



# **A SIMPLE ASK FOR DIGNITY AND RESPECT:**

EQUALITY AUSTRALIA'S SUBMISSION TO THE AUSTRALIAN LAW REFORM  
COMMISSION INQUIRY INTO RELIGIOUS EDUCATIONAL INSTITUTIONS AND  
ANTI-DISCRIMINATION LAWS

28 FEBRUARY 2023

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## ABOUT EQUALITY AUSTRALIA

Equality Australia is a national LGBTIQ+ organisation dedicated to achieving equality for LGBTIQ+ people.

Born out of the successful campaign for marriage equality and established with support from the Human Rights Law Centre, Equality Australia brings together legal, policy and communications expertise, along with thousands of supporters, to address discrimination, disadvantage and distress experienced by LGBTIQ+ people.

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We acknowledge that our offices are on the land of the Kulin Nation and the land of the Eora Nation and we pay our respects to their traditional owners.

# EXECUTIVE SUMMARY

**Everyone deserves to be treated with dignity and respect no matter where they work or study.**

However, LGBTQ+ people and others in Australia can be legally discriminated against by religious educational organisations because of exemptions in federal anti-discrimination laws. Religious educational institutions use these legal carve-outs to fire, deny opportunities to and treat less favourably LGBTQ+ teachers, staff and students and the people who love or affirm us. Our submission begins with some recent cases where legal carve-outs for religious educational organisations have allowed this unfair treatment to continue.

## FOUR OVERRIDING PRINCIPLES

We thank the Australian Law Reform Commission (ALRC) for its consultation paper and detailed work leading up to it. We are grateful for the opportunity to provide submissions on the proposals contained in the ALRC's Consultation Paper.

In responding to the ALRC's proposals, four overriding principles have underpinned our submission:

1. As significant employers and educators in Australia, religious educational institutions should comply with the same laws as other organisations, unless an exception can be justified in accordance with international human rights law.
2. LGBTQ+ people, alongside others who are protected by the *Sex Discrimination Act 1984* (Cth), should be protected from discrimination under law no matter in which educational institution they work or study.
3. No worker or student should lose protections as a result of the ALRC's recommendations, including that there can be no overriding of existing state and territory anti-discrimination protections.
4. The *Fair Work Act 2009* (Cth) should conform to the highest standard set by anti-discrimination laws in Australia to ensure the same rules apply regardless of the forum in which a person seeks a remedy for discrimination against them.

Accordingly, **we broadly support** most of the proposals put forward by the ALRC in the *Religious Educational Institutions and Anti-Discrimination Laws* consultation paper. We thank the ALRC for the detailed work it has done to put these proposals forward, having heard the clear evidence of ongoing discrimination against members of our communities. We also seek some improvements to some of these proposals, which we support.

However, **we do not support** proposals that would exempt curriculum content from the application of the *Sex Discrimination Act 1984* (Cth) or that would create a new right to terminate workers who “*undermine the ethos of the institution*”. That is because these new exceptions are unnecessary. They would also allow discrimination to occur through ill-defined concepts that hand power back to school administrators, allowing them to reintroduce discriminatory requirements into their policies and practices under a different guise.

## GETTING THE DETAIL RIGHT

Our submission principally responds to the ALRC's 14 technical proposals because the detail of the proposed reform is critically important to achieving reforms that remove discrimination against LGBTQ+ people and others, which the Government has committed to protect from discrimination.

We also make some comments in respect of the general propositions expressed by the ALRC where we take issue, but caution that high level principles can obfuscate where the real issues lie. For example, language like “ethos” is used by religious educational institutions variously to mean very different things, some of which is worthy of protection and some of which is a means by which to hide discrimination against LGBTQ+ people and others.

As the following case studies demonstrate, discrimination is insidious and can be framed in a number of ways. That is why, discrimination based on religious belief must not be allowed to be used as a proxy for discrimination against people who affirm LGBTQ+ people, including LGBTQ+ people themselves.

Further, as a recent letter sent to the Commonwealth Attorney-General and released publicly also demonstrates, some religious educational institutions intend to use the federal laws to evade their obligations under state and

territory anti-discrimination laws.<sup>1</sup> The consequences of amending the *Sex Discrimination Act* and *Fair Work Act* on state and territory anti-discrimination frameworks must therefore be considered, and no overriding of state and territory laws should be permitted by the ALRC's recommendations.

### **A SIMPLE ASK FOR DIGNITY AND RESPECT**

This is another inquiry that is putting LGBTQ+ people's lives up for public debate, when the ask has always been simple and the same.

**Everyone deserves to be treated with dignity and respect no matter where they work or study. LGBTQ+ people are simply asking for the freedom to express who they are and whom they love, in a manner which is equal to their colleagues and peers, without adverse consequences for their employment or education.**

We are asking the ALRC to be precise and principled in its recommendations and deliver us a pathway to realising that long-held aspiration of our community.

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<sup>1</sup>“Religious schools in those States rely upon the current exemptions in section 38 of the Sex Discrimination Act and depend upon those exemptions overriding the State laws in order to maintain their religious ethos”: [Letter dated 13 February 2023 from Rt Reverend Dr Michael Stead, Anglican Bishop of South Sydney to The Hon Mark Dreyfus MP, Attorney-General.](#)

# UNDERSTANDING THE PROBLEM

**1 in 3 students<sup>2</sup> and almost 2 in 5 staff<sup>3</sup> are enrolled or employed in non-government schools, most of which are religiously affiliated as part of the Catholic or independent school system.**

Over the past few years, Equality Australia has supported many people who have experienced discrimination by faith-based educational institutions because of their sexual orientation, gender identity, or their religious beliefs about matters concerning sexual orientation or gender identity. We have provided an overview of the experiences of a few of these people below.

Their stories and experiences must guide the ALRC's recommendations so that reforms do not allow discrimination which has been permitted to continue, including under other guises or exemptions.

