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Religious Education Institutions and Anti- Discrimination Laws Inquiry
Australian Law Reform Commission
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To Whom It May Concern,

Thank you for the opportunity to submit our views on key questions raised in the Religious Education Institutions and Anti-Discrimination Laws: Consultation Paper, released in January 2023 by the ALRC.

This submission may be published.

Just.Equal Australia

Just.Equal Australia is a national organisation advocating for the rights of lesbian, gay, bisexual, transgender, intersex, queer and asexual/aromantic (LGBTIQA+) Australians.

We regularly consult with the LGBTIQA+ community through large scale national surveys, community development work and partnerships with other community-based organisations.

Our record of advocacy

Since its establishment in 2016, Just.Equal Australia has advocated consistently and strongly for the removal of all exemptions in state and federal anti-discrimination law. Particularly those which allow discrimination on the basis of sexual orientation, gender identity, relationship status and lawful sexual activity against students and staff in faith-based schools. As well as staff, volunteers and clients associated with other faith-based services including hospitals, employment and housing agencies, aged care facilities and charities.

Because there are no specific exemptions in the *Sex Discrimination Act* that allow discrimination against people with innate variations of sex characteristics, we will not include "I" within the LGBTQA+ acronym for the purpose of this submission.

The principles at stake

The principles underlying our advocacy are:

- Australians deserve the same opportunities in life regardless of sexual orientation, gender identity, relationship status and lawful sexual activity.
- Essential services, including education, employment, health and housing, must be equally accessible to all Australians regardless of the attributes already mentioned and regardless of who provides those essential services.
- Everyone has a human right to education and employment regardless of irrelevant attributes such as those already mentioned.
- Discrimination in areas of life that are fundamental to self-fulfillment, social participation, prosperity and social mobility, including education and employment, causes great harm to LGBTIQ+ people.

Because LGBTIQ+ people already grow up suffering higher levels of stigma and prejudice, and discrimination in key areas of life where we should experience support and affirmation, this can be demoralising and traumatising.

Other reasons for supporting reform

All children should be affirmed for who they are, not face discrimination from those who have a duty of care.

All Australian workers deserve inclusive and affirming workplaces.

Students and parents benefit when staff are selected on the basis of competence, not on the basis of irrelevant attributes such as those mentioned above.

Current discrimination

There are several recent examples of this discrimination taking place, although it must be said that in most instances the LGBTQ+ students and teachers who “leave a faith school” do so under duress and are not technically expelled or sacked.

It appears that faith schools try to avoid using the law afforded them in some states but seem anxious to see its retention as a marker of legal privilege.

Instead, the modus operandi most often used is to make the school life of the student or teacher miserable; untenable. And then the student or teacher “leaves of their own accord” and the school principle salves his/her conscience by claiming that the student or teacher was not “expelled or sacked.”

That said, there are clear-cut examples of discrimination under this law and most seem to be in response to the emergence of LGBTQ+ equality generally, and same-sex marriage rights in particular.

Examples of LGBTQA+ discrimination:

- 1.) In 2015, a [seven year old girl was ejected](#) from a Mandurah Christian school when the principal found out she was being raised by two gay dads.

Principal, Mr Andrew Newhouse, told the media, “If I’d known at the interview you were gay (father), I would never have enrolled her.”

Mr Newhouse also told the media that the girl was removed because she spoke about her two fathers with classmates.

- 2.) In 2017, [history teacher Craig Campbell was dumped](#) from a Rockingham Baptist College when his sexuality became known during the equal marriage postal survey.

Mr Campbell had also been a student at this school. Principal, Mr Des Mitchell, told the media his school, “was on a respectful journey of understanding on this issue.” This “journey” resulted in Mr Campbell being sacked to the dismay of students and many parents.

- 3.) In 2022 – Quinns Baptist College [refused to address a non-binary student](#) by their chosen name. The school insists on using the child’s former name, citing a school policy introduced in 2021 that rules out recognising transgender students.

- 4.) In 2022, [a teacher at a Catholic school was subject to homophobic harassment](#) though cyber bullying. The teacher revealed that he had been “outed” by students through a cruel “Guess Who” game on TikTok where students posted anonymous accusations of him being gay.

The school did not support the teacher or penalise the students.

Public opinion

Finally, there has been a remarkable and substantial shift in public opinion.

