph 20 of the Consultation Paper.

⁵ See paragraph 55 of the Consultation Paper.

⁶ See paragraph 54 of the Consultation Paper.

⁷ See paragraph A.36 of the Consultation Paper. See also a similar statement in paragraph A.35 of the Consultation Paper.

⁸ See paragraph 48 of the Consultation Paper.

⁹ See paragraphs 70 and 71 of the Consultation Paper.

interfere with REIs' institutional autonomy. We disagree with any assertion that Propositions C and D allow space for religious beliefs to be manifested in REIs' communities. Neither proposition secures any substantive rights. If REIs cannot make hiring, promotion, teaching, enrolment, education, uniform and even student leadership decisions in accordance with their religion, what 'essence' of such rights are left? The ALRC has demolished many of the avenues through which their faith may be manifested in any real way. An REI's ability to teach religious doctrine is tempered by a qualification that staff must be allowed to teach other views. Overall, while the ALRC acknowledges the burden of its propositions on such rights several times, it inexplicably denies that it traverses the essence of them. This reveals an attitude pervading the Paper minimising the proper scope of the 'right to religion'. This requires addressing. The Paper would significantly undermine Australians' freedoms to practise religion through REIs.

The Paper also marginalises the rights of parents regarding religious education

The Paper also marginalises the right of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions. In fact, the Paper only refers to this right in a cursory way,¹⁰ and an Appendix section expressly discussing it¹¹ seems to just minimise its scope.

The Paper wrongly subjugates the 'right to religion' to non-discrimination rights

There is a tension between the first two limbs of the TOR and the third limb. However, in line with its minimisation of religious rights, the ALRC has consistently subjugated the human right to freedom of thought, conscience and religion to non-discrimination rights, failing to properly balance the rights. Under ICCPR Article 4, the latter right is actually given a place of primacy. In particular, Article 4 essentially states that rights may be derogated from in times of emergency, but this does not allow certain rights, including Article 18, to be derogated from.¹² Notably, Article 4 does *not* mention Article 26 (which sets out non-discrimination rights) in this list of Articles that cannot be derogated from. Further, the ALRC refers to Article 26 as if it includes the concepts of 'sexual orientation' and 'gender identity'.¹³ In fact, Article 26 only refers to "sex".¹⁴ At best the concepts of sexual orientation and gender identity may only be included because of interpretations of the word 'sex' by certain UN bodies. However, this interpretation is not supported by, for example, much of the Islamic world.¹⁵

Essentially, the ALRC says its recommendations are necessary to protect students and staff with a particular "sexual orientation" or "gender identity".¹⁶ However, this is ultimately supported by little argument or reasoning. The ALRC says that its recommendations are similar to the laws in QLD and Tasmania which, it says, have operated for over two decades without issue.¹⁷ This is misleading. Schools in these states have relied on SDA s38 and s109 of the *Constitution*, i.e. the argument that SDA exemptions override state laws. In any case, the ALRC has inappropriately subjugated Article 18 to Article 26. Non-discrimination rights should *not* overpower other international law rights. Article 18 rights should also be given full force and effect. In our view, the ALRC has fundamentally failed to put forward material which properly reflects the framework for the intersection of non-discrimination rights and other rights at international law. Though the Paper refers to Australia's international human rights obligations numerous times, its analysis is ultimately selective and unbalanced. This approach is also inconsistent with the TOR which require that the reforms meet the

¹⁰ See paragraphs 20, 49, 55, 70, A.30 and A.39 of the Consultation Paper.

¹¹ See paragraphs A.26 to A.28 of the Consultation Paper.

¹² See Article 4 of the ICCPR here: [This link](#).

¹³ See paragraph 20 of the Consultation Paper.

¹⁴ See Article 26 of the ICCPR here: [This link](#).

¹⁵ See, for example, this article by the Religious Freedom Institute: [This link](#).

¹⁶ See, for example, paragraphs 49 and 55 of the Consultation Paper.