## 1. OBSERVATIONS ARISING FROM THE CASE STUDIES

The following cases demonstrate that:

- Discrimination by religious educational institutions may be framed based on a person's personal attributes, such as their sexual orientation or gender identity, or their religious beliefs about an attribute (such as whether they believe homosexuality is sinful or marriage can only be between a man and a woman). In this way, discrimination by religious educational institutions is not always directed at LGBTQ+ people, but also those who love and affirm us, such as our parents, children and allies who stand with us.
- Religious educational institutions may disguise discrimination in various ways, including through insistence on conformity with religious beliefs or doctrines regarding sexual orientation and gender identity which may be imposed through statements of belief, enrolment contracts or other policies. Discriminatory requirements may also be updated and imposed retrospectively on existing employees or students.
- Religious educational institutions go to great lengths to hide or deny their discrimination, meaning many communities of faith are not given a fair opportunity to show their opposition to continuing discrimination against LGBTQ+ people.
- When religious educational institutions talk about hiring people of their own faith, they can mean hiring people with discriminatory views on matters concerning sexual orientation or gender identity. Religious educational institutions may discriminate *among* people of the same faith where a person's views on matters concerning sexual orientation and gender identity do not align with those of administrators that control the school, even where those views are not shared by the broader school community.
- The extent and nature of the expression prohibited by religious educational institutions can be extreme, extending to very private aspects of life and deeply held personal and religious beliefs. The school's faith-based community may not get a say in the setting of these requirements, and are sometimes not told about the real reasons why their favourite teacher is no longer working at the school.
- Faith communities have a diversity of views on matters concerning sexual orientation and gender identity, including among people within the same faith community. The freedom of thought, conscience and belief is a human right enjoyed by everyone, and includes the right for a person of faith or no faith to have their own beliefs on these matters without unjustified discrimination.

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<sup>2</sup> Australian Bureau of Statistics (2022) [Schools, Australia 2021](#), Data release dated 23 February 2022.

<sup>3</sup> Australian Bureau of Statistics (2022) [Schools, Australia 2021: Table 50a In-school Staff \(Number\), 2006-2021](#), Data release dated 23 February 2022.

## 2. SOME RECENT CASE STUDIES

### STEPH LENTZ

In 2021, Steph Lentz was fired from her role as an English teacher at a Christian school in Sydney after she came out as a lesbian. Despite being a Christian and attending a Christian church, the school fired Steph because she would not affirm the 'immorality' of homosexuality, which the school argued breached an 'inherent, genuine occupational requirement' of her role. This was despite Steph offering to respond to any questions raised by her students about sexuality by presenting the school's strong convictions while acknowledging that some Christians hold different views.<sup>4</sup>

*In paragraph 5 of your letter of 28 December you have stated, with respect to the church you attend, that your church's doctrinal position is consistent with the beliefs and ethos of the School and the School's Summary Statement of Beliefs, except for the issue of its position on LGBTQIA+ people and relationships. The School repeats that the issue relating to your church is solely whether you maintain an active commitment to and involvement with a Christian church holding a doctrinal position consistent with the beliefs of the School, as required by clause 35.1(c) of the MEA. However, on your repeated admissions, you attend a church which does not hold a doctrinal position consistent with the beliefs of the School because it affirms homosexual relationships.*

*In paragraphs 2, 3, 5 and 6 of your letter of 28 December, you have asserted that you believe the School's issue is your sexual orientation or sexuality. The School again assures you that is not the case. The School's questions to you have at all times been directed to whether you fulfil the inherent, genuine occupational requirement of clause 35.1(c) of the MEA. The School accepts that there are*

*faithful Christians who see their sexual orientation as homosexual or who experience same sex attraction, and yet who recognise that it would be wrong to act on their temptations and who prayerfully live a celibate life. Accordingly, the issue is not your sexual orientation but whether you fulfil the inherent, genuine occupational requirement of clause 35.1(c) of the MEA.*

*Above: Extracts from the letter dated 13 January 2021 terminating Ms Lentz's employment*

### KAREN PACK

Karen Pack is a committed Christian and an ordained pastor. In 2020, she was fired from her role as a teacher at a Baptist tertiary college in Sydney after she became engaged to her same-sex partner. Karen was employed by the college in February 2018 and lectured in chaplaincy and spiritual care, a post-graduate program she had been engaged by the college to develop. In a statement emailed to Karen's students after her employment was terminated, the college admitted that Karen had a 'deep and abiding faith in Jesus' and was an 'excellent and committed educator'. It explained that the decision to end her role was made by the Principal with the support of the College Board and Leadership Team, based on the position held by the college on same-sex marriage.<sup>5</sup>



*Above: Karen Pack and her wife, Bronte*

<sup>4</sup> B Schnieders and R Millar (2021) '[Steph Lentz was sacked this year for being gay, it was perfectly legal](#)' *Sydney Morning Herald*, 10 August.

<sup>5</sup> M Vincent and L Kewley (2021) '[Karen Pack was praised as an 'excellent' educator, but she says she was sacked by her employer Morling College for being gay - but the College disputes this](#)', *ABC News*, 8 April.

As some of you may already be aware, Karen is in a committed same-sex relationship. Recently her and her partner decided to formalise this commitment by getting engaged to be married. Over the past month or so, Karen, myself, [REDACTED], [REDACTED] and our Principal [REDACTED] have met (together and in smaller groups) to discuss what this means for Karen's role at College. The decision for Karen to end her lecturing role was made by the Principal, with the knowledge and support of the Morling College Board and College Leadership Team. It was based on the position on same-sex marriage held by the College as stated in our Community Code as well as the Baptist Association's position and ongoing discussions.

In no way does this decision indicate that we question Karen's deep and abiding faith in Jesus and her desire to live with integrity and honesty. She is an excellent and committed educator. She has taught you to think deeply about your faith and be further equipped with skills which will impact many. She has made a significant contribution to Morling, particularly in the establishment and flourishing of the Chaplaincy and Spiritual Care programs over the past two and a half years. She has become a good friend, teacher and colleague to many of us. Karen will still be warmly welcomed on campus and we thank her for serving you and our community so well.

*Above: Extract from the statement sent to Ms Pack's students by the college*

Despite the school's statement at the time which stated that the 'decision was made by the Principal, with the knowledge and support of the... College Board and College Leadership Team', the Principal of the college publicly denied firing Karen and asserted that she had agreed to resign from her role because she could no longer adhere to a key value of the college about the nature of marriage.<sup>6</sup> The Principal of the College further explained his decision to terminate Karen's employment to the Parliamentary Joint Committee on Human Rights as him having 'entered a very strong pastoral conversation' with Karen, in which 'we [sic] came to the conclusion that this was not where should continue to exercise her gift, which is a very strong gift'.<sup>7</sup>

## RACHEL COLVIN

Rachel Colvin is a committed Christian and mother of three married to a male partner. In 2019, she was constructively dismissed from her role as a teacher at a non-denominational Christian School in Ballarat after 10 years' service. Rachel was forced to resign after she refused to agree to and abide by an amended statement of faith, contrary to her own religious beliefs, that marriage 'can only be between a male and a female'. Rachel was forced to resign notwithstanding her offer to teach in accordance with the schools' beliefs. The matter was brought before the Victorian Civil and Administrative Appeals Tribunal,<sup>8</sup> and was settled in 2020.<sup>9</sup>



*Above: Rachel Colvin and her family*

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<sup>6</sup> M Vincent and LKewley (2021) 'Karen Pack was praised as an 'excellent' educator, but she says she was sacked by her employer Morling College for being gay - but the College disputes this', *ABC News*, 8 April.