In 2018, Just.Equal Australia commissioned YouGov Galaxy which surveyed 1015 people Australia-wide on the matter of LGBTQA+ discrimination in faith schools. [The results were clear.](#)

- 82 per cent said they oppose religious schools expelling LGBTQA+ students.
- 79 per cent said religious schools should not sack teachers who marry a same-sex partner.
- 78 per cent said religious schools that discriminate against LGBTQA+ students and teachers should not be entitled to taxpayer funding.

The current inquiry does not go further

Just.Equal Australia welcomes this inquiry but we are concerned it does not go far enough.

As well as experiencing discrimination in faith-based schools, LGBTQA+ Australians experience discrimination in and from faith-based services such as hospitals, employment and housing agencies, aged care facilities and charities.

This discrimination is as detrimental to LGBTIQ+ people, our human rights and our social participation as discrimination in schools.

We urge the Australian Law Reform Commission to call for a further inquiry into discrimination by faith-based services.

We ask that this be a recommendation of this inquiry.

Our concerns about the public and political debate

We have a number of concerns about the current Australian debate on discrimination by faith-based schools.

Precedents matter

Those who oppose removing exemptions often ignore existing Australian and international precedents. For example, Tasmania has prevented discrimination by faith-based schools against LGBTQA+ people since 1998, yet the fact this has been the case seemingly without any of the dire consequences predicted by opponents of removing exemptions is rarely mentioned.

The fact it is rarely mentioned by opponents of removing exemptions may be expected. But the fact is it too rarely mentioned by advocates for removing exemptions and by commentators on the issue is deeply concerning. It means the national debate is ill-informed.

- We urge the ALRC to cite these precedents and draw out their implications.

Opponents of removing exemptions attempt to reframe the issue

Opponents of removing exemptions attempt to reframe the issue from one of discrimination against LGBTQA+ people to one of religious belief and values.

For example, in 2022, the Australian Christian Schools Alliance commissioned national research from Compass Polling. It was claimed in The Australian newspaper that:

“A national poll commissioned by a coalition of Christian schools, found 75 per cent of respondents supported the right of a religious school to employ teachers who support stated values and beliefs of the schools.”

CSA Policy Director, Mark Spencer, said, *“Support is growing for protections ensuring Christian schools can chose staff who share their beliefs, and parents recognise that this may require staff to move to another school if they no longer share those beliefs.”* [The Australian Newspaper, 10 Nov 2022.](#)

This survey did not ask respondents whether faith-based schools should have the right to refuse to employ, or to sack, LGBTQA+ teachers, despite this being the issue.

Clearly, employment based on “religious values and beliefs” is being used as a convenient euphemism for discriminating against LGBTQA+ staff.

The reframing of the issue this way is offensive to logic. Schools can maintain their religious values without discriminating against LGBTQA+ people. The reframing also obscures the true cost of discrimination to LGBTQA+ people.

Obviously, it is done because when Australians are asked directly: Do you support faith schools discriminating against LGBTQA+ teachers and students?, a strong majority say no.

Religious freedom narrative

A related and very disturbing part of the debate is the claim that removing existing exemptions will violate “religious freedom”.

“Religious freedom” in this context does not mean the traditional Enlightenment definition of religious freedom as the freedom of all citizens to practice their faith.

It means rolling back discrimination protections for LGBTQA+ people or retaining existing exemptions allowing discrimination.

“Religious freedom” in this second sense was a major part of the backlash to marriage equality in the United States in 2015. It came to Australia soon after and was used as an argument against marriage equality here.

The contemporary “religious freedom” narrative is that people who face consequences for stigmatising or discriminating against LGBTQA+ people for reasons of faith are victims of religious persecution. That they should have the “religious freedom” to stigmatise and discriminate against us to the extent their religious conscience requires. And if the law constrains this freedom, the law should change.

This was the foundational narrative of the Morrison Government’s Religious Discrimination Bill. That Bill rolled back existing discrimination protections for LGBTQA+ people and others in the name of the “free exercise” of “religious conscience”.

Indeed, clauses of the Bill were colloquially known by the names of the “persecuted Christians” – Israel Folau and Archbishop Julian Porteous - whose “freedom” they sought to uphold.

When we consider the patterns exhibited by the “religious freedom” movement we can see its true nature.