¹⁷ See paragraphs 49, 55 and 91 of the Consultation Paper.

Government's commitments in a manner "consistent with" the ICCPR. As the Paper is inconsistent with the ICCPR, it does not meet this requirement in the TOR. The ALRC has failed to meet a key aspect of the Inquiry's scope. These failings fundamentally impair the underlying basis of its reforms.

- 2. The ALRC has gravely erred in the delicate balancing act required for this Inquiry. Though its propositions purport to implement the first two limbs of the TOR, it has failed to adequately meet the third limb of ensuring that REIs can "continue to build a community of faith" through 'religious preferencing'. The Paper alleges that it does so, but in reality it comprehensively dismantles any genuine prospect of either. Firstly, it fails to provide any mechanism by which REIs may operate consistently with the faith they were established to advance, destroying any practical basis for the operation of authentic religious schooling. In fact, the propositions and proposals will strip REIs of their ability to maintain a community which is religious in much other than name and basic ethos only. They will force REIs to reflect a nominal faith, led by staff who can live inconsistently with their doctrines and teach conflicting views. No REI could build a genuine 'community of faith' in such circumstances. Many REIs may cease to operate as a result. Any rights of REIs to preference staff on religious grounds would also have little practical implication, hollowed out by other qualifications and the carving out of other protected grounds.**

Introduction

REIs exist to educate students in accordance with a religion. They are valuable to many Australians of faith, and also to many others. An authentic 'community of faith' which both teaches *and* models the faith underpins much of their value. It is ill-conceived for any law reform to fundamentally impair this.

The Paper fails to adequately meet the third limb of the TOR

The TOR charged the ALRC to propose reforms that ensure REIs can still "build a community of faith by giving preference, in good faith, to persons of the same religion".¹⁸ Whilst the Paper indicates that its propositions achieve this,¹⁹ in reality, it comprehensively dismantles any genuine prospect of REIs doing either thing. Its reforms clearly implement the first two limbs of the TOR but fail to meet the third. REIs will not genuinely be able to build a 'community of faith' or preference staff in any substantive way under the Paper. In fact, it fails to provide any mechanism by which REIs may operate consistently with the faith they were established to advance, destroying any practical basis for the operation of authentic religious schooling. Ultimately, the proposed reforms strip REIs of their ability to maintain a community which is religious in much other than name and basic ethos only. The extremely limited religious preferencing rights proposed do little to offset this reality.

Proposition A will force REIs to allow student conduct inconsistent with beliefs

In our view, Proposition A undermines the ability of REIs to build any genuine community of faith. Essentially, it will force REIs to allow student behaviour entirely inconsistent with their religious beliefs. It may even require REIs to appoint such students to leadership.

The ALRC's concession that REIs can still teach religious beliefs "subject to existing legal requirements to do so in a way that respects [the] duty of care to students, and accreditation and curriculum requirements"²⁰ seems to assume that the mere teaching of religious doctrine might breach the duty of care. It is foreseeable that there will be allegations that teaching a biblical view of sexuality and gender will be said to be harmful and in breach of the duty of care. This view is supported by the Paper's citing of studies which assert that discrimination causes mental health

¹⁸ See pages 3 and 5 of the Consultation Paper.

¹⁹ See, for example, page 4, paragraph 50 and paragraph 56 of the Consultation Paper.

²⁰ See page 18 of the Consultation Paper.

problems to transgender students.²¹ If so, Proposition A may open the door for Biblical teaching to be challenged as harmful. If so, REIs may be prevented from teaching students core beliefs of their religion – destroying the very reason for their existence. It is essential that REIs can teach religion.