<sup>7</sup> Commonwealth of Australia, Parliamentary Joint Committee on Human Rights (*Official Committee Hansard*) 21 December 2021, at 43.

<sup>8</sup> H Elg (2019) 'Ballarat Christian College under fire for same-sex marriage views', *The Courier*, 16 September. See also <https://equalityaustralia.org.au/rachel-colvin-files-discrimination-complaint-against-ballarat-christian-college/>.

<sup>9</sup> R Ferguson (2020) 'Ballarat Christian College settles case with former teacher Rachel Colvin over same-sex beliefs', *The Australian*, 5 March.

## OTHER CASE STUDIES

In addition, Equality Australia has also assisted or is aware of the following examples of discrimination against LGBTQ+ people by religious educational institutions:

- **Nathan Zamprogno** is a gay man who lost his job as a teacher at a Christian School in Sydney in 2020 after 20 years' service because the school discovered his sexuality.<sup>10</sup>
- **Craig Campbell** is a committed Christian who lost his job as a teacher at a Christian college in Western Australia in 2017 after he told senior staff he was in a relationship with a man. He was never told the reason for his dismissal directly but the school principal confirmed it was due to an *'inconsistency with his beliefs on sexuality and the college's beliefs'*.<sup>11</sup>
- **Elise Christian** is a teacher and committed Christian who worked in a learning support role with children aged between 10 and 12 at a Christian school in NSW in 2016 and 2017. She believes she lost her job because she tried to support students who were seriously bullied by classmates and by senior staff because of their suspected sexuality.<sup>12</sup>
- **Evie MacDonald** is a trans girl who attended a religious school in the Mornington Peninsula between 2011 and 2015. In 2015, when Evie was 10 years old, a teacher divided the class into boys and girls. When Evie said she wanted to be with the girls the teacher physically dragged her to the group of boys. She was also forced to attend seven sessions of chaplaincy counselling intended to prevent her affirming her gender as a girl, without her parents' knowledge.<sup>13</sup>
- **Olivia Stewart** is a trans girl who attended a co-ed Sydney Anglican school in year 7. When she informed the school of her intention to start year 8 as a girl, Olivia's family were told that if she stayed at the school they would write to the parents of other students to inform them there was a trans student at the school. Olivia changed schools.<sup>14</sup>
- **Sam Cairns** is a lesbian teacher who lost her job at a Christian school in Victoria in 2012 after 7 years' service because the school became aware of her 'choice of sexuality'.<sup>15</sup>
- **John Connors** is a gay man who worked as a teacher and principal at various schools in the Catholic education system for 37 years. He was threatened by an ex-partner of being outed to his employer, which he strongly believes would have resulted in him losing his job. He always kept his sexuality a secret out of fear and felt he could not talk about it with his colleagues.
- **Michael\*** is a gay man and committed Catholic who worked as a principal in a Catholic school in Victoria but kept his sexuality a secret for fear of losing his job. When he disciplined a staff member over unprofessional practice that staff member threatened to out him to the school community. He met with the Victorian Attorney-General during the debate on reforms in Victoria, who spoke about his story in Parliament.<sup>16</sup>
- **Peter\*** is a gay man who worked as a teacher at a religious school for many years. Following a leadership change at the school, Peter was overlooked for a promotion for a role that he was already performing despite being the most qualified applicant for the position and had an

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<sup>10</sup> Commonwealth of Australia, Senate Legal and Constitutional Affairs Legislation Committee ([Official Committee Hansard](#)) 21 January 2022, at 9; T McLroy (2022) ["Don't ask, don't tell" on gay teachers being sacked](#), *Australian Financial Review*, 21 January.

<sup>11</sup> C Moodie (2018) ["Teacher who lost school job after revealing he was in same sex relationship warns of impact of religious review"](#), *ABC News*, 12 October.

<sup>12</sup> Commonwealth of Australia, Senate Legal and Constitutional Affairs Legislation Committee ([Official Committee Hansard](#)) 21 December 2021 at 78; D Giannini and A Brown (2021) ["Teacher's tears at religious laws inquiry"](#), *The Canberra Times*, 21 December.

<sup>13</sup> F Tomazin (2018) ["Religious leaders and health practitioners could face prosecution for gay "conversion"'](#), *Sydney Morning Herald*, 16 May.

<sup>14</sup> C Fitzsimmons (2021) ["I'm still the same person inside": Olivia's journey coming out as a transgender teen](#), *Sydney Morning Herald*, 17 January.

<sup>15</sup> B Schniederer and R Millar (2021) ["Steph Lentz was sacked this year for being gay, it was perfectly legal"](#), *Sydney Morning Herald*, 10 August.

<sup>16</sup> Parliament of Victoria, Legislative Council Parliamentary Debates ([Hansard](#)) 3 December 2021 at 5138.

exemplary teaching record. Peter's sexual orientation had recently become known to a member of the school leadership who was involved in the hiring process.

- **Citipointe Christian College** in Brisbane forced parents to sign a declaration of faith in 2022 to keep their children enrolled. The declaration included the statement that *'any form of sexual immorality (including but not limited to; adultery, fornication, homosexual acts, bisexual acts, bestiality, incest, paedophilia, and pornography) is sinful and offensive to God and is destructive to human relationships and society'*. Teachers were also forced to accept that it was *'a genuine occupational requirement'* of their role to ensure they did not express their sexuality except through heterosexual, monogamous relationships, expressed intimately through marriage. A group of Citipointe students and parents are now represented in a legal complaint to the Queensland Human Rights Commission.<sup>17</sup>
- **Foundation Christian College** in Western Australia told a 7-year-old student in 2015 that she could only stay at the school if she did not speak about her father's sexuality or relationship with a male partner. The father was told by that school that his child would never have been admitted if they had known he was gay.<sup>18</sup>
- **St Catherine's School** in Sydney advertised a role for a new principal which required them to affirm they believed marriage as between a man and a woman. Most parents in the school community opposed the requirement and wrote to the school council. Separately, several Sydney Anglican principals wrote to the Diocese with concerns over the requirement, including its impact on gay students and parents.<sup>19</sup>

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<sup>17</sup> S Chenery and K Murray (2022) ['How Citipointe Christian College's "sexuality contract" brought queer students out of the shadows and onto the national stage'](#), ABC News, 2 November; B Smee (2022) ['Citipointe Christian College teachers threatened with dismissal for expressing homosexuality'](#), The Guardian, 21 March.

