


# Response to the Consultation Paper for Religious Educational Institutions and Anti-discrimination Laws, January 2023

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## Introduction

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Thank you for the opportunity to participate in this consultation process.

In recent times, there seem to be increasing numbers of people who, faced with barriers to participation in activities that have been built by other citizens, and for the benefit of other citizens, decide that the best way forward is to use the power of the state to force their way in. We see this behaviour across a wide range of activities, events and institutions, crossing culture, heritage, civil society, sex and religion.

Despite all the benefits of tolerance, all the choices available to citizens in the free, diverse and multicultural society that is 21<sup>st</sup> Australia, the choices that such people insist upon are the activities that were built and then set aside and reserved for others.

In my view, if citizens cannot persuade the owners of the activity that they belong with and in the activity, then it is anti-democratic and unfair to use the power of the state to infringe upon the freedoms and rights of their fellow citizens, no matter how noble our government thinks that such infringements may be.

As a society, do we really value diversity and multiculturalism? Or do we only value it when such diversity and cultures does not include aspects that are unpopular in wider society? In our heart of hearts, is our tolerance for diversity and multiculturalism only half-hearted, if not fake, and variation from the popular and wider society must be eliminated and blocked. When a religion and its institutions are out of favour, is it acceptable for the Federal Government, through its legislation, regulation and bureaucracy, to crush diversity into whatever is popular? Do we truly value the wide range of participants and stakeholders that contribute in myriad ways to our nation? Or are their unpopular views so threatening that they must be tuned to a grey, same-ness?

In my view, as far as is possible, the Federal Government should use its powers to support the diverse institutions of civil society, rather than forcing such institutions to submit to capricious whims and fads of the wider population. Consequently, I am generally opposed to the technical proposals of the Consultation Paper for Religious Educational Institutions and Anti-discrimination Laws since they detract from the ability of religious educational institutions to deliver the cultural

and religious values and education that the parents and carers wish their children to be educated in. I have provided more detailed responses below.

## Response to the Technical Consultation Proposals

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TCP 1. Subsection 38(3) of the Sex Discrimination Act 1984 (Cth) should be repealed.

I disagree with this proposal.

The purpose of a religion educational institution is to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.

Not every child and not every family makes the right choice of educational institution. Some parents/carers may choose a particular institution because of the reputation or history, even though the characteristics of the family and child are at odds with the institution's values and beliefs. If such choices interfere with the stated cultural and religious values of the institution, then it may be necessary for there to be lawful discrimination at the institution.

The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society in Australia, religions and their religious educational institutions must be protected.

On behalf of the parents and carers, institutions need stronger powers to deliver their purpose, rather than existing powers being weakened or eliminated. With the wide choice of educational institutions available for children, if values and beliefs of parents and carers conflict with the stated values of the institution, then such parents and carers are free to choose another institution instead, including our world-class public education system or the option for home-schooling.

Accordingly, for religious educational institutions to be able to deliver their purpose for parents and carers, this subsection should be retained.

TCP 2. Subsections 38(1) and (2) of the Sex Discrimination Act 1984 (Cth) should be repealed.

I disagree with this proposal.

The purpose of a religion educational institution is to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.

The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society in Australia, religions and their religious educational institutions must be protected.

For cultural and religious values to be delivered to students, it is highly beneficial for students to observe the values being lived outside of the bounds of the church, synagogue, or other religious building, in this case, by their teachers and support staff.

Staff and contract workers provide living examples of the values and beliefs of the institution, so it is important for staff and contract workers to support and to be comfortable with the values and beliefs of the institution.

With the wide choice of educational institutions available to staff and contract workers for employment, if values and beliefs conflict with the stated values of the institution, then such staff and workers are free to choose another institution or career instead.

Not every staff member and contract worker will make the right choice of place of work. In some cases, their values and beliefs may have been in concord with the educational institution at one point and be in conflict later. With our world-class public education system, there is no reason for a particular employee to be limited to a workplace at odds with their values and beliefs. Accordingly, if the values and beliefs of the employee/contract worker interfere with the stated cultural and religious values of the institution, then it may be necessary for lawful discrimination at the institution.