Proposition B will force REIs to accept staff with a nominal faith

Proposition B minimises any possibility of achieving the TORs third limb through Propositions C and D. The ALRC has acknowledged that Proposition B “limits the operation of Propositions C and D”.²²

ALRC examples clearly show that REIs will not be allowed to require that their staff adhere to their sexual ethic or live according to their natal sex. If REIs cannot refuse to hire and promote people who live inconsistently with core religious doctrines, then any ability to preference staff ‘of the same religion’ as required by the third limb of the TOR will be fundamentally undermined. This effectively mandates the acceptance of people who hold the faith in name only or are nominal adherents. The intention of the third limb of the TOR is also undermined by the ALRC’s example that REIs must allow such staff to “provide objective information about alternative viewpoints” conflicting with the REI’s beliefs.²³ If staff do not personally follow core doctrines of the faith and/or teach contradictory material, how could they be ‘of the same religion’ as the REI in any objective sense? Religion is more than just professed adherence, it involves identity, belief *and* conduct.

Proposition B undermines the ability of REIs to build any genuine ‘community of faith’ as required by the third limb of the TOR. Authenticity requires consistency. People who live lifestyles contradicting the core doctrines of faith and teach alternative viewpoints would not help to build an authentic faith community adherent to an REIs doctrines. The ALRC seems to acknowledge this by its admission that restricting REIs from excluding such staff may “impact the authenticity or credibility of the institution’s delivery of faith-based education, in the eyes of their religious (and parental) community”.²⁴ And yet, the ALRC still recommends the restriction. In our view, Proposition B works against achievement of the third limb of the TOR. It will force REIs to reflect a nominal faith, led by staff who can live inconsistently with its faith doctrines and teach conflicting views. No REI could build a genuine ‘community of faith’ in such circumstances or effectively religiously preference staff.

Proposition C does not secure any substantive religious preferencing rights

Proposition C is expressly meant to meet the TOR of ensuring REIs can religiously preference staff.²⁵ However, as the ALRC itself acknowledges,²⁶ it “would only be of limited practical implication” now “because there is currently no Commonwealth religious anti-discrimination law”.

Proposition C²⁷ also lacks utility. As the ALRC alludes, REIs will “be limited” in the extent to which they can religiously preference.²⁸ In fact, any religious preferencing rights Proposition C secures are hollowed out almost entirely by other qualifications and the carving out of other protected grounds. Firstly, it only allows preferencing “based on the staff member’s religious belief or activity”, reducing the criteria to staff who may only nominally profess or assert their faith. It also only allows preferencing in staff selection, appointment and promotion (not termination). It will not give redress to REIs if staff were preferenced on the basis of professed ‘religious belief or activity’ but it becomes apparent their faith is ingenuine. Preferencing will also only be ‘justified’ where participation in the

²¹ See paragraph A.33 of the Consultation Paper.

²² See paragraph 51 of the Consultation Paper.

²³ See paragraph 55 of the Consultation Paper.

²⁴ See paragraph A.39 of the Consultation Paper.

²⁵ See page 4 of the Consultation Paper.

²⁶ See paragraph 56 of the Consultation Paper.

²⁷ See page 22 of the Consultation Paper.

²⁸ See paragraph 62 of the Consultation Paper.

teaching, observance, or practice of the religion “is a genuine requirement of the role” and “proportionate to the objective of upholding the religious ethos”. These qualifications significantly limit Proposition C’s scope. The ALRC’s indication that preferencing may only be reasonable if “a job has explicitly religious or doctrinal content”²⁹ totally misunderstands the nature of religious communities which are built upon expressions of faith permeating all aspects of an entity’s activity. Lastly, the basis for the preferencing also cannot involve another protected ground. As such, REIs could not actually seek conformity with major religious doctrines, which would make Proposition C virtually useless in terms of securing any substantive preferencing rights.

Overall, Proposition C clearly does not achieve the TOR of “ensuring” that REIs “can continue to build a community of faith” through preferencing religious staff. It places a host of qualifications around the right which conflict with the broad nature of what the TOR indicated it should capture. Given the constraints of reasonableness, proportionality and the exclusion of other protected attributes, Proposition C does *not* provide any substantive protections, leaving REIs with no opportunity to build a genuine community of faith through their staff.