<sup>18</sup> N Hondros (2015) ['Gay man's daughter not welcome at Mandurah Christian School'](#), WAToday, October 29.

<sup>19</sup> J Baker (2022) ['St Catherine's appoints 'active Christian' principal amid same-sex marriage row'](#), Sydney Morning Herald, 28 June.

# THE PATH FORWARD

Equality Australia broadly supports many of the ALRC's technical proposals. However, some proposals need refinement to properly protect LGBTQ+<sup>20</sup> people, their families and loved ones. We also oppose proposals that are unnecessary and would, in our view, weaken current discrimination protections, including the creation of a new right to terminate workers for supposedly 'undermining the ethos of the school'.

## 3. PROPOSALS WE SUPPORT

### (a) Ensuring religious educational institutions play by the same rules under the *Sex Discrimination Act* (Technical proposals 1-5)

Equality Australia supports the prohibition of discrimination against staff and students in religious educational institutions based on sexual orientation or gender identity (as well as other attributes protected under the *Sex Discrimination Act 1981*).<sup>21</sup> The ALRC proposes to achieve this prohibition through technical proposals 1, 2, 3, 4 and 5, which we support. These technical proposals are the legally sound way to achieve these reforms.

Technical proposals 1 and 2 would remove exemptions in section 38 of the *Sex Discrimination Act 1984* (Cth) (*SDA*) which allow discrimination against LGBTQ+ staff and students in religious educational institutions (among others). Technical proposals 3 and 4 would ensure the broad exemption for religious bodies in sections 37(1)(d) or 23(3)(b) of the *SDA* cannot then be impliedly construed to allow this discrimination by religious educational institutions to continue once section 38 has been removed. Technical proposal 5 ensures there is consistency between the *SDA* and the *Fair Work Act 2009* (Cth) (*FWA*).

These changes are crucial to addressing recent examples of discrimination by religious institutions, making it clear that discrimination experienced by LGBTQ+ staff and students is unlawful.<sup>22</sup>

Removing exemptions for religious educational institutions in section 38 of the *SDA* would also bring national laws into line with similar standards set by the majority of Australian states and territories, including the Australian Capital Territory, the Northern Territory, Tasmania, and Victoria,<sup>23</sup> and recommended in Western Australia and Queensland.<sup>24</sup> South Australia and Queensland have also already implemented reforms protecting LGBTQ+ students.<sup>25</sup>

The reforms proposed to section 37(1)(d) of the *SDA* by the ALRC also provide a pathway to addressing discrimination in the delivery of goods, services, facilities and accommodation by religious organisations other than educational institutions. We suggest these reforms should be adopted at the same time as reforms on educational institutions so that there are consistent rules in employment and in the provision of education and other goods and services, such as the provision of healthcare, disability services, homelessness services, family violence support and other similar services. While appreciate that this goes beyond the term of reference for the ALRC inquiry, we would welcome it being referred to in the final report as an area for further reform.

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<sup>20</sup> In this submission, we predominantly use the term 'LGBTQ+' as s 38 of the *SDA* does not allow discrimination against intersex people by religious educational institutions. However, in some cases we use the term 'LGBTIQ+' where reform proposals would also address areas that concern discrimination protections for intersex people.

<sup>21</sup> See Australian Law Reform Commission (2023) *Consultation paper: Religious educational institutions and anti-discrimination laws*, Propositions A.1, B.1 at 17, 20.

<sup>22</sup> For example, see the case studies of discrimination experienced by Karen Pack, Steph Lentz, Nathan Zamprogno, Evie McDonald, Olivia Stewart, Sam Cairns and the students of Citipointe Christian College.

<sup>23</sup> *Discrimination Act 1991* (ACT) s 46; *Anti-Discrimination Act 1992* (NT) as amended by the Anti-Discrimination Amendment Bill 2022 (NT) cl 17; *Anti-Discrimination Act 1998* (Tas) ss 51-52; *Equal Opportunity Act 2010* (Vic) ss 83-83A.

<sup>24</sup> Queensland Human Rights Commission (2022) [Building Belonging: Review of Queensland's Anti-Discrimination Act 1991](#); The Law Reform Commission of Western Australia (2022) [Review of the Equal Opportunity Act 1984 \(WA\) – Project 111 Final Report](#).

<sup>25</sup> *Equal Opportunity Act 1984* (SA) s 37; *Anti-Discrimination Act 1991* (Qld) Div 3 ss 37-44, and 109(2).

## (b) Making the rules clear and allowing oversight of the changes (Technical proposals 11-13)

We also support changes to the *Australian Human Rights Commission Act 1986* (Cth) which would allow the Australian Human Rights Commission (AHRC) to monitor the proposed changes to the SDA and FWA, as set out in technical proposal 11.

We have no issue with the requirements proposed in technical proposals 12 and 13 that the AHRC review the Commission Guidelines in line with the reforms and develop detailed guidance to assist educational institution administrators to understand and comply with changes to the SDA and FWA. We would suggest that these guidelines be developed in consultation with affected stakeholders, including educational institutions, unions and LGBTIQ+ organisations. This will also ensure that the Guidelines address the key areas of concern which have been raised in previous cases of discrimination experienced by LGBTIQ+ people.

### RECOMMENDATION 1

The ALRC should adopt its technical proposals 1-5 and 11 in its final report, and should adopt technical proposals 12-13 in its final report subject to a recommendation that the Australian Human Rights Commission consults with affected stakeholders, including educational institutions, unions and LGBTIQ+ organisations, before it issues guidance.

### RECOMMENDATION 2

The ALRC should recommend that section 37(1)(d) of the *Sex Discrimination Act 1984* (Cth) also be reviewed and amended to prohibit discrimination against LGBTIQ+ people in employment and service delivery by other religious organisations providing goods, services, facilities and accommodation to the general public.

## 4. PROPOSALS WE SUPPORT BUT NEED FURTHER REFINEMENT

### (a) Protecting those who love and support LGBTIQ+ people (Technical proposal 6)

People who are personally connected to LGBTIQ+ people, such as our children, parents, relatives, carers, friends or colleagues, deserve to be protected if they experience discrimination based on their relationship to someone who is LGBTIQ+. These broader protections are needed to protect people like Elise Christian and the parents and staff at Citipointe Christian College and St Catherine's School who stood up for their children, family members, friends and other students who were unrelated to themselves.<sup>26</sup> They are also especially needed for the children of rainbow families, like the 7-year-old student at Foundation Christian College who was told in 2015 she was not to speak about her gay dads at school.<sup>27</sup>

None of these people are currently protected under the SDA because, unlike the *Racial Discrimination Act 1975* (Cth) and *Disability Discrimination Act 1992* (Cth), the personal associates of a person with a protected attribute have no discrimination protections. Accordingly, we support technical proposal 6 which ensures students with a family member or carer who has a protected attribute are also protected from discrimination.<sup>28</sup> However, as the

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<sup>26</sup> See section 2 of the submission above.