Accordingly, for religious educational institutions to be able to deliver their purpose for parents and carers, these subsections should be retained.

TCP 3. The Sex Discrimination Act 1984 (Cth) should be amended to specify that the exception for religious bodies in s 37(1)(d) does not apply to educational institutions

I disagree with this proposal.

The purpose of a religion educational institution is to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.

The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society, religions and their religious educational institutions must be protected.

In our diverse Australian society, people have choices on where they work, educate their children, shop, bank, participate in leisure and in sporting activities and so forth. We do not need the Federal Government to damage the small number of spaces that have been specially carved out for participation in the life of particular religion, including its approach to education.

Accordingly, if any change should be made to the Sex Discrimination Act, then the change should add a section to explicitly exempt religious educational institutions.

TCP 4. The Sex Discrimination Act 1984 (Cth) should be amended to specify that the exception for religious bodies in s 23(3)(b) does not apply to accommodation provided by an educational institution.

I disagree with this proposal.

The proposal from the Australian Law Reform Commission to rely on the general exemption for charities is weak, given moves in wider society to exclude religious bodies from registration as charities at all. The ALRC proposal could mean that religious educational institutions are reliant on a general exception that they no longer qualify for, since it could be subsequently removed.

More generally, the purpose of a religious educational institution is for parents and carers to choose an educational environment that will deliver the cultural and religious values and education that the parents/carers wish their children to be educated in. This includes the accommodation provided as necessary for delivery of that educational experience, whether it be for staff or students.

The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society, religions and their religious educational institutions must be protected, including provision of accommodation.

In our diverse Australian society, people have choices on where they work, educate their children, shop, bank, participate in leisure and in sporting activities, and so forth. We do not need the Federal Government to damage the small number of spaces that have been specially carved out for participation in the life of a particular religion, including provision of accommodation.

Accordingly, if any change should be made to the Sex Discrimination Act, then the change should add a section to explicitly exempt religious educational institutions.

TCP 5. The Fair Work Act 2009 (Cth) should be amended to specify that the exceptions for religious bodies in ss 153(2)(b), 195(2)(b), 351(2)(c) and 772(1)(f) do not apply to educational institutions except as otherwise provided in the Sex Discrimination Act 1984 (Cth) and Age Discrimination Act 2004 (Cth).

I disagree with this proposal.

The purpose of a religion educational institution is to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.

The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society in Australia, religions and their religious educational institutions must be protected.

For the cultural and religious values to be delivered to students, it is highly beneficial for students to observe the values being lived outside of the bounds of the church, synagogue, or other religious building.

Staff and contract workers provide living examples of the values and beliefs of the institution, so it is important for staff and contract workers to support and to be comfortable with the values and beliefs of the institution.

With the wide choice of educational institutions available to staff and contract workers for employment, if values and beliefs conflict with the stated values of the institution, then such staff and workers are free to choose another institution or career instead.

Not every staff member and contract worker will make the right choice of place of work. In some cases, their values and beliefs may have been in concord with the educational institution at one point and be in conflict later. With our world-class public education system and diverse economy, there is no reason for an to limit themselves to a workplace at odds with their personal values and beliefs. If the values and beliefs of the employee/contract worker interfere with the stated cultural and religious values of the institution, then it may be necessary for lawful discrimination by the institution.

Accordingly, if any change should be made to the Fair Work Act 2009 (Cth), then such changes should strengthen and not weaken the powers of religious educational institutions, to be as strong as for other religious bodies, to protect our diverse, multi-cultural society.

TCP 6. The Sex Discrimination Act 1984 (Cth) should be amended to extend anti-discrimination protections to prohibit discrimination against students and prospective students on the grounds that a family member or carer of the student has a protected attribute.

I disagree with this proposal.