There are never calls for greater freedom for people of faith to, say, free refugees from detention. It is almost always about “freedom” to demonise LGBTQA+ people. The call is only ever for the rights of powerful Christian conservatives to impose their ideology on the church and society, never everyday people of faith to have their progressive and dissenting voices heard.

In reality, the movement we are facing is not about freedom for faith. It is about privilege for prejudice.

We urge the ALRC to call out this disingenuous “religious freedom” narrative for what it really is, a form of resurgent prejudice against LGBTQA+ people.

The current government

When the Morrison Government attempted to pass its Religious Discrimination Bill through the last parliament, just prior to the 2022 election, the Bill faltered.

MPs on both sides of the House as well as Independents and other cross-benchers aired concerns with its likely negative impact on students and teachers in faith schools.

To try and alleviate this and smooth the passage of the Bill, the Prime Minister announced that he would subsequently seek to amend the Sex Discrimination Act to ensure that LGBTQA+ students would be protected against expulsion. He later limited that promise even further, to only cover lesbian, gay and bisexual students, while excluding trans students.

This proposal was seen as too slow and inadequate by MPs in the House of Representatives who moved to amend the existing Bill to remove all discrimination against all LGBT students. That amendment passed and become part of the wider Bill.

It was for this and some other political reasons that the Prime Minister withdrew the Bill.

When the Bill was withdrawn on 10 February 2022, Mr Albanese, as Opposition Leader, issued a [media statement](#) saying, in part, that, in addition to protecting LGBTQ+ students, a future Labor Government will:

‘protect teachers from discrimination at work, whilst maintaining the right of religious schools to preference people of their faith in the selection of staff.’

This judicious language seems to imply that LGBTQ+ teachers “at work” (those employed) will be protected by a Labor Government, but those who apply can be rejected in the name of “preferencing people of faith the selection of staff.”

This wording leaves open the possibility of faith schools defining LGBTQ+ teachers as being outside of the values and tenets of the school.

Ultimately, this would lead to a slow purge of LGBTQ+ staff from faith schools as those who move on or retire are not replaced.

Just.Equal has sought clarity on this from the Attorney General, Prime Minister and several government MPs. The standard reply avoids any direct response to the key question and demurs to the current inquiry by the ALRC.

Just.Equal urges the ALRC to reject any notion that a faith school should have the right to refuse to employ any new qualified and competent LGBTQ+ teachers.

Allowing the refusal of incoming LGBTQ+ teachers whilst maintaining existing LGBTQ+ teachers not only creates an inexplicable double standard, it potentially induces an unwelcome and unsettling environment for existing LGBTQ+ teachers and students.

Apart from potentially denying students access to the best teachers from a range of applicants, such a policy would also reinforce the age-old stereotype of LGBTQ+ adults as a threat and danger to children.

Objections to removing existing exemptions

Faith-based objections

Faith-based schools were established to reassure religious communities and parents their children would be raised in a particular religious tradition.

In the twenty first century we know being LGBTQA+ is not a sin or a moral failing. It is part of natural human diversity. Therefore, there is nothing inherently anti- or un-religious about being LGBTQA+, and nothing preventing LGBTQA+ people from being faithful adherents of a particular religion.

Further, the Australian Government funds faith-based schools to provide parents with a choice about where to have their children educated. This choice is about proximity of home and school and educational standards as well as religious values.

Exemptions that limit parental choice by allowing discrimination against LGBTQA+ students or teachers is an abrogation of the contract faith-based schools have with Australian taxpayers.

False comparisons

A comparison often used to justify existing exemptions is that political parties are allowed to employ people who hold to their values, so why not faith-based schools?

The difference is that faith-based schools provide an essential service – education - and are funded by the taxpayer to provide that service in a way that is professional and affirming.

Why attend or work at a faith-based school?

Over and above objections to removing existing exemptions based on concern about religious values, the question is often asked, “Why would any LGBTIQ+ student or staff member want to go to a religious school?” The answers are simple.

- 1.) No faith school advertises the fact it is anti-LGBTQ+. The prejudice is kept hidden or camouflaged by euphemism. And the views and values of a school can change suddenly, for example by replacing a principal or members on the school Board. LGBTQ+ students and staff who may feel supported live under constant threat of rejection.
- 2.) Many LGBTQ+ students and staff are also people of faith who can reconcile their sexuality and/or gender identity with their spirituality. Being LGBTQ+ is not the antithesis of religious belief.