<sup>27</sup> See section 2 of the submission above.

<sup>28</sup> See Australian Law Reform Commission (2023) *Consultation paper: Religious educational institutions and anti-discrimination laws*, Proposition A.1, at 17.

recent cases of Elise Christian and the teachers at Citipointe Christian College show, we believe these protections need to go further in two important ways.

*First*, the proposed protections should not be limited to family members and carers but extend to all personal associates, consistently with definition of an ‘associate’ in the *Disability Discrimination Act 1992* (Cth).<sup>29</sup> There is no basis for creating a legal distinction between carers or family members and other personal associates, or for creating inconsistency between federal anti-discrimination acts. Discrimination by a religious educational institution against a student because their friend, rather than a parent, is LGBTQ+ is no less insidious or harmful.

*Secondly*, the protections for associates must extend across all areas in the SDA (including in employment), as nobody should be discriminated against because of their relationship to someone who is LGBTQ+. The general proposition put forward by the ALRC concerning discrimination against and the preferencing of staff should be amended to reflect this.<sup>30</sup> Otherwise people like Elise Christian or Rachel Colvin, who bravely speak out to protect LGBTQ+ students being bullied at their school, can continue to lose their jobs without recourse. These protections will be particularly necessary if the ALRC presses forward with reforms that would allow discrimination in the school curriculum and erode protections for workers, which we oppose and which are discussed below.

### **RECOMMENDATION 3**

Ensure personal associates, defined consistently with the *Disability Discrimination Act 1992* (Cth), are protected from discrimination under the SDA, and this protection is extended across all areas in the SDA – not only limited to students who have family members or carers with a protected attribute.

#### **(b) Protecting the freedom of religion, thought and conscience of all staff in religious educational institutions (Technical proposals 8 to 10, General Propositions C.1 and D)**

We accept the government’s policy is to enable selective preferencing of staff in religious educational institutions based on their religious belief or activity.<sup>31</sup> This would be implemented through technical proposal 8, which would allow favourable treatment of staff on religious grounds in certain circumstances, and technical proposal 10, which prevents future religious discrimination laws from preventing such favourable treatment from being unlawful. It also underpins aspects of technical proposal 9, which is addressed in more detail later in this submission. These technical proposals are underpinned by the principles outlined in General Propositions C and D.

To start with, we agree with the ALRC’s proposal that the power of religious educational institutions to preference staff based on their religion:

- should be linked to some genuine occupational requirement (that is, the person’s religious beliefs or activities must actually be relevant to the role in question);
- should not amount to discrimination based on grounds other than religious belief or activity; and
- must include a proportionality test, so that the employee’s own freedom of thought, conscience and religion, alongside their other human rights, are appropriately considered if they are to be limited by their employer.

However, we wish to make a number of submissions regarding the importance of properly articulating how these proposals should be framed in law and operate in practice, particularly given some assumptions underlying the framing of General Propositions C and D that we believe are liable to allowing discrimination to continue.

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<sup>29</sup> *Disability Discrimination Act 1992* s 4 (definition of ‘associate’).

<sup>30</sup> See Australian Law Reform Commission (2023) *Consultation paper: Religious educational institutions and anti-discrimination laws*, Propositions B.1, C.1 at 20, 22.

<sup>31</sup> See Australian Law Reform Commission (2023) *Consultation paper: Religious educational institutions and anti-discrimination laws*, Propositions C.1 at 22.

## Employment conditions framed to allow discrimination

First, we agree with the ALRC that a requirement for proportionality is crucial, as a ‘genuine occupational requirement’ test alone is not sufficient. This is because it is not clear what a ‘genuine occupational requirement’ actually means, and there is authority which suggests that a ‘genuine occupational requirement’ might mean the same thing as an ‘inherent requirement’.<sup>32</sup> If that is correct, then as highlighted in *X v Commonwealth* [1999] HCA 63, whether something is an inherent or essential requirement may be determined by the terms and conditions of employment set by the employer.<sup>33</sup> That is, the employer may largely be able to construct the requirements of the role specifically in order to allow them to discriminate based on religious belief or activity.

As seen in the cases concerning Steph Lentz, Rachel Colvin and Citipointe Christian College, religious educational institutions have attempted to evade protections against discrimination based on sexual orientation or gender identity by simply imposing requirements on employees to have certain religious beliefs that are not affirming of LGBTQ+ people. Without an objective proportionality requirement, an employee’s own freedoms of thought, conscience and religion, as well as other human rights, are entirely subsumed by the power given to their employers to ‘write in’ disproportionately discriminatory religious requirements into their role descriptions.

## Framing proportionality properly

Secondly, while we support a requirement for proportionality, the various formulations of that requirement proposed by the ALRC in General Propositions C and D that underpin technical proposals 8-10 give too much weight to a religious ethos (whatever it is or may be), thereby stacking the proportionality assessment by a prior assumption that protecting a religious ethos is always the ultimate objective.<sup>34</sup>

The ALRC should proceed using a true proportionality standard conforming with international human rights law. In cases involving discrimination, proportionality requires there to be a genuine consideration of all the circumstances of the case to ensure that the discrimination is justified by some legitimate objective, and that the proposed conduct is the least restrictive means necessary to achieve that legitimate objective. Proportionately requires a careful assessment of intersecting rights and interests, including those of the staff member, the institution and other persons involved.

The error in General Propositions C and D, which underpins technical proposals 8-10, appears to be the repeated framing of proportionality by reference to an ultimate objective of upholding the religious ethos of an organisation – no matter what that ethos is or whose rights it trammels upon. But some aspects of a religious ethos may not be worthy of ultimate protection when considered against countervailing interests, such as the employee’s own freedom of thought, conscience and religion, their freedom of expression, their right to marry and found a family of their own choosing, or their right to work (and be promoted in their job) without discrimination.<sup>35</sup> Communities of faith may also disagree as to what their ethos is and the relative importance of certain parts of that ethos to the community as a whole. As demonstrated in the St Catherine’s School case, the governing authorities of a school may also not represent the will of the school community as to what its ethos is or should be.

