



Wednesday, 1 March 2023

To:
Australian Law Reform Commission
By email: antidiscriminationlaw@alrc.gov.au

Dear Australian Law Reform Commission

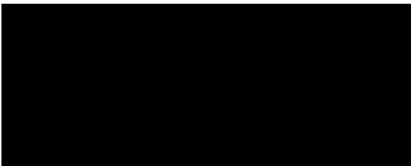
Thank you for the opportunity to comment on your Consultation Paper on the *Review of Religious Educational Institutions and Anti-Discrimination Laws*.¹

Please refer to the submission attached.

We seek to contribute constructively to avoid detrimental debate that polarises communities and promotes religious misunderstanding.²

Should you have any questions, please do not hesitate to contact us.

Yours faithfully,



Ahmed Zreika

Islamic Society of South Australia, President

ISSA Committee

Adnan Abu Ajamieh
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Farheen Mushtaq
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¹ ALRC Consultation Paper and copy and paste the proposals they are consulting on <https://www.alrc.gov.au/wp-content/uploads/2023/01/ALRC-Anti-discrimination-Laws-CP-2023.pdf>

² We acknowledge the work of Professor Mohamad Abdalla, Dr. Nadeem Memon and Mr. Dylan Chown from the Centre for Islamic Thought and Education at the University of South Australia, which has fundamentally shaped this submission.



Overview

We share the Australian Government's intention to legislate in a manner that unites, not polarises, communities. While we think the existing principles for this reform are thoughtfully crafted, additional principles will help the Commission to reach an optimal outcome.

Firstly, the law should not become a vehicle for enforcing new attitudes in religious communities. Islamic beliefs about modesty, the role of sexuality in one's life, marriage and gender are matters of religion that cannot be forcibly changed by laws.

There is a valid place for the law to stop hate speech, bullying and harassment, but determining where religious speech becomes discriminatory or disrespectful is far more subjective. Often, it is the natural consequence of people with very different experiences and worldviews coming into each other's space. Our laws want to encourage dialogue, understanding and peaceful, respectful and easy resolution of moral disagreement at a grassroots level.

Secondly, religious education is a whole school project, carried out through the school purpose, curriculum (beyond religious studies) and methods of instruction (pedagogy).³ Without acknowledging this principle, lawmakers tend to see religious studies' teachers as the only teachers involved in religious instruction. The right to preference teachers and staff of our own faith needs to extend beyond religious studies teachers.

Thirdly, faith-based schools should be able to require teachers and other staff to only teach beliefs consistent with the religion.

Principles

The first guiding principle of the ALRC has been that human dignity is central to the expression and protection of all human rights. We agree that people may disagree about how difficult views should be resolved. It is also true that people hold differing views about what is needed to have human dignity in relation to their identity.

We agree that no human right should be legally prioritised at the expense of another (Principle 2).

There is an expectation in faith schools that every teacher must engage with the beliefs, values and faith perspectives that inform the purpose, the curriculum, and the instruction (pedagogy) of the school.

The philosophy of holistically forming a student underlies the **purpose** of an Islamic school. This means considering their spiritual formation equal to their physical, intellectual and emotional formation.

³ Mohamad Abdalla, Nadeem Memon and Dylan Chown, *Joint Submission Queensland Human Rights Commission Review of Queensland's Anti-Discrimination Act* (16 February 2023).





Religious and spiritual practice inform the reading of the prescribed **curriculum**: for example, a subjective interpretation of an English text would also consider Islamic values and teachings on moral dilemmas; an economics class would also consider Islamic teachings on accruing interest; a medieval history class would also consider the contributions of the medieval Bagdad to the proliferation of literature and science or Muslim histories from the 'Crusades'; a physical education class would also consider Islamic knowledge about the body and rules governing sex and menstruation.

There is so much richness in our Islamic worldview that our Islamic schools seek to instill in the hearts and minds of students not only through the content but **how content is taught** (pedagogy). These schools challenge students to understand the different types of knowledge and the limitations of human knowledge.

Laws are a heavy-handed tool to determine unacceptable and harmful behaviour in grey areas. Laws can be helpful to assist in moderating disagreement and clashes of values in a way that imposes the least burden on human rights.

What is missing from your principles is an acknowledgement that this particular inquiry is contending with a tension between collective and individual rights. There will be situations where the individual's rights collide with the rights of a community.

Adopting an individualistic approach to human rights law will lead to significant disenfranchisement and isolation of religious communities. We are concerned by many recent Australian reform approaches which have misunderstood how religious schools work, treating religion as 'an addendum' that can be 'reductively quarantined to one space in an Islamic school'. Human rights include the freedom to manifest religion or belief, either individually or in community with others, and in public or private, in worship, observance, practice and teaching (ICCPR, article 18.1). Freedom of religion has both an individual and collective aspect, under which religious bodies ought to be free to manifest the religious beliefs of their members.

Teachers develop a relationship of trust with students and serve as important role models. Adolescents undergo essential physiological and psychological changes where they struggle with their identity and sense of purpose. During this time they rely on these very role models from their religion to provide them with solace and belonging. Australian Muslim teenagers face an additional layer of challenge in the way their religion has been demonised in the public sphere. This situation requires sensitive stewardship. This underscores why law reform in education is critical to supporting a pluralistic society (Principle 3).

We firmly support that every school holds a primary duty of care to its students (Principle 5).