- 3.) Most LGBTQ+ students awaken to their sexuality or gender identity during childhood or adolescence. They are likely to have started at the school, by parental choice, before 'coming out' and are an established part of the school community.
- 4.) The same is true of some teachers who may 'come out' later in life after many years faultless service. Or they may wish to wed under the 2017 commonwealth equal marriage laws, after many years of discretion through fear of dismissal.
- 5.) Many LGBTQ+ students go to a particular school because their brothers and sisters also go there as a family tradition. Such students should not have their education disrupted and family torn apart.
- 6.) In some rural and regional areas there is little or no choice of schools. The local faith school can be all there is. Religious organisations benevolently target such areas to provide choice and shouldn't be allowed to then say, "We offer families choice, except for you."
- 7.) Faith schools are very inconsistent with the application of 'ethos and values.' For example, they do not target other biblical sins such as adulterers or those who work on Sundays. "Views and values" almost always come down to anti-LGBTQ+ sentiment.
- 8.) Allowing religious schools to discriminate against LGBTQ+ staff means they can be excluded from one-third or more of available jobs for which they are qualified. This is a disincentive for LGBTQ+ teachers to enter, or remain, in the critically important education workforce.
- 9.) Many LGBTQ+ former students who remained closeted at school or who suffered discrimination and isolation report that their lives would have been far better if they had supportive LGBTQ+ role models at school. The presence of LGBTQ+ teachers and staff at any school helps to normalise their existence and points to a better future for students suffering fear or anxiety. Conversely, banishing LGBTQ+ teachers from faith schools sends a terrible message to students, especially LGBTQ+ students.
- 10.) It's important to remember the purpose of anti-discrimination law. The foundation of anti-discrimination protections is to ensure that no student is treated less favourably based on their sexuality or gender identity and to ensure teachers are chosen only by their qualifications and competence. It should not be permissible for any organisation that relies on taxpayer funding to provide an essential service to flip this law on its head.

Response to ALRC national recommendations

Proposition A

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

Just.Equal Australia agrees there should be no discrimination against students on these grounds in faith-based schools. There should be no discrimination at the point of enrolment and for the entire period of education, in all learning and in all social and recreational activity associated with the school.

As a caution, Just.Equal warns that no faith-based schools be allowed a loophole in this law which permits them to discriminate indirectly, by forcing students to sign, agree or pledge to support certain statements of belief proposed by the school which could be used to justify discrimination.

For example, no student should be asked or coerced into signing, pledging or affirming that “homosexuality is an intrinsic disorder”, or that “there are only two genders”, or that “marriage must only be between a man and a woman.”

This “loophole” allowing discrimination against LGBTQ+ students was attempted by [Citipointe Christian College](#) in Brisbane in 2022, but appeared to breach Queensland anti-discrimination law. This may not be the case in other jurisdictions.

Further, no discrimination against LGBTQ+ students should be indirectly allowed on the basis of religious ethos, values, beliefs or traditions.

Proposition B

- Discrimination against staff on the grounds of sex, sexual orientation, gender identity, marital or relationships status, or pregnancy.

Just.Equal Australia agrees there should be no discrimination against staff, teaching and non-teaching, on these grounds in faith-based schools. There should be no discrimination at the point of recruitment, during the course of employment, in teaching of approved curricula, and in all social and recreational activity associated with the school.

As a caution, Just.Equal warns that no faith-based schools be allowed a loophole in this law which permits them to discriminate indirectly, by forcing prospective or existing staff members to sign, agree or pledge to support certain statements of belief proposed by the school which could be used to justify discrimination.

For example, no applicant for a teaching position should be asked or coerced into signing, pledging or affirming that “homosexuality is an intrinsic disorder”, or that “there are only two genders”, or that “marriage must only be between a man and a woman.”

Further, no discrimination against LGBTQ+ staff members should be indirectly allowed on the basis of religious ethos, values, beliefs or traditions.

Proposition C

- **Preferencing staff involved in the teaching, observance, or practice of religion on religious grounds.**

Just.Equal Australia supports this as long as it is not used to justify discrimination on the basis of sexual orientation, gender identity, relationship or marital status or pregnancy.

For example, it is understandable that a Catholic school may wish to hire only a Catholic priest or nun for the teaching of religion within the beliefs of that school. Likewise, a Muslim school should be allowed to only hire an Imam, or similar, to teach Islam at the school.