The need for a well-framed proportionality standard is particularly important given the ALRC has apparently rejected the religious conformity and religious sensitivities/susceptibilities tests used in state and territory laws, and currently used in the SDA and FWA. These tests have previously been used (sometimes successfully, and sometimes not) to inject a degree of scrutiny against claims by religious organisations that their proposed discrimination is necessary to protect some overriding religious objective.<sup>36</sup> They provide a basis to ask questions

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<sup>32</sup> *Chivers v Queensland* [2014] QCA 141.

<sup>33</sup> *X v Commonwealth* [1999] HCA 63 at [31]-[33], [37] per McHugh J, and [102]-[103] and [105]-[106] per Gummow and Hayne JJ (with whom Gleeson CJ and Callinan J agreed, see also [173]); cf at [105]-[151] per Kirby J dissenting.

<sup>34</sup> See Australian Law Reform Commission (2023) *Consultation paper: Religious educational institutions and anti-discrimination laws*, Propositions C.1 at 22.

<sup>35</sup> International Covenant on Civil and Political Rights (ICCPR) arts 2(1), 18-20, 23; International Covenant on Economic, Social and Cultural Rights (ICESCR) arts 2(2), 6.

<sup>36</sup> See e.g. *Christian Youth Camps Ltd v Cobaw Community Health Services Ltd* [2014] VSCA 75; *OV & OW v Members of the Board of the Wesley Mission Council* [2010] NSWCA 155 (\*OV & OW\*).

about how closely connected an organisation's leadership is to its community of faith, given that – ultimately – the freedom of thought, conscience and religion is a freedom owed to human beings not legal entities, and including the right of those individuals to create a community of faith together. By leaving out these tests, the ALRC's proposal appears to take at face value that:

- a school's religious ethos will always conform with religious doctrines, beliefs and tenets; and
- failures to maintain a particular aspect of that ethos would always injure the religious susceptibilities of adherents of a religion.

By leaving out these tests, this leaves the proportionality test with all the work to do in ensuring the intersecting rights and freedoms of employee are properly considered, including the freedoms of people of faith to internally debate matters of religious doctrine or interpretation and still be part of the community of faith to which they belong. This is why the proportionality test must be properly framed in any final recommendations allowing the preferencing of people based on their religious beliefs or activities. If that is not done properly the discrimination faced by LGBTQ+ and LGBTQ+ -affirming people of faith, such as Steph Lentz, Karen Pack or Rachel Colvin, will remain lawful under another guise.

#### **Spell out what should happen to the FWA exemptions**

Finally, technical proposals 8 and 10 also need to address what should happen to the *'inherent requirements'* exemptions in sections 153(2)(a), 195(2)(a), 351(2)(b) and 772(2)(a) of the FWA that otherwise apply to the same attributes covered by the SDA and which may be covered by a future Commonwealth religious discrimination law. Otherwise, religious educational institutions will be able to bypass the protections offered by any narrower exemptions in these laws by relying on pre-existing exemptions in the FWA that do not have these additional requirements. In our view, where a Commonwealth law regulates discrimination, the FWA should be brought up to the best standard which is consistent with that law, including any limitations in how its exceptions are framed. This ensures that employees will have the same rights and protections regardless of the forum in which they seek to bring a complaint regarding discrimination.

#### **RECOMMENDATION 4**

Ensure the proportionality principles outlined in General Proposition C and D and underpinning technical proposals 8-10 require a true proportionality test conforming with international human rights law. That is, a proportionality test that starts with prohibiting discrimination unless it can be justified by a legitimate objective which cannot be achieved using less restrictive means.

Ensure all the circumstances of the case include consideration of all relevant human rights considerations, including those of the employees' and other affected persons, as well as the legitimate interests of a religious educational institution.

## RECOMMENDATION 5

With the passage of religious discrimination laws, the ALRC should recommend that:

- the ‘inherent requirements’ exemptions in sections 153(2)(a), 195(2)(a), 351(2)(b) and 772(2)(a) of the FWA be amended so that they are only available if, and to the extent that:
  - a relevant Commonwealth anti-discrimination law protecting the attribute also allows this exception; or
  - the discrimination is based on the employee’s political opinion, national extraction or social origin (being attributes not otherwise protected under another Commonwealth anti-discrimination law);
- a ‘genuine occupational requirements’ exemption (with the requirement for proportionality in respect of any religious preferencing requirements) is reflected in the FWA if, and to the extent, that this exception is allowed in a relevant Commonwealth anti-discrimination law protecting that attribute.

## 5. PROPOSALS WE OPPOSE

### (a) Allowing discrimination in the school curriculum (Technical proposal 7)

We do not support amending the SDA to clarify that the content of the curriculum is not subject to the SDA, as articulated in technical proposal 7. This proposal has consequences which go beyond religious educational institutions and we oppose this proposal for two reasons.

#### A SOLUTION IN SEARCH OF A PROBLEM

Amending the SDA to exempt the content of a school’s curriculum from discrimination protections is a solution in search of a problem. The ALRC has conceded that this is the case in their consultation paper.<sup>37</sup>

Religious schools that teach the curriculum are highly unlikely to offend the SDA, even if they provide views as to their religious beliefs in respect of protected attributes such as sexual orientation or gender identity. This is because:

- These beliefs may be communicated to all students regardless of their personal attributes, and therefore would not amount to direct discrimination;
- If the beliefs are not presented in a way which is (in the words of the *Equality Act 2010* (UK) Department Guidance) ‘*haranguing, harassing or berating a particular pupil or group of pupils*’, such communications are not likely to be unreasonable requirements, policies or practices and will not amount to indirect discrimination. Based on the approach taken in *Richardson v Oracle Corporation Australia Pty Ltd* [2014] FCAFC 82 at [171], there may not even be a case of disadvantage that can be made out under the definition of indirect discrimination.

In any event, the distinction between the curriculum and the way it is communicated is highly artificial and difficult to draw. This will lead to more complicated technical legal arguments in discrimination complaints about discriminatory treatment in the classroom.

#### FURTHER CONSEQUENCES

Removing the content of the curriculum from the scope of the SDA would also remove obligations from government schools, and from authorities that set the curriculum that may constitute service providers and

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<sup>37</sup> Australian Law Reform Commission (2023) *Consultation paper: Religious educational institutions and anti-discrimination laws*, 32 [91].

administrators of Commonwealth laws and programs for the purposes of the SDA.<sup>38</sup> For example, this would exempt the Australian Curriculum Assessment and Reporting Authority (ACARA) from its obligations under the SDA to provide a service or administer Commonwealth laws and programs without discrimination. One of the functions ascribed to ACARA under Commonwealth law is to develop and administer a national school curriculum.<sup>39</sup>

## RECOMMENDATION 6

Do not proceed with technical proposal 7.

