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AUSTRALIAN MUSLIM ADVOCACY NETWORK

Friday, 3 March 2023

To:
Australian Law Reform Commission
PO Box 12953
George Street Post Shop, Queensland 4003

By email: antidiscriminationlaw@alrc.gov.au

Re: *Submission on Religious Educational Institutions and Anti-Discrimination Laws: Consultation Paper (2023)*

1. We thank you for the opportunity to make a submission on the proposals to change the way Commonwealth anti-discrimination law applies to religious schools and other educational institutions.
2. We thank you also for granting us this extension of time.

GUIDING PRINCIPLES FOR LAW

3. We provide some comments on existing guiding principles below.

Acknowledge collective and individual rights

4. A further principle must enunciate the need to consider collective and individual rights.
 - a. There will be situations where the individual's rights collide with the rights of a community.
 - b. 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.

Religion is a public good

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5. A further principle must enunciate that *new laws should not, by default, position or characterise religious communities as harmful actors but as moral leaders capable of managing sensitive situations to safeguard the dignity of individuals.*
 - c. A positive law and obligation approach would instead invite and oblige religious communities to care for the dignity of individuals where a conflict arises between an individual and a religious community.
 - d. We agree with the second guiding principle that no human right should be legally prioritised at the expense of another. Still, we worry that the proposed approach leads to this by creating layer upon layer of exceptions.
 - e. An alternative approach to an exception clause is to
 - i. articulate the positive freedoms that form the basis of the exception (in this case, the freedom of religious belief and to manifest those beliefs collectively and individually)
 - ii. and then articulate the positive obligation of the religious school or organization to take reasonable and proportionate measures to protect countervailing human rights; or to guard against bullying or harassment.
 - f. Articulating the positive obligation (ii) is the more challenging part. Still, a correct and complete set of guiding principles will assist the Commission in settling on a law that
 - i. reinforces religion as a public good;
 - ii. enables and supports moral leadership within religious communities to function and carefully tend to the sensitive issues this inquiry raises; or
 - iii. reduces the risk of litigation being used to challenge religious teachings where there is no dignity harm, as defined by the law (for example, bullying and harassment).
 - g. We note that this approach would be consistent with the positive obligation approach of duty of care and school standards currently applicable to all Australian schools.
 - h. It is also consistent with the direction of reforms to the Sex Discrimination Act more broadly to impose an obligation on employers to prevent sexual harassment. What is unique in this situation is the reality that religious teachings in themselves can be perceived and accused of being discriminatory. The law can set a clear *boundary* on certain behaviour and may need to focus on setting correct *signals* for more grey areas.
 - i. We propose that a positive obligation that says, notwithstanding your religious freedoms, you must take reasonable and proportionate measures to protect countervailing human rights; or to guard against

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bullying or harassment, is a way to set an appropriate mix of boundary and signal, *without* effectively hollowing out religious freedom.

- j.* We understand that this area is much need of greater good faith dialogue to build understanding across perspectives and we are open to that discussion.

Define the dignity harm

6. The first guiding principle of the ALRC has been that human dignity is central to the expression and protection of all human rights.
7. However, a further principle must enunciate that *the dignity harm the Government seeks to avoid must be clarified by any law reform with enough precision to provide certainty.*
8. Laws can define and educate public harms for the broader community. But the harm must be precisely identified.
9. The dignity harms this set of proposals covers are diverse, nuanced, context-specific, and heavily complicated by the interaction of religious freedoms and religious teachings. This creates a significant drafting challenge.
10. The Australian Government must avoid "hollowing out" religious freedom by making it impractical for religious institutions to create a genuine community of faith. Proposals that set up significant legal stakes for religious schools without defining what crosses the line may have that effect.

Support the community to moderate disagreement

11. A further principle must enunciate that *the laws must assist in moderating disagreement about values in a way that imposes the least practical burden on any individual or group's human rights.* Litigation is a burdensome and undesirable route.

IMPACT ON PSYCHOLOGICAL SAFETY AND WELLBEING

12. We agree that laws and law reform in education can critically impact the objective of supporting a pluralistic society, as touched on by the third guiding principle. We wish to provide further information on the connection between religious education and the formation of healthy and psychologically-safe communities, which is essential to supporting pluralistic societies.
13. Unfortunately, negative sentiment towards Muslims in Australia has been exceptionally high for years.¹

¹ Refer to various Scanlon Foundation Surveys, finding public negative sentiment towards Muslims to be between 35-40%.