Proposition D sets the lowest possible bar for staff in respecting an REI’s ethos

Proposition D is intended by the ALRC to complement Proposition C in allowing REIs to build a ‘community of faith’.³⁰ It is held up as giving REIs “assurance that anti-discrimination law will not prevent them from ensuring that all staff members appropriately respect the religious ethos...”.³¹ However, it is “of limited relevance at the Commonwealth level” relating to modern awards and enterprise agreements.³² REIs will only be able to prevent staff “actively undermining” their ethos. They would *not* have to believe the ethos, nor live consistently with it. The ALRC’s own examples of what Proposition D might mean in practice³³ highlight this clearly. For example, while an REI may take action against a person who “publicly denigrated the religion”, or “actively tried to convert parents of students to another religion”, these take a low view of the sort of ‘respect’ required for an ethos. Clearly, the ALRC has set the lowest possible bar for employees to meet. Proposition D gives no assurance to REIs that staff will respect the ethos, only that they will not undermine it.

- 3. The Paper overrides the core of long-standing orthodox religious doctrines regarding gender, sexuality, marriage and family. The Paper undermines the authority and legitimacy of REIs as institutions to interpret and apply their own religious doctrines. The ALRC proposals will lead to unwarranted State intrusion into religious matters.**

Introduction

Orthodox religious doctrines have existed throughout history, representing core beliefs of the faith which have persevered through generations and across societies. They have been held, respected and practised for centuries and are still held by millions of Australians today. They should not be seen as fit sacrifices for modern ‘progress’. REIs should not be forced to forsake the doctrines on which their very existence is founded.

The Paper overrides the substance of long-standing orthodox religious doctrines and is completely untenable for REIs which hold those doctrines

Gender, sexuality, marriage and family are the subject of long-standing religious doctrines. Churches and religious authorities have interpreted religious texts throughout history in accordance with a

²⁹ See paragraph 57 of the Consultation Paper.

³⁰ See page 4 of the Consultation Paper.

³¹ See paragraph 62 of the Consultation Paper.

³² See paragraph 63 of the Consultation Paper.

³³ See page 26 of the Consultation Paper.

biological and traditional view of gender and sexuality. However, despite their historical centrality, the Paper effectively requires REIs to allow the fundamental teachings of their religion in these matters to give way to inconsistent practices asserted by students and staff. This is completely untenable for REIs, who are conscience-bound to build communities living consistently with core religious doctrines.

While the entire Paper is replete with this theme, a few particularly egregious examples bear repeating. For example, as the ALRC states of Proposition A,³⁴ an REI could only continue to impose ‘reasonable uniform requirements’ if “adjustments could be made to accommodate transgender or gender diverse students”. This directly conflicts with the substance of orthodox views on gender and sexuality. An REI could continue to hold orthodox views, but not act consistently with them, despite those views having existed throughout history. Under Proposition C, religious preferencing by REIs also cannot involve another protected ground.³⁵ As such, REIs could not seek conformity with doctrines relating to sex, gender identity, sexual orientation, marital or relationship status, etc. For example, as the ALRC confirms, an REI “could not refuse to consider a person as a ‘practising’ member of its religion because the person was LGBTQ+ or in a same-sex relationship ...”.³⁶ In essence, this mandates that REIs ignore longstanding orthodox doctrines regarding the behaviour of religious adherents in matters of gender and sexuality. The ALRC notes - a school could not require a person to sign a statement of belief by which they had to affirm that homosexuality is a sin.³⁷ This example is taken entirely out of its theological context, but evidences the ALRC’s intent to interfere with the theology of REIs and override the substance of religious doctrines.

