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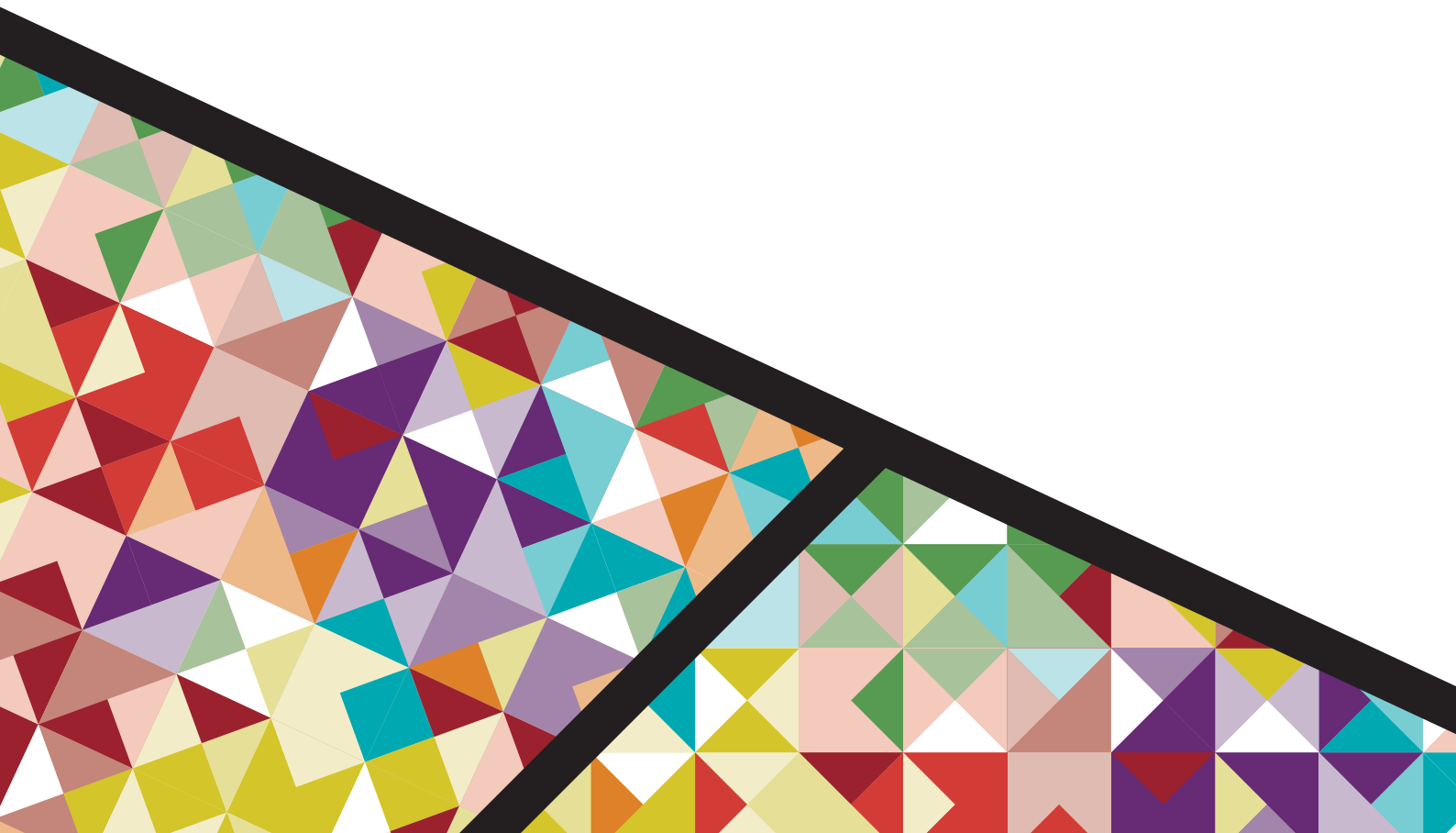
Australian Law Reform Commission

BACKGROUND PAPER ADL2

RELIGIOUS EDUCATIONAL INSTITUTIONS AND ANTI-DISCRIMINATION LAWS

What We Heard

November 2023



This Background Paper is released by the Australian Law Reform Commission ('ALRC') as part of its Inquiry into Religious Educational Institutions and Anti-Discrimination Laws ('the Inquiry'). **[View the Inquiry webpage](#)**. It provides a summary of what the ALRC heard from stakeholders through consultations, submissions, and survey responses.

Background papers are intended to provide a high-level overview of topics relevant to the Inquiry, including key principles and areas of research that underpin the development of recommendations.

The call for formal submissions to this Inquiry has closed. The Final Report is due to be submitted to government by the end of 2023.

Acknowledgement of Country

The ALRC acknowledges the Traditional Owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander Elders past and present. We value Aboriginal and Torres Strait Islander histories, cultures, and knowledges.

This Background Paper reflects the law as at 1 September 2023.

The ALRC was established on 1 January 1975 and operates in accordance with the *Australian Law Reform Commission Act 1996* (Cth).

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WARNING

Readers may find some of the views and experiences quoted in this report challenging, offensive, or distressing.

Themes include discrimination, bullying, depression, homophobia/heterosexism, self-harm, suicide, and transphobia/trans misogyny.

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Headspace: [online and phone support](#)

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Introduction

1. This Background Paper aims to reflect what the ALRC has heard from a wide range of stakeholders during its Inquiry into Religious Educational Institutions and Anti-Discrimination Laws.¹

2. The Australian Government has set out its policy position in the Terms of Reference,² and has asked the ALRC to make recommendations as to how that policy position might be implemented, consistent with Australia's international law obligations. The Government's policy position is that religious educational institutions:

- must not discriminate against a student on the basis of sexual orientation, gender identity, marital or relationship status, or pregnancy;
- must not discriminate against a member of staff on the basis of sex, sexual orientation, gender identity, marital or relationship status, or pregnancy; and
- can continue to build a community of faith by giving preference, in good faith, to persons of the same religion as the educational institution in the selection of staff.

3. This Inquiry has elicited an overwhelming response from the Australian public. A large number of organisations and individuals have expressed strong views about the protection of students and staff