The purpose of a religion educational institution is to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.

Not every child and not every family makes the right choice of educational institution. Some parents/carers may choose a particular institution because of the reputation or history, even though the characteristics of the family and child are at odds with the institution's values and beliefs. If such choices interfere with the stated cultural and religious values of the institution, then it may be necessary for discrimination at the institution to be lawful.

The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society in Australia, religions and their religious educational institutions must be protected.

On behalf of the parents and carers, institutions need stronger powers to deliver their purpose, rather than existing powers being weakened or eliminated. With the wide choice of educational institutions available for parents and carers, if values and beliefs conflict with the stated values of the institution, then such parents and carers are free to choose another institution instead, including our world-class public education system, or even to home-school.

Accordingly, for religious educational institutions to be able to deliver their purpose for parents and carers, no such amendments to the Sex Discrimination Act should be made.

TCP 7. Amend the Sex Discrimination Act 1984 (Cth) to clarify that the content of the curriculum is not subject to the Act.

To an extent, I agree with this proposal.

The purpose of a religion educational institution is to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.

Importantly, both the content and the delivery of curriculum must be protected. The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society in Australia, religions and their religious educational institutions must be strengthened to allow them develop content that is aligned with the religion. This is just as important as protections for delivering that content to students in a way that is also aligned with the values of the institution.

If this proposal will provide stronger powers for religious educational institutions to deliver their purpose, then I support this proposal.

TCP 8. The Fair Work Act 2009 (Cth) should be amended such that a term of a modern award or enterprise agreement (as applicable) does not discriminate merely because it gives more favourable treatment on the ground of religion to an employee of an educational institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed where: the treatment relates to the selection of employees; participation of the employee in the teaching, observance or practice of religion is a genuine occupational requirement, having regard to the nature and ethos of the institution; the treatment does not constitute discrimination on any other ground prohibited by ss 153(1) or 195(1), respectively; and the treatment is proportionate in all the circumstances.

I disagree with this proposal.

The purpose of a religion educational institution is to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.

The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society in Australia, religions and their religious educational institutions must be protected.

For the cultural and religious values to be delivered to students, it is highly beneficial for students to observe the values being lived outside of the bounds of the church, synagogue, or other religious building.

Employees and workers provide living examples of the values and beliefs of the institution, so it is important for such staff to support and to be comfortable with the values and beliefs of the institution. Employment preference cannot be limited to “participation of the employee in the teaching, observance or practice of religion is a genuine occupational requirement, having regard to the nature and ethos of the institution” – this is far too limiting for employers and for the parents/carers that have chosen the institution.

With the wide choice of educational institutions available to staff and contract workers for employment, if values and beliefs conflict with the stated values of the institution, then such staff and workers are free to choose another institution or career instead.

Not every staff member and contract worker will make the right choice of place of work. In some cases, their values and beliefs may have been in concord with the educational institution at one point and be in conflict later. With our world-class public education system, there is no reason for a particular employee to be limited to a workplace at odds with their values and beliefs. If the values and beliefs of the employee/contract worker interfere with the stated cultural and religious values of the institution, then it may be necessary for discrimination at the institution to be lawful.

Accordingly, for religious educational institutions to be able to deliver their purpose for parents and carers, these subsections should be expanded to strengthen the powers of the institutions select and employ staff that will support the purpose of the institution.

TCP. 9 The Fair Work Act 2009 (Cth) should be amended such that a term of a modern award or enterprise agreement (as applicable) does not discriminate merely because it allows an educational institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed to terminate an employee's employment where: the termination is necessary to prevent an employee from actively undermining the ethos of the institution; the treatment does not constitute discrimination on any other ground prohibited by ss 153(1) or 195(1), respectively; and the termination is proportionate to the conduct of the employee — including by reference to: ○ the damage caused to the ethos of the educational institution; ○ the genuine occupational requirements of the role, having regard to the nature and ethos of the educational institution; ○ alternative action the employer could instead reasonably take in the circumstances; ○ the consequences of termination for the employee; and ○ the employee's right to privacy. The Fair Work Act 2009 (Cth) should be further amended such that religion is a permissible ground of termination, despite s 772(1)(f), in the circumstances set out above.