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14. Children have been routinely targeted in Islamophobic hate incidents in public places, and the presence of Muslim children has not deterred perpetrators from committing acts of hatred.²
15. Muslim girls who wear hijab experience have received direct hatred in public places, within months of wearing the hijab, including verbal abuse, physical intimidation, and attempts to rip off their hijab. Their vulnerability in age does not deter perpetrators because Muslim identity has been so profoundly dehumanised through terrorism and far-right discourse. Some girls are no longer seen as human by hardened Islamophobes as soon as those girls start to wear hijab.³
16. The data collated from surveying 4019 Victorians and feedback from community and government stakeholders found
 - a. Just under half of the respondents would accept living near a mosque (48.4%).
 - b. One-third (33.7%) agreed that women should not be allowed to wear the hijab in Australia. This rose to 48.9% when asked about wearing the niqab or burqa.
 - c. The survey also included disappointing data in relation to views on Muslim immigration and compatibility with Australia.
 - d. Nine (9%) of respondents held blatantly supremacist and hostile views toward Muslims.⁴
17. Muslim parents struggle to explain terrorism discourse from the media to their children⁵, given official labels of ‘religiously motivated terrorism,’ which do not reflect or show respect for their faith.
18. Kabir (2008) writes, “to gradually develop all citizens’ sense of being Australian, both Muslim Australians and mainstream Australians have to work together to emphasize their cultural similarities and allow for their differences.”⁶

² Iner, D, 2019, “Islamophobia in Australia Report II (2016-2017),” *Charles Sturt University*, Report no. 2; Iner, D, 2022, “Islamophobia in Australia Report III (2018-2019),” *Charles Sturt University*, Report no. 3.

³ Combined submission by the Australian Muslim Advocacy Network and Islamic Council of Queensland to the Queensland Parliamentary Inquiry into Serious Vilification and Hate Crimes (2021).

⁴ Kevin Dunn et al, ‘Countering Islamophobia in the Victorian Population’ (Issue Paper No 3/2021, Centre for Resilient and Inclusive Societies, July 2021).

⁵ Bedar, A, et al, 2020, Supporting Muslim Families and Children in Dealing with Islamophobia: Australian Muslim Women’s Centre for Human Rights & Alfred Deakin Institute, Research Paper, 2020.

⁶ Nahid Kabir, ‘To be or not to be an Australian: Focus on Muslim youth’ (2008) *National Identities*, 10(4), 399–419. <https://doi.org/10.1080/14608940802518997>

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19. Kayrouz et al. (2022) paint a grim picture of the mental health of Australian Muslim youth.⁷

- a. Muslim females (11–15 years) are at a substantially higher risk of developing clinically significant emotional and conduct problems than age-related females. Muslim females (11–17 years) were at even greater risk of developing clinically significant conduct problems, emotional symptoms, and hyperactivity-inattention problems than Muslim males (11–17 years).
- b. Australian Muslim females aged 11–15 years are at greater substantial risk of developing clinical problems of emotional symptoms and conduct problems compared to adolescents in the general community. Left untreated, this could have an array of adverse life and health outcomes. Therefore, developing and providing Islamic community-driven culturally and religiously congruent mental health resources and outreach services are critical for mitigating these risks among Muslim adolescents in Australia, particularly for females aged 11–15 years.

20. Kayrouz et al. (2022) explain identity stress amongst Australian Muslim youth being connected to:

- a. First, the high percentage of children from first-generation immigrants are at higher risk of problem behaviours when compared to children from the host culture (Flink et al., 2012).
- b. Second, Muslim females aged 11–15 may have lower levels of ethnic identity when compared to Muslim males (11–17 years) and older Muslim females (16–17 years).
- c. Muslim females aged 11–15 years may report low levels remaining stable or significant decreases in ethnic identity levels. They cannot mitigate the risks associated with their reported experience of vilification and discrimination.

21. We submit that,

- a. Teachers in faith-based schools embrace Islamic values and teachings to support Australian Muslim teenagers in their challenges. Those challenges include:
 - i. The typical scale and pace of psychological and physical change during adolescence,

⁷ R Kayrouz, E Karin, C Ghanem, N Chowdury & Ahmad Malas, 'Muslim Adolescent Mental Health in Australia: A Cross-Cultural Comparison of the Risk of Developing Clinically Significant Psychological problems' (2022) 31, *Journal of Child and Family Studies* 2837. <https://doi.org/10.1007/s10826-022-02257-6>

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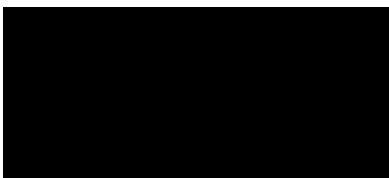
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- ii. combined with exposure to a multitude of value sets and coping strategies online
 - iii. a changing online sphere,
 - iv. the demonisation of Islam and Muslims in official, political, media and online spheres, including through terrorism discourse, and
 - v. an anti-religion sentiment more broadly in the public sphere.
- b. Religious instruction is not only about content. Islamic values are imparted by how teachers teach, leaders lead, and support staff offer support. Every staff member in an Islamic school must engage with the beliefs, values and faith perspectives that inform the school's purpose, curriculum, and instruction (pedagogy).⁸ As such, not only religious studies teachers contribute to a community of faith.
- c. Communities of faith are also communities of safety and wellbeing, given the symbiotic nexus between identity, culture, wellbeing and safety.
- d. Faith-based schools are not the schooling choice for every Muslim family, but when it is their choice, the school must be able to nurture that community of faith.

22. We acknowledge the sensitivities involved in this discussion. We stand ready to assist in any further practical deliberations.

23. Should you have any questions, please do not hesitate to contact the email below.

Yours faithfully,



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⁸ Mohamad Abdalla, Nadeem Memon and Dylan Chown, *Joint Submission Queensland Human Rights Commission Review of Queensland's Anti-Discrimination Act* (16 February 2023).

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