### (b) Eroding protections for workers in religious educational institutions (Technical proposals 9 and 10)

We strongly oppose the formulation of a new right to terminate workers for supposedly '*actively undermining the ethos*' of a religious educational institution as set out in technical proposals 9 and 10. Depending on how these recommendations may be drafted into law (which itself is not clear), this vaguely-defined proposal may represent a worse position for LGBTQ+ workers and others than the existing exemptions to anti-discrimination law for religious educational institutions in section 38 of the SDA. As articulated below, there are a number of technical reasons for this.

However, this proposal should also be entirely abandoned for three simple reasons beyond the technical issues it presents. They are:

- **It is not necessary.** If a worker acts in a manner that contravenes the reasonable conduct rules of a religious educational institution which are applied consistently, then their termination would not be unlawful discrimination.
- **It would provide a perverse incentive** for religious educational institutions to terminate workers rather than consider other steps (such as cautions, mediations, etc) in order to take advantage of the protections offered by this clause. This is because the new right applies only to termination, and not other forms of adverse treatment.
- **It is pleasing no one.** Catholic schools and religious leaders have already rejected the ALRC's proposals.<sup>40</sup> They don't see this proposal working, and neither do we.

## MISUSE BY RELIGIOUS EDUCATIONAL INSTITUTIONS

Depending on how this proposal is enacted, a new right to terminate workers who supposedly '*actively undermine the ethos*' of a religious educational institution would be open to misuse because a religious ethos can be code for discriminatory beliefs regarding gender identity and sexual orientation.

Allowing discrimination based only on religious belief and not on other protected attributes does not solve this problem as it provides no protection against discrimination based on a requirement to hold discriminatory religious beliefs regarding sexual orientation and gender identity as a condition of employment.

For example, a religious educational institution might require workers to declare a religious belief that marriage is between a man and a woman in order to demonstrate their commitment to the ethos of the institution, as was the case for Rachel Colvin. A religious educational institution might also require their employees to attend a church that aligns with their own non-affirming religious views on LGBTQ+ people, as was the case for Steph Lentz.

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<sup>38</sup> SDA ss 22, 26.

<sup>39</sup> See, *Australian Curriculum, Assessment and Reporting Authority Act 2008* (Cth) s 6(a).

<sup>40</sup> See P Karp (2023) '[Catholic schools to oppose LGBTQ+ teacher and student law reform proposal](#)' *The Guardian*, 31 January; J Kelly (2023) '[Churches versus state to save faith school rights](#)' *The Australian*, 14 February; [Letter dated 13 February 2023 from Rt Reverend Dr Michael Stead, Anglican Bishop of South Sydney to The Hon Mark Dreyfus MP, Attorney-General](#);

In both these cases, Rachel and Steph lost their jobs notwithstanding that they were willing to remain silent about their personal religious beliefs that were affirming of LGBTQ+ people or to present the religious beliefs of the school alongside their own, if they were asked questions by their students.

You only need to read the letter to the Attorney-General dated 13 February 2023 signed by several religious leaders affirming that they rely on Commonwealth laws to override their state and territory anti-discrimination obligations,<sup>41</sup> or the comments which have been made by religious leaders and administrators of educational institutions defending the treatment of people like Karen Pack, Steph Lentz and the parents and students of Citipointe Christian College,<sup>42</sup> or the response of some organisations to the ALRC's consultation paper, to recognise that religious educational institutions often fail to comprehend the potential for LGBTQ+ discrimination in their practices and the associated harm which accompanies it.

It is critical to recognise that many of these administrators and religious leaders are often the same people who set or inform the employment policies that bind ordinary staff in religious educational institutions. They can decide what the religious ethos of the institution is (sometimes at odds with their own community of faith<sup>43</sup>), and they can decide whom they consider has '*actively undermined*' it. That is why laws protecting people from discrimination must not be so vaguely framed. People of faith who are LGBTQ+ or who affirm LGBTQ+ people, like Rachel Colvin and Karen Pack, deserve the same dignity and respect in their workplaces which are afforded to others, including the freedom to maintain and respectfully express their religious beliefs on matters of sexuality and gender in a proportionate and reasonable way.

## **TURNING A SHIELD FOR THE WORKER INTO A SWORD FOR THE EMPLOYER**

Depending on how technical proposals 9 and 10 are enacted into law, there is a risk that these proposals will undermine other procedural safeguards offered under anti-discrimination laws, thereby turning what is now a shield against discrimination for the worker into a sword allowing discrimination by the employer.

Workers are currently shielded from termination on discriminatory grounds in two main ways under anti-discrimination laws. *First*, a worker can generally expect to be treated *consistently* because of the protections against direct discrimination. *Secondly*, a worker can expect to be treated *reasonably* because of the protections against indirect discrimination. Currently, an employer also bears the burden of showing the termination of a worker is either subject to a conduct or policy requirement which was reasonable (for the purpose of indirect discrimination), or subject to an exemption from discrimination protections. Typically, exemptions for religious organisations to terminate workers on discriminatory grounds require conformity with religious doctrine, injury to religious sensitivities/susceptibilities, or both.

A right for religious educational institutions to terminate workers under federal law may bypass many of these protections by either enlivening different legal exemptions regarding compliance with an award,<sup>44</sup> or because a federal right to terminate renders inconsistent (and thereby inoperative under section 109 of the Constitution) a state or territory prohibition on discriminatory terminations. Either way, the proposal may effectively override protections in state and territory laws. It is clear that some religious leaders and administrators will be relying on such provisions exactly for this purpose.<sup>45</sup>

Anti-discrimination law circumscribes the power to contract, meaning that the duty of fidelity cannot be framed as requiring the employee to accept a discriminatory term. Depending on how it is enacted into law, this proposed

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<sup>41</sup> "Religious schools in those States rely upon the current exemptions in section 38 of the Sex Discrimination Act and depend upon those exemptions overriding the State laws in order to maintain their religious ethos": [Letter dated 13 February 2023 from Rt Reverend Dr Michael Stead, Anglican Bishop of South Sydney to The Hon Mark Dreyfus MP, Attorney-General](#).

<sup>42</sup> See, eg, 7 News (2022) '[Citipointe Christian College principal response safter enrolment contract petition grows](#)', 7 News, 31 January; Michael Koziol (2021) '["Her views no longer aligned": Anglicans defend sacking of gay teacher](#)', *Sydney Morning Herald*, 29 December; Commonwealth of Australia, Parliamentary Joint Committee on Human Rights ([Official Committee Hansard](#)) 21 December 2021, at 43.