To an extent, I support this proposal.

The purpose of a religion educational institution is to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.

The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society in Australia, religions and their religious educational institutions must be protected.

For cultural and religious values to be delivered to students, it is highly beneficial for students to observe the values being lived outside of the bounds of the church, synagogue, or other religious building.

Employees and workers provide living examples of the values and beliefs of the institution, so it is important for such staff to support and to be comfortable with the values and beliefs of the institution.

With the wide choice of educational institutions available to staff and contract workers for employment, if values and beliefs conflict with the stated values of the institution, then such staff and workers are free to choose another institution or career instead.

Not every staff member and contract worker will make the right choice of place of work. In some cases, their values and beliefs may have been in concord with the educational institution at one point and be in conflict later. With our world-class public education system, there is no reason for a particular employee to be limited to a workplace at odds with their values and beliefs.

Accordingly, if the actions an employee/contract worker interfere with the stated cultural and religious values of the institution, then it may be necessary for that employee's employment to be lawfully terminated. Provided this proposal supports this aim, then I support the proposal.

TCP 10. The Australian Government should ensure that any future legislation to prohibit discrimination on the basis of religious belief or activity contains exceptions in relation to employment and engagement of contract workers that allow an educational institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed to: give more favourable treatment to an employee or prospective employee (and contract worker or prospective contract worker) on the ground of religion in relation to selection; and take action that is reasonably necessary to prevent an employee or contract worker from actively undermining the ethos of the institution; consistent with the limitations on such exceptions contained in Proposals 8 and 9.

I conditionally support this proposal, with the condition being the deletion of the text “8 and”, because the proposed protections of Proposal 8 are far too limited to be effective or useful.

The purpose of a religion educational institution is to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.

The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society in Australia, religions and their religious educational institutions must be protected and strengthened where possible and appropriate.

On behalf of the parents and carers, institutions need stronger powers to deliver their purpose. With the wide choice of educational institutions available for parents, carers, employees and contract workers, if values and beliefs conflict with the stated values of the institution, then they are free to choose another institution or workplace instead, including our world-class public education system.

Accordingly, the Federal Government should ensure that religious educational institutions are protected so that they can more effectively deliver their purpose in future legislation, by broadening the exemptions and exceptions, and specifically adding protections for religions and their institutions.

TCP 11. The Australian Human Rights Commission Act 1986 (Cth) should be amended so that religious educational institutions are subject to the Act.

I disagree with this proposal.

The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society in Australia, religions and their religious educational institutions must be protected.

By being made subject to the Act and the Commission, it is likely that religions and religious educational institutions will be subject to further interference from the Federal Government and its bureaucracies. As we can see from this reform package, the exemptions in place are too limited for effective delivery of the purpose of religious educational institutions.

Religious educational institutions should be as free as possible to manage their affairs in order to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.



With the wide choice of educational institutions available for parents, carers, employees and contract workers, if values and beliefs conflict with the stated values of the institution, then they are free to choose another institution or workplace instead, including our world-class public education system.

Accordingly, for religious educational institutions to be able to deliver their purpose religious educational institutions should not be made subject to unnecessary, additional bureaucratic oversight that detracts from the benefits of a diverse, multicultural Australia.

TCP 12. The Australian Human Rights Commission should review the 'Commission Guidelines' for 'Temporary exemptions under the Sex Discrimination Act 1984 (Cth)' in light of the legislative changes proposed.

Provided Technical Consultation Proposal 11 is not enacted, then this proposal can be safely ignored.

Religious educational institutions should be as free as possible to manage their affairs to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.

With the wide choice of educational institutions available for parents, carers, employees and contract workers, if values and beliefs conflict with the stated values of the institution, then they are free to choose another institution or workplace instead, including our world-class public education system.