The ALRC proposes that teachers (in addition to not holding orthodox views on sexuality themselves) could introduce LGBTQ+ ideology as part of religious education.³⁸ In effect, REIs would be forced to allow teachers to promote LGBTQ+ ideology as part of religious education, targeting the heart of religious education in its most core function – teaching the precepts of the faith. It is completely inappropriate for REIs to be forced to teach other moral and sexual codes than their own, especially material conflicting with long-standing orthodox religious doctrines. The Paper prevents REIs operating in accordance with long-standing orthodox views on gender, sexuality, marriage and family. This interferes with even the most basic aim of REIs of inculcating religious beliefs in their students, significantly undermining the very purpose of REIs existing and operating as religious entities. The propositions and proposals are unworkable for REIs. The ALRC recommendations would even permit atheism to be taught in in the scripture (Bible, Koran etc) classes of the REI.

The Paper undermines the authority and legitimacy of REIs in applying doctrine

In effect, the Paper also fundamentally undermines the authority and legitimacy of REIs as institutions which can interpret and apply the very doctrines of faith which underlie their existence. Through the mechanisms discussed above, REIs’ authority to employ doctrinal positions in a suite of matters relating to students and staff will be effectively annulled. They will be forced to ignore or even facilitate behaviours in students and staff which they believe in good conscience to be sinful. They will have no recourse to historical orthodoxy in such matters, but will be subjugated to gender fluidity ideology and some who wish to be part of a faith community and yet hollow it out of any authentic faith aspect. By recommending that the AHRC be given oversight of REIs, despite it being a secular entity, the ALRC has made the AHRC the arbiter of how religious doctrines must (or must not) be outworked. It has also mandated the acceptance of nominal adherents who lack any actual conformity to religious doctrines as genuine members of religion. This is entirely inappropriate. The ALRC’s

³⁴ See pages 18 and 19 of the Consultation Paper.

³⁵ See page 22 of the Consultation Paper.

³⁶ See paragraph 59 of the Consultation Paper.

³⁷ See page 24 of the Consultation Paper.

³⁸ See page 24 of the Consultation Paper.

propositions and proposals lack any value or respect for religious doctrines, the significant contributions which REIs have made in educational spheres, and the many Australians of faith who wish to be a part of faith communities that genuinely represent their beliefs.

The Paper will lead to unwarranted State intrusion into religious matters

The changes it proposes will effectively require the State to decide what is legitimate religious practice or not, require REIs to allow the teaching of matters in complete opposition to their views and give the State via AHRC the power to investigate faith-based REIs of its own motion.

For example, regarding Proposition C,³⁹ the need to establish a genuine occupational requirement and proportionality for religious preferencing intrudes the State's tribunals and commissions into the operation of REIs in the event of a dispute, creating uncertainty and additional burden on REIs. The State would in essence rewrite religious belief, directing what a religion may stipulate as core beliefs.

The propositions also allow the State to intrude into religious teaching through the curriculum. For example, Proposition B will mean that REIs must allow an LGBTQ+ teacher to teach alternative viewpoints.⁴⁰ Clearly, the ALRC considers that the State should be able to prescribe the content of the curriculum of private REIs. That the ability to teach religion might be tied to the curriculum also raises concern that in future, the curriculum may be changed to remove the ability of REIs to teach doctrine.

One technical proposal also recommends amending the *Australian Human Rights Commission Act 1986* (Cth) (**Act**). This would make REIs subject to the AHRC's inquiry powers.⁴¹ This is perhaps the most serious intrusion by the State. The paper also proposes that the AHRC, with the Attorney-General's Department, develop detailed guidance for REIs.⁴² This would *not* be subject to parliamentary oversight, but would inevitably set out expectations which REIs effectively must follow.

In multiple ways, the Paper inappropriately invites the State's purview into matters properly falling into the scope of religious and church entities. This is dangerous and unacceptable. Faith communities should be able to manifest the faith within the confines of the law without State intrusion.

- 4. The Ruddock Review regarding religious freedom in Australia was conducted by an expert panel which undertook a nationwide consultation process across every State and Territory of Australia. It comprehensively considered discrimination laws and international law and published recommendations in 2018, including specifically regarding religious schools. Despite the expertise of its panel and wide-ranging consultation, the Paper inexplicably and inappropriately ignores the findings of this review and in fact publishes material completely contradicting them.**

Introduction

The previous work of inquiry bodies is obviously relevant to any further review on the same topic. This is particularly the case for past reviews by experts if that same expertise is not reflected in the current review. It is completely imperious to override past expert opinion without strong reason.