Anecdotal evidence however, suggests that most often it's lay people and everyday teachers who fill these roles, usually from a lack of availability of ordained clerics.

In these instances, the same anti-discrimination laws should apply as to other teachers. Just as a Maths, Geography, English or Science teacher should not be discriminated against on the basis of sex, sexuality, gender identity or marital status – nor should any teacher of Religious Studies.

Such discrimination sends the false and damaging message to students, teachers, parents and communities that LGBTQ+ people are intrinsically less religious and more sinful because of who we are.

Where this exception is vulnerable to abuse, is when a school might state, imply or evolve its entire teaching staff under the umbrella of “teaching, observing or practicing religion on religious grounds.”

This might perhaps be done by running the argument that all staff are ultimately “pastoral careers” or “spiritual mentors” by virtue of their approval and appointment by the school.

This broad ‘escape clause’ would allow a faith school to side-step the prohibition against sacking a gay science teacher, for example, by claiming that his general “pastoral role” at the school was compromised by his sexuality or relationship.

Anti-discrimination law should allow discrimination on the basis of religious affiliation when it comes to appointing a teacher of Religion.

However, anti-LGBTQ+ sentiments found or claimed within that religion must not be elevated to entitle that school to refuse to hire, or to sack, an LGBTQ+ teacher of religion.

The law is framed in this way in Tasmania and has been for 25 years.

Proposition D

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

Just.Equal Australia supports the position of the Australian Discrimination Law Experts Group that the term “ethos” is without clear definition in Australian law and vague in everyday use. It can too easily be used as a convenient catch-all, flexible term to suit prejudice and justify discrimination. We oppose its use in Australian law.

More generally, as outlined above in propositions A, B and C, many religious conservatives and anti-LGBTQ+ groups look to create loopholes and build escape clauses to anti-discrimination protections. And this particular one has the greatest vulnerability.

For example, if a lesbian maths teacher marries her long-time partner and then seeks to have her wife noted as next of kin on the school’s records, then the school must not be allowed to refuse by citing, “the religious ethos of the school.”

Equally, the school must not be allowed to dismiss or otherwise discriminate against that teacher by claiming her marriage and relationship “do not respect the religious ethos of the school.”

As another example, if a legal studies teacher was explaining same-sex marriage to a class that was studying the 2017 Postal Survey into equal marriage, then no breach of the law or the school’s beliefs has occurred.

Teaching facts, history and generating discussion is the point of education.

Footnote:

The Western Australian Experience

The Western Australian Equal Opportunity Act was established in 1984 under Labor Premier Brian Burke.

It reflected the attitudes of the day and the conservative Catholicism within his party room. In 1984, homosexuality in WA was a criminal offence. Gay men were regarded as criminals and faced up to 14 years in prison for engaging in consenting sex in private.

There were no anti-discrimination protections for LGBTIQ+ people and no recognition of same-sex couples.

In this context, Section (73.3) of the Western Australian EO Act provided general and sweeping religious exemptions. This included allowing faith schools to discriminate against LGBTIQ+ students and teachers across the board.

It was a very different era, a time of great ignorance and fear around LGBTIQ+ people. Chief among these fears was the myth that gay people abused children; that there was a correlation between homosexuality and paedophilia.

There was no review of this Act until 2002. Attitudes had changed hugely over the previous 13 years and the incoming Gallop Labor Government was keen to reform it in line with interstate changes.

Then Attorney General, Jim McGinty, (the "McGinty reforms"), included adding LGBT people to the coverage of anti-discrimination protections in employment, housing and the provision of goods and services.

However, as positive as these reforms were, for political reasons they fell short of modifying or removing the special religious exemptions.

As a result, WA maintains its sweeping anti-LGBTIQ+ law, under the guise of its religious exemptions for faith schools.

Premier McGowan proposal

In 2018, current WA Attorney General, John Quigley, announced a review of the WA Equal Opportunity Act.

The WA Law Reform Commission undertook this and presented its [final report](#) to parliament in 2022.

In short, it recommends reform in relation to faith schools (among other things), that seems largely reflective of what has occurred in Victoria.

This would bring WA into line with some mainland states and equal with Victoria in terms of protections for LGBTIQ+ students and teachers.

The WALRC proposals just fall short of existing Tasmanian standards.

This may be corrected during passage of the reforming legislation expected in 2023.