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Summary of Issues

Unjustifiable interference

1. Some proposals cross the line in attempting to force cultural hegemony rather than respecting communities of faith to promulgate their own cultural and moral viewpoints.
2. We refer to the guidance from the Parliamentary Joint Committee on Human Rights which describes the factors to consider in determining proportionality
 - a. Whether there are less restrictive ways to achieve the same aim
 - b. Whether there are effective safeguards over the measures
 - c. The extent of interference with other human rights
 - d. Whether affected groups are particularly vulnerable
 - e. Whether the measure provides sufficient flexibility to treat different cases differently, or whether it imposes a blanket policy without regard to the merits of an individual case.

Defining the harm

3. The harm toward students the proposed legislation seeks to address is bullying through put downs or deliberate exclusion, which is unIslamic and unacceptable. Any speech that suggests a person is less human or inferior to others because of their sex or sexual identity goes against the Islamic ethos of always aspiring to act with the best of character and manners.

Laws supporting religion as a public good

4. How the Religious Discrimination Bill debate has unfolded has positioned people of faith as bigots who seek to bully and harm. Instead, we need a suite of laws that reinforce the public good of religion.
5. That means our laws must support the coexistence of different worldviews on topics like sex, sexual identity, relationships and marriage, acknowledging that the threshold of what is respectful versus disrespectful is very subjective.
6. For example, the idea of people choosing their own pronouns is antithetical to Islamic concepts of biology and sex. Still, it is acknowledged that some people consider it profoundly significant to their identity and dignity.
7. Young Australian Muslims are growing up in a world of cultures and values buttressing against each other. A world of performative social media where self-expression, including sexual expression, is public and rampant and where public declarations of LGBTQI identity are framed as necessary and important. This culture does not embody Islamic values. Islamically, we prize modesty over the public promotion of our private lives. We prize God-consciousness over bodily satisfaction. We do not relate our identity with our sexual preferences. This friction between values and cultures and how young people forge their own culture through choices is the defining issue of our time.
8. The law must be cautious of taking action that appears to be neutral but actually strips the public good of religion and cultural pluralism.



The appropriate role of law

9. The appropriate role of law is to ensure schools take their responsibilities seriously in stopping bullying or the rejection of individuals based on their race, religion or sexuality and, as far as practicable, pursuing respectful methods to resolving disagreements with individuals.

Examples of problematic proposals

10. The following proposals are examples of how heavy-handed law can result in justifiable interference with freedom of religion:
 - a. Under one proposal, for example, a school could require an LBTQ+ staff member to teach the school's position on religious doctrines or beliefs as long as they can provide 'objective' information about alternative viewpoints.
 - b. The effect of another proposal would be that a school not require, as a condition of appointment, any staff member or prospective staff member to sign a statement of belief by which they had to affirm that homosexuality is a sin (because this would be discriminatory against an LGBTQ+ applicant). There are two possible governing principles here:
 - i. That schools shouldn't be able to police teachers' beliefs by requiring them to sign a statement of belief documents; or
 - ii. that schools cannot require teachers to only teach beliefs consistent with the religion
 - c. The former principle (i) has basis in human rights in so far as it breaches freedom of thought and conscience.
 - d. However, the adoption of the latter principle (ii) would fundamentally destroy religious education. Religious schools are entitled to ask teachers not to communicate personal beliefs to students which undermine the school's ethos and religious beliefs.
 - e. Another proposal provides that respect for an educational institution's ethos and codes of conduct or behaviour should not require employees to hide their own sex, sexual orientation, gender identity, marital or relationship status, or pregnancy in connection with work or in private life, or to refrain from supporting another person with these attributes. How does one define 'requiring to hide'? Does asking teachers not to discuss their private relationships with students require a teacher to hide?
 - f. We agree that schools should be able to take reasonably necessary action to prevent an employee or contract worker from actively undermining the institution's ethos. But we point out that this wording is not plain enough to provide certainty. For example,
 - i. Will "actively undermining" include choosing to avoid practices that are school wide practices associated with the religion?
 - ii. Who will be the judge of the 'ethos'?



Proposals

1. We respectfully submit the following suggestions.
2. Reframe your principles by including the following additional principles:
 - a. Firstly, the law should not become a vehicle for enforcing new attitudes in religious communities. There is a valid place for the law to stop hate speech, bullying and harassment, but determining where religious speech becomes discriminatory or disrespectful is far more subjective. Often, it is the natural consequence of people with very different experiences and worldviews coming into each other's space. Our laws want to encourage dialogue, understanding and peaceful, respectful and easy resolution of moral disagreement at a grassroots level, but not forcibly change attitudes in areas traditionally governed by religious belief.
 - b. Secondly, religious education is a whole school project, carried out through the school purpose, curriculum (beyond religious studies) and methods of instruction (pedagogy). Without acknowledging this principle, lawmakers tend to see religious studies' teachers as the only teachers involved in religious instruction. The right to preference teachers and staff of our own faith needs to extend beyond religious studies teachers.
 - c. Thirdly, faith-based schools should be able to require teachers and other staff to only teach beliefs consistent with the religion.
3. In general, where discrimination laws try to balance competing rights, a good model for an exception clause is
 - a. To articulate the positive freedoms (of individuals and communities) that form the basis of the exception; and
 - b. Then articulate the positive obligation of the religious school or organization to take reasonable and proportionate measures to protect countervailing human rights.

Articulating (b) is the more challenging part. Still, a correct and complete set of guiding principles will assist the Commission in settling on a law that reinforces religion as a public good and enables the moral leadership within religious communities to function and carefully tend to the sensitive issues this inquiry raises.