The Paper inexplicably ignores and contradicts the Ruddock Review's findings

In 2017 the Federal Government appointed an Expert Panel into Religious Freedom chaired by the Hon Philip Ruddock,⁴³ to examine whether Australian law adequately protects the human right to

³⁹ See page 22 of the Consultation Paper.

⁴⁰ See pages 20 and 21 of the Consultation Paper.

⁴¹ See page 35 of the Consultation Paper.

⁴² See page 36 of the Consultation Paper.

⁴³ Australian Government Attorney-General's Department's website: See [this link](#).

freedom of religion.⁴⁴ The Panel provided a [report](#) in 2018 (**Report**).⁴⁵ It was the culmination of a nationwide consultation process, including public submissions and face-to-face meetings in every State and Territory. It reflected comprehensive research, the Panel’s expertise and input to the Panel throughout the review.⁴⁶ It comprehensively considered discrimination law and intersecting rights.

The Government’s [response](#) to the Report,⁴⁷ “at the most fundamental level”, accepted its ‘central conclusion’ that “there is an opportunity to further protect, and better promote and balance, the right to freedom of religion under Australian law and in the public sphere”. It accepted directly or in principle 15 of the 20 recommendations, and agreed with the principles underpinning the remaining 5 (but determined that further consideration was necessary to address the complexities associated with them). The Report recommendations clearly protected the continuing existence of REIs. Several recommendations related to employment and enrolment in religious schools⁴⁸ essentially supporting SDA provisions for religious schools to discriminate in relation to the employment of staff, or in relation to students on the basis of sexual orientation, gender identity or relationship status, if founded in precepts of the religion and the school had a publicly available policy stating its position. These recommendations sit in stark contrast to the ALRC’s proposed reforms. The Paper, in essence, completely contradicts the findings of the Panel. It essentially comes to the opposite conclusion, and overrides any rights of REIs to discriminate. It also rejects other potentially less restrictive measures which are broadly consistent with the findings of the Panel regarding the effect of schools having publicly available policies. For example, it rejects the idea that discrimination should be allowed if an REI’s policies are made clear to enable others like parents and children to make decisions on that basis.⁴⁹ Despite the Ruddock Review’s support for this general idea, the ALRC argues (without reference to the Panel’s conclusions) that this would “entrench discriminatory beliefs”.

The Ruddock Review was an expert, national and wide-ranging review as recent as 2018. The ALRC generally considers some past reviews, including the Ruddock Review,⁵⁰ but it doesn’t explain how or why it completely diverged from the Panel’s findings. This is inexplicable, as the Panel analysed the same international human rights law. If the ALRC considered the Panel’s findings and came to different conclusions, its rationale should have been made clear given the Ruddock Review’s direct relevance and expertise. As it involved panel members who were experts in this area, we consider it improper for the ALRC to disregard and override its expertise, particularly without explanation. The ALRC’s failure to even vaguely respect the Ruddock Review’s findings has resulted in suggested reforms which are inconsistent with international law and the TOR it was charged with. The ALRC should, in reconsidering its reforms, turn back to the expertise of the Ruddock Review as an authoritative guide towards reform.

⁴⁴ See page iii of the Expert Panel’s report: [This link](#).

⁴⁵ Australian Government Attorney-General’s Department’s website: See [this link](#).

⁴⁶ See page i of the Expert Panel’s report: [This link](#).

⁴⁷ See pages 4 and 5 of the Australian Government’s response: [This link](#).

⁴⁸ See recommendations 5 to 8 of the Ruddock Review Report.

⁴⁹ See paragraphs A.37 and A.46 of the Consultation Paper.

⁵⁰ See paragraph 5 of the Consultation Paper and [this ALRC website](#).