



Tara Cheyne MLA
Assistant Minister for Economic Development
Minister for the Arts
Minister for Business and Better Regulation
Minister for Human Rights
Minister for Multicultural Affairs

Member for Ginninderra

Our ref: PRO23/346

The Hon Justice Mark Moshinsky
Acting President
Australian Law Reform Commission
By email: antidiscriminationlaw@alrc.gov.au.

/ March 2023

Dear Justice Moshinsky

Thank you for the opportunity for the ACT Government to make a submission to the Australian Law Reform Commission's (ALRC) Inquiry into religious educational institutions and Federal anti-discrimination laws.

The ACT Government welcomes the ALRC's Consultation Paper and notes the four general propositions and fourteen technical reform proposals. The Territory supports the ALRC's proposals to strengthen federal anti-discrimination protections for staff and students at religious educational institutions. We welcome the opportunity to establish a clearer and more consistent national anti-discrimination framework that easier for parents, schools and the broader community to understand and navigate.

Discrimination against vulnerable groups has devastating impacts on the health and wellbeing of individuals and erodes the foundation of trust and social cohesion in our communities. The ACT Government is committed to ensuring that Canberra is an inclusive, progressive and welcoming place for everyone in our vibrant and diverse Territory. As you are aware, in the ACT the *Discrimination Act 1991* (Discrimination Act) protects individuals from unlawful discrimination on the grounds of a wide range of protected attributes including sexuality, gender identity and relationship status. These protections apply to areas of public life including employment, education and the provision of goods, services and facilities.

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601

+61 2 6205 0100

cheyne@act.gov.au

[@In_The_Taratory](https://twitter.com/In_The_Taratory)

[tarafginninderra](https://www.facebook.com/taarafginninderra)

[in_the_taratory](https://www.instagram.com/in_the_taratory)

In 2018, the ACT Government acted decisively to narrow the exceptions to unlawful discrimination for the employment of staff and enrolment of students at religious educational institutions. This was in response to the leaked recommendations of the Ruddock Review into Religious Freedom, and concerns that existing laws could permit students and staff at religious schools to be discriminated against on the grounds of their sexuality or gender identity.

Under section 46 of our Discrimination Act, a religious educational institution may now only discriminate in the employment of staff and enrolment of students on the grounds of religious conviction, and not on any other protected attribute including sexuality, gender identity, pregnancy and relationship status. This exception is further constrained to apply only where a religious educational institution is conducted in accordance with the doctrines, tenets, beliefs or teaching of a particular religion or creed; the discrimination is to enable the institution to be conducted in accordance with these values and the institution has a publicly accessible policy outlining these matters. While initially contentious with religious groups, this approach has worked effectively for both the community and religious schools in the ACT. It has encouraged greater transparency, and facilitated prospective employees and families to make informed choices about whether to engage with a religious educational institution.

To ensure the Territory's anti-discrimination framework remains fit for purpose and appropriately equipped to protect the right to equality for all Canberrans, the ACT Government also recently introduced the Discrimination Amendment Bill 2022 (the Bill). While this Bill does not amend the exceptions for religious educational institutions, it will strengthen protections for all persons with a protected attribute, including staff and students at the religious educational institutions. This will be achieved by introducing both a positive duty to make reasonable adjustments for all protected attributes and a positive duty for organisations to take reasonable and proportionate steps to eliminate discrimination, sexual harassment and unlawful vilification.

The Bill also amends a range of exceptions to unlawful discrimination including the exceptions for religious bodies. Noting the effectiveness of the current exception for religious educational institutions, the Bill mirrors this approach for the exceptions to unlawful discrimination for employment and the provision of goods and services by a religious body. Further information on these reforms including the explanatory statement is available on the [ACT Legislation Register](#).

We note that the specific proposals for reform in the Consultation paper are consistent with the objectives of the ACT reforms but would take a slightly different approach in the way these objectives are achieved. The ACT Government is broadly supportive of these proposals and if implemented by the Commonwealth, we would consider whether further reforms to ACT law would be necessary to align with this approach and reduce any regulatory burden on religious schools.

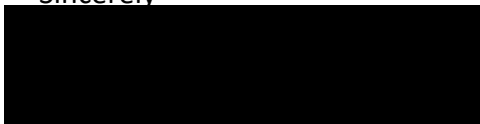
The ACT Government strongly supports proposal 14 calling for the Commonwealth Government to identify options for enactment of a Commonwealth Human Rights Act. The value of enacting a national Human Rights Act cannot be overstated. Integrating international human rights obligations more fully into the Commonwealth's legislative landscape would provide a more comprehensive and effective framework for upholding the human rights of all Australians, and managing the interactions and tensions between competing rights in a systematic and principled way.

As you know, the ACT is a jurisdiction with a proud history of protecting and promoting human rights and was the first Australian State or Territory to enact a legislative charter of human rights. The Territory's robust human rights framework is provided in the *Human Rights Act 2004* and enshrines a range of fundamental rights including the right to equality and non-discrimination, the right to freedom of religion and the rights of parents to send their children to schools that conform to their religious beliefs.

In progressing reforms to our Discrimination Act, our human rights framework has been critical in ensuring that competing rights are properly considered and protected as far as possible, and that any limitations on rights are rigorously justified as reasonable and proportionate. Our Human Rights Act provides an assurance to everyone in our diverse community that their rights are valued and protected.

Thank you once again for the opportunity to contribute to this inquiry.

Sincerely



Tara Cheyne MLA
Minister for Human Rights