It is appalling that the AHRC would add to the administrative burden of religious educational institutions, by using temporary exemptions while forcing the institutions to abandon their values and beliefs. This goes directly against the goals for building a diverse, multi-cultural Australia.

Accordingly, for religious educational institutions to be able to deliver their purpose religious educational institutions should not be made subject to unnecessary, additional bureaucratic oversight that detracts from the benefits of a diverse, multicultural Australia.

TCP 13. The Australian Human Rights Commission, in consultation with the Attorney-General's Department, should develop detailed guidance to assist educational institution administrators to understand and comply with the Sex Discrimination Act 1984 (Cth) and anti-discrimination provisions in the Fair Work Act 2009 (Cth), and for the public to understand the relevant protections.

I agree with this proposal, save that it should apply to current arrangements rather than the proposed changes, changes which simultaneously increase confusion whilst weakening the ability of religious educational institutions to meet their purpose.

The purpose of a religion educational institution is to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in.

The places in which the values that a religion holds sway are small relative to size of the wider society. To deliver the benefits of a diverse, multi-cultural society in Australia, religions and their religious educational institutions must be protected. On behalf of the parents and carers,

institutions need stronger powers to deliver their purpose, rather than existing powers being weakened or eliminated.

If this proposal will provide stronger powers to religious educational institutions and clarify how religious educational institutions can lawfully deliver their purpose, then I support this proposal.

TCP 14. Following implementation of Proposals 1 to 11, the Australian Government should consider and consult on further reforms to simplify and strengthen Commonwealth antidiscrimination law, including by addressing inconsistencies arising from reforms proposed in this Inquiry.

I am in favour of law reform, but this reform takes Australia in the opposite direction to where we should go. Based on the content of this consultation has been developed, I am highly sceptical about the process of law reform in these matters.

Rather than strengthening the powers of religious educational institutions to deliver the cultural and religious values and education that the parents and carers wish their children to be educated in, this set of reforms seem designed to weaken the institutions. The reforms deliberately introduce changes that will hinder the purpose of such institutions, and also increase the administrative burden with new and unnecessary bureaucratic oversight from the Federal Government.

The reform process seems to accept this itself – the laws interact in a confusing way, but it seems clear that laws tend to be interpreted in a way that is more bureaucratic, less democratic and less free for religious educational institutions to deliver their purpose.

In a free society like Australia, citizens are free to make choices that align with their beliefs. There is no sensible reason to continue with an institution that you disagree with. It seems to me that some people in society and government prefer to wield the power of the state to bludgeon religions and their religious educational institutions into submission to the values of those people.

People that struggle with the clearly stated values and beliefs of institutions that they do not belong to have no business in forcing those institutions to change using the Federal Government as their proxy.

People that struggle with the clearly stated values and beliefs of institutions that they belong to need not stay members or employees of such institutions. There are so many choices in Australia – choose another religion, workplace or society instead, or start your own. If such people choose to stay members or employees, then they should work to change the institution from within, rather than using the state to force such change.

From what I can see, the proposed reforms are designed to meet the unmeetable and capricious whims of individual parents, students and staff-members. Rather than strengthening the ability of religions and their educational institutions to contribute to Australia, they seek a lowest-common-denominator grey, where there is no appreciable difference from one institution to another, or to wider society.

If we agree that a diverse and multi-cultural society values the contribution of wide variety of stakeholders, from varying cultural backgrounds, and a multitude of religions, ethnicities and nationalities, then we look to law reform to strengthen religions and their institutions, not to weaken them.

I support further consultation to simplify and strengthen antidiscrimination law, but only where the proposed reforms are to the benefit of all stakeholders, and reforms that appreciate the marvellous diversity of values and beliefs in our religions and their institutions. Let us use the contribution and efforts of religions educational institutions to build a stronger, more diverse, multi-cultural and harmonious Australia.