<sup>43</sup> See, eg, the St Catherine's school example above.

<sup>44</sup> See, eg, *Anti-Discrimination Act 1992* (NT) s 53; *Anti-Discrimination Act 1991* (Qld) s 106.

<sup>45</sup> See [Letter dated 13 February 2023 from Rt Reverend Dr Michael Stead, Anglican Bishop of South Sydney to The Hon Mark Dreyfus MP, Attorney-General](#).

right to terminate workers may enlarge the ability of an employer to impose discriminatory contractual requirements on an employee.

It is also unclear how the proposed right to terminate a worker interacts with section 29 of the FWA, which preserves state and territory anti-discrimination laws.

## **LEGAL CONCERNS WITH THE PROPOSAL**

In place of current protections, this proposal appears to give inferior protections to employees. This is because:

- It reasserts the primacy of an ethos above all other considerations, in circumstances where that ethos is undefined, unpinned to any requirement for conformity with religious doctrine and unconstrained by any requirement for inquiry into the views of adherents of the religion. This is discussed above in part 4(b) of this submission.
- Depending on how it is enacted into law, this proposal may make what would currently be a defence for an employer, who currently may have the burden of proof,<sup>46</sup> into a positive right to terminate. Few workers challenge their terminations notwithstanding these existing procedural protections. Even fewer would do so when faced with an open-ended debate over proportionality, that begins by asserting the primacy of an ethos (whatever it is, whoever determined it, and whether it has the support of the school community).
- It relies on the inferior discrimination protections in the FWA, which may not extend to indirect discrimination.<sup>47</sup> Most examples of religious ethos that discriminate based on sexual orientation or gender identity are forms of indirect discrimination. This is because religious educational institutions assert that their doctrines apply to everyone, regardless of their sexual orientation or gender identity. For example, a religious doctrine that all people must only maintain sexual relations in the confines of a marriage between one man and one woman, they would argue is not a form of direct discrimination because it applies to heterosexuals and non-heterosexuals alike. This means that the requirement that the treatment not amount to discrimination for the purposes of sections 153 or 195 of the FWA may amount to a very hollow protection.
- It puts in place an inferior proportionality test, privileging the religious ethos of an educational institution and not referring to many of the relevant rights of the worker, including their freedoms of expression,<sup>48</sup> thought, conscience and belief,<sup>49</sup> and rights to work,<sup>50</sup> marry and found a family.<sup>51</sup> The only right enumerated in the test is a 'right to privacy', which effectively means a new 'don't ask, don't tell' requirement where employees must stay silent about who they are, whom they love or what they believe in order to maintain their employment. This test would be unlikely to achieve the ALRC's stipulation in General Proposition D.3, that employees should not be expected to hide their own sexual orientation or gender identity, or refrain from supporting another person with these attributes.

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<sup>46</sup> See, eg, SDA s 7C.

<sup>47</sup> See Australian Law Reform Commission, *Religious Educational Institutions and Anti-Discrimination Laws: Consultation Paper*, at para 40.

<sup>48</sup> ICCPR arts 19 and 20.

<sup>49</sup> ICCPR art 18.

<sup>50</sup> ICESCR art 6.

<sup>51</sup> ICCPR art 23.

## RECOMMENDATION 7

Do not proceed with technical proposal 9 and the second bullet point in proposal 10 – relying instead on standard anti-discrimination laws.

## 6. FURTHER REFORMS

### 'STAGE 1' REFORMS

We agree with the ALRC that further reforms are needed in this area, including to address the inconsistency between federal anti-discrimination laws arising from this reform. However, we think some of the 'Stage 2' reforms described in paragraph 106 of the ALRC Consultation Paper should be addressed as part of 'Stage 1'. This is because they go to fundamental issues that detract from the effectiveness of the protections in the *Sex Discrimination Act* and *Fair Work Act*.

We suggest considering the following as part of Stage 1:

- **Making the following technical improvements to the *Sex Discrimination Act*:**
  - updates to the definitions of direct and indirect discrimination, the removal of the comparator test wherever it remains, and ensuring harassment protections apply consistently across all protected attributes in the SDA;
  - updates to the definitions of protected attributes (including those currently described as sexual orientation, gender identity and intersex status) in line with contemporary best practice;
  - ensuring protections apply to people who are presumed to have a protected attribute, such as those who are presumed to be LGBTIQ+;
  - ensuring other religious organisations that employ or provide goods, services, facilities and accommodation to the general public cannot discriminate on the basis of sexual orientation, gender identity or intersex status (among other attributes);
  - removing or phasing out section 43A of the SDA, which allows discrimination against non-binary people in requests for information and the keeping of records;
  - considering the possibility of improving the burden of proof by adopting a prima facie evidentiary standard like that now in place in the UK<sup>52</sup> and recently recommended by the Queensland Human Rights Commission; and
  - improvements to the complaints process, including addressing the inconsistency in the representative complaints regime introduced by the recent Respect@Work reforms.
- **Harmonising the FWA and Australian anti-discrimination framework so that workers have the same highest standard of anti-discrimination protection regardless of the forum in which they bring their employment discrimination complaint**, including by:
  - amending the FWA to clarify that the meaning of discrimination can carry the same enlarged meaning as it does in anti-discrimination law, including protections against indirect discrimination and for associates;
  - ensuring the FWA intersects effectively with discrimination laws by resolving the uncertain interpretation of section 351(2)(a) and ensuring the FWA provides no

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<sup>52</sup> *Equality Act 2010* (UK), s 136.

additional exemptions which are not otherwise be permitted under (at least) other Commonwealth anti-discrimination laws.

The pressing need for these reforms is evident in the proposals of the ALRC which grapple with the structural inconsistencies and technical deficiencies in the existing federal anti-discrimination regime. These deficiencies need urgent review and remedy as these issues go to the underlying effectiveness of the protections in the *Sex Discrimination Act* and *Fair Work Act* and, unless resolved, may undermine the effectiveness of new protections recommended by the ALRC.

We also agree with the ALRC that a full review of Commonwealth anti-discrimination law is warranted even if these quick fixes can be prioritised now, given there is room for further harmonisation or consolidation of Commonwealth anti-discrimination law and bringing it up to best practice.

## **HUMAN RIGHTS ACT**

We also agree and support the enactment of a federal Human Rights Act which would have different work to do to Commonwealth anti-discrimination laws. Anti-discrimination laws prohibit discrimination by both public and private organisations and individuals, while a Human Rights Act generally regulates the conduct of public authorities to better conform with human rights. They both have different, yet important work, to do.