

AUSTRALIAN LAW REFORM COMMISSION CONSULTATION ON
RELIGIOUS EDUCATION INSTITUTIONS
AND ANTI-DISCRIMINATION LAWS

SUBMISSION

20 February 2023

Established in 1906, the RSA is Australia's oldest freethought organisation working to promote evidence-based policy, reason and secularism. We welcome the opportunity to make a submission to the ALRC's consultation process and to share our thoughts on the proposed amendments to the Sex Discrimination Act 1984 (Cth) and other federal anti-discrimination laws, where necessary.

The RSA broadly supports the proposed principles for amendments, outlined in the consultation paper, to repeal the exemptions from discrimination laws that allow religious schools and institutions to sack or discipline staff for reasons including their marital or relationship status, parental status, sexuality or pregnancy.

For the sake of clarity and certainty, and to avoid costly litigation, any Amendment Bill should state clearly that it is Parliament's intention that State and Territory anti-discrimination laws that offer stronger protections for staff and students are not overridden by amendments to the Sex Discrimination Act.

Religious exemptions harm and hurt Australians

The use of these religious exemptions negatively affects individuals, causing unnecessary harm and hurt to vulnerable people throughout communities across Australia.

While much of the media coverage focuses on the negative impact of such religious exemptions on LGBTIQ people in schools, it is important to recognise this issue does not only affect LGBTIQ people.

In a submission to the Religious Discrimination Bill 2019, the Independent Education Union (IEU) wrote that, in a survey of almost 1,150 members working in faith-based schools in Victoria and Tasmania, 51 per cent of respondents reported having witnessed or been subjected to discrimination based on marital, relationship or parental status.

The IEU submission also included personal testimony from a number of teachers in relation to such discrimination. These included:

"A male teacher applied for a promotional position but was advised that he wouldn't be considered as he had some years before been in a defacto relationship with a woman for 10 years and had children 'out of wedlock'."

“A teacher employed by a Catholic diocesan school was dismissed as a consequence of becoming pregnant via IVF.”

“A teacher at my school didn’t get her contract renewed because she had a baby with her female partner, a teacher got vilified because she and her partner had a baby out of wedlock, and I know of a teacher who is privately undergoing IVF treatments and hasn’t told leadership for fear they will lose their job.”

“A teacher in a western NSW Catholic diocesan school was threatened with termination due to ‘non-recognised marriage’. The teacher’s husband had been previously married. The employer was insisting that the husband had his marriage annulled...”

“I have to keep my sexuality a secret as I fear I would be fired or targeted by leadership at my school. I understand they have a right to their faith, but it feels awful having to hide who I am.”

The media have reported on a number of similar cases in recent years, including that of [Steph Lentz who was sacked](#) by a Christian college after she came out as lesbian.

In 2021, [teacher Samantha Cairns shared with us](#) her story of being sacked from a Christian school earlier in her career simply for being gay, and the impact it had on her. “It was very damaging to me in a lot of ways and it has taken a long time to process and to heal through that experience,” she said.

In Victoria, David Patterson, a committee member at Flinders Christian Community College south-east of Melbourne, said the use of exemptions to discrimination laws was a “systemic issue” that was causing “too much pain”. “Too many lives are being negatively impacted,” [he told Nine Newspapers](#).

These religious exemptions have no place in modern Australia

In recent years, we have witnessed a public backlash to story after story in the media in response to religious schools for having utilised such exemptions against students or teachers, having expressed support for maintaining such exemptions or having implemented policies targeting specific groups within their schools, such as LGBTIQ children. The wider community has sent a clear message that these exemptions from discrimination laws have no place in modern Australia.

A gardener at a school should not be sacked for having experienced a marriage breakdown. An administration officer should not be fired for being a single parent. A gay teacher should not lose their job simply for who they love.

Although we expect conservative religious lobbyists and church leaders to argue for their wish to maintain these exemptions and the ability to discriminate on such grounds, we know that the views of such interest groups are out of step not only with mainstream Australia but also their own congregations.

As social researcher Neil Francis outlined in his comprehensive [Religiosity in Australia series](#): “Most Australians (74%–82%) oppose religious schools having the legal right to expel students or sack staff on the basis of sexual orientation or relationship status. Majorities of schoolchild parents across the religious denominations hold strong positive rather than negative attitudes toward the morality of homosexuality...”

This was evident in, for example, how parents and school children spearheaded the backlash in response to Citipointe Christian College's new policies and attitudes towards LGBTIQ students in early 2022.

As Francis' outlines in his *Religiosity in Australia* research series, the views of the majority of religious lay people are at odds with their leaders – such as bishops in the Catholic Church – on a wide range of social issues, including same-sex marriage, voluntary assisted dying and access to abortion.

Obligation to abide by public standards

It is to be expected that conservative religious lobbyists and clerical leaders will encourage their followers to oppose the amendments and argue that they need to retain the exemptions in order to uphold the ethos of religious institutions. The ALRC consultation paper proposes that religious educational institutions be allowed to give preference to job applicants based on religious belief so long as “the teaching, observance or practice of religion is a genuine occupational requirement”, and we believe this strikes the right balance.

We accept the argument that faith-based institutions should be allowed to appoint people to certain positions where religious knowledge, skill and experience can be seen to be a genuine occupational requirement. This would include, for example, people who are charged with teaching the tenets of a particular faith.

However, given the large size of the faith-based education sector in Australia and the significant amount of taxpayer funding directed to it, we believe schools operating in this sector have an obligation to the wider community to respect and comply with anti-discrimination laws that apply to the rest of society.

In modern Australia, taxpayers' money should not fund practices that isolate children within religious denominations and propagate uncharitable beliefs and harmful practices that no longer have a place in a liberal, pluralist society.

In 2013, the Gillard government introduced the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 to amend the general exemption for religious bodies provision (section 37) of the Act. The amendment prohibited government-funded aged-care homes operated by religious bodies from engaging in discrimination based on any of the attributes protected by the Sex Discrimination Act in the provision of aged-care services. Since then, religious aged-care homes have continued to grow and operate. The amendment proved that religious bodies did not need a right to discriminate to operate effectively.

Similarly, there are some State and Territory anti-discrimination laws that prevent religious schools discriminating against staff and students in a similar way to what is proposed by these Sex Discrimination Act amendments. In those jurisdictions, the religious school sector also continues to operate effectively.

To give full effect to the principle that organisations that operate on public funding should abide by public standards, further amendments of the kind proposed are now needed to extend protections for staff and students in religious schools.

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