



ISLAMIC COUNCIL OF VICTORIA

**Submission to ALRC review
of the existing exemptions
in the Commonwealth
Discrimination Acts that
apply to religious
educational institutions**

66-68 Jeffcott St, West
Melbourne VIC 3003

The Islamic Council of Victoria (ICV) welcomes the opportunity to make a submission to the Australian Law Reform Commission (ALRC) review of the existing exceptions in the Sex Discrimination Act 1984 (Cth) ('Sex Discrimination Act') and the Fair Work Act 2009 (Cth) ('Fair Work Act'), that apply to religious educational institutions. As the peak representative body of Muslims in Victoria, the ICV's mission is to protect and advance the rights of its constituents throughout Victoria. It is from this perspective that we write this submission.

All enquiries about this Islamic Council of Victoria submission should be directed to:

Adel Salman

President

Email: [REDACTED]

Tel: [REDACTED]

INTRODUCTION

1. The Islamic Council of Victoria (ICV) is the peak Muslim body in Victoria representing over 270,000 Muslims and 76 member societies. The ICV provides advocacy and social welfare services while leading state and national initiatives through community consultations and advice to the Victorian and Federal Governments.
2. As with many other representative bodies for religious communities, the ICV is concerned with the Proposals put forth by the Australian Law Reform Commission. It is the ICV's view that the Propositions made in the Consultation Paper do not strike an appropriate balance between protecting certain rights of students and staff and the school's ability to "build a community of faith".
3. This submission to the ALRC inquiry will explain the ICV's views with respect to the Proposals set out in the ALRC Consultation Paper.
4. Australia has signed and ratified the International Covenant on Civil and Political Rights (ICCPR) and has resultant obligations under this international treaty. Article 18 of the treaty reads,

"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".

5. It is the ICV's view that the Propositions of the Consultation Paper do not respect these rights of parents contained within the ICCPR). The ICV, and the Muslim community generally, has long held that faith-based schools should be able to teach students according to religious teachings and values, and operate as an organisation with a religious ethos. This religious ethos cannot be upheld and sustained unless all members of staff hold the same beliefs in word and action, and not merely selective members such as the Principal and the religious studies teacher.
6. For Islamic schools, religious values are not a discrete part of school life. They are the paramount source of moral learning, and as such, cannot be selectively adhered to. Islamic schools take care to preserve their religious ethos, by expecting that staff and students alike adhere to the religious values of the school. Insofar as student and staff conduct 'touches' the school, religious values are paramount. Students enrolled at Islamic schools, and their parents

who send them there, expect these values to be preserved where they reasonably can. Further, the religious expectations and policies of Islamic schools are known to students and staff before enrolment or employment.

7. On this basis, Islamic schools have found the need to take action against certain staff and students where their conduct violates religious values. Crucially, not all conduct which is against religious values is 'policed' by Islamic schools, nor do Islamic schools seek this power. But where this conduct can affect the school's ability to imbue religious values unto their students, Islamic schools should be able to take action against the relevant staff or students.
8. It must be emphasised that Islamic Schools do not set out to discriminate against staff and students. This would be antithetical to the Islamic concept of justice. Further, there is no record of Islamic Schools violating discrimination laws or failing their duty of care obligations towards students. However, Islamic schools (and other faith schools) have not previously confronted the significant obstacles posed by various State laws and now the proposed amendments to Commonwealth discrimination laws to their ability to uphold the religious ethos of the school.
9. In Islam, a person's gender is that which is assigned at birth (based on biological sex),¹ and the only legitimate institution for sexual relations is marriage, which in turn is only valid between a man and a woman. This is the only legitimate reading of sexual orientation, gender identity and marital status under Islamic doctrine.
10. And so there is an inherent tension between protection of the rights of students and staff with certain sexual orientations, gender identities and marital statuses (the 'protected attributes') and the freedom of the school to operate in a manner consistent with its religious ethos. It is the ICV's view, and the view of many faith-based organisations, that the ALRC's Proposals do not fairly balance the two interests.
11. The ICV does not believe that the Propositions and Proposals outlined in the ALRC Consultation Paper are consistent with the stated Terms of Reference of this review. The ALRC's starting point appears to be aimed at removing or significantly weakening the existing exemptions, thereby rendering the concept of establishing a community of faith meaningless in practice. The ICV does not believe that this is a fair and reasonable attempt by the ALRC to balance the competing rights for reasons outlined below.

¹ With exceptions regarding persons born Intersex.

12. The ICV supports, in principle, nationally consistent legislation which lays out the rights and obligations of religious education institutions vis a vis exemptions given to those institutions under various discrimination laws as long as the fundamental right of those institutions to establish 'a community of faith' is not undermined. As such a mechanism to achieve this outcome given conflicting state and territory laws must be considered.
13. The ICV, its member societies and the Muslim community at large strongly believe that Islamic schools should be able to teach students what Islam teaches on gender identity and sexual orientation, without reservation, and operate in a way consistent with these teachings. Islamic schools should be able to take action against both staff and students if their conduct is substantially at conflict with these teachings. However, this does not mean that schools operate indifferently to the psychological wellbeing of staff and students. Islamic schools are aware of the duty of care imposed upon them to their students, by the Islamic faith foremost but also the relevant laws and regulations they are subject to. It is essential that students are not exposed to avoidable harms at school.
14. It is the ICV's view that the Propositions A to D would unjustifiably impede upon Islamic schools' right to freedom of religion and religious practice. At the outset, they signal that the right to freedom of religion is subservient to other relevant rights.
15. Principle 3 of the Principles listed at page 9 in the Consultation Paper explain the need to 'preserve' the 'substance' of human rights where two rights intersect. It is submitted that the Consultation Paper's Propositions would negate the substance of the right to freedom of religious practice. In the context of an Islamic school, the 'substance' of this right is severely eroded: why would sex discrimination laws (which limit the decisions an Islamic school can make) apply only to 'participation in religious observances and practices', and not the general operations of the school? This provision is an admission that schools will not be able to teach and preserve religious teachings and ethos entirely; they can be preserved only insofar as they do not offend other rights. Essentially, the ALRC has proposed that other rights be superimposed on rights to religious freedom and practice, as opposed to fairly balancing the two.
16. This approach entirely ignores that the faith-based schools are expected to promote religious teachings and beliefs foremost. That is the essential purpose of these schools. Schools should have the right to teach and uphold these teachings. Muslim families, and even non-Muslim families, are increasingly deciding to send their children to Islamic schools for this very

reason.² There is community concern about what is taught in public schools concerning views on sexual orientation and gender identity, and parents want to ground their children with a religious view on these matters.³ It would be a glaring injustice to essentially deny Muslim families and schools the right to freedom of religion within Islamic schools.

17. In sum, Islamic schools should be able to teach Islamic beliefs, and promote Islamic values. These beliefs can be outlined in the school's policies and procedures, and applied consistently and fairly to all students and staff. These policies would relate both to the ongoing enrolment and employment of students and staff respectively. These policies are necessary to preserve the religious ethos of schools, which is the fundamental purpose of faith-based schools. Finally, it is worth noting that if individuals seeking employment do not agree with the school's religious values and cannot commit to abiding by its religious ethos, they free to seek employment elsewhere.

PROPOSITION A:

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

18. Islamic schools should be able to preserve their religious ethos by producing and enforcing policies and procedures to that effect. Islamic schools do not set out to discriminate against students on any basis in deciding their enrolment eligibility. However, Islamic schools may need to take action against some students where their beliefs and conduct are not in conformity with Islamic teachings. Schools must model the Islamic principles and values that are being taught at the school. Anything less than this standard would betray the trust of the parents who send their children to these schools and would be considered hypocritical. This is certainly the case when it comes to sexuality and gender identity.

PROPOSITION B:

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

19. The ICV's comments with respect to Proposition A also apply to Proposition B.

² C e.g., White, D. 2022 September 4 *NSW's Islamic schools surge in popularity as principals push for cap increase* <https://www.smh.com.au/national/nsw/nsw-s-islamic-schools-surge-in-popularity-as-principals-push-for-cap-increase-20220825-p5bctp.html>

³ Ibid

20. Even where members of staff are not employed for a role directly responsible for 'religious observances or practices', there is a general expectation that staff observe the religious values and expectations outlined in employment policies and codes of conduct. Islamic schools should be able to enforce these policies to preserve the Islamic ethos of the school.

PROPOSITION C:

Preferencing staff involved in the teaching, observance and practice of religion on religious grounds

21. The ICV believes that Islamic schools should have the right to preference staff who belong to the Muslim faith during the hiring process. In doing so, Islamic schools are preferencing the individual because their beliefs and values are in accordance with the religious ethos of the school. As such, it does not make sense to impose constraints that would undermine the purpose of this preferencing by imposing an unreasonable expectation that the preferencing "would not amount to discrimination on another prohibited ground". The Proposition acknowledges that "the nature and religious ethos of the educational institution" is relevant to determining whether religious observance or practice is a genuine inherent requirement of staff roles, but this acknowledgement rings hollow if the right of Islamic schools are restricted in this way.

PROPOSITION D:

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

22. Islamic schools should have the right to terminate staff where, amongst other requirements, the termination is necessary to prevent staff from actively undermining the ethos of the school. However, with respect to Proposition D, the examples presented by the ALRC of conduct which would not be taken to actively undermine the religious ethos would lead to a hypocritical application of this right.

For example, the ALRC suggests that,

"a religious school could not take action against a staff member for supporting an LGBTQ+ student, or attending a Pride rally, on the grounds that it undermined the religious ethos of the school".

To Islamic schools, it is inconceivable that such conduct would **not** actively undermine the religious ethos of the school. Staff are expected to respect the teachings of Islam, and for students to see staff promote alternate views on either gender identity or sexual orientation would actively undermine the views and teachings taught by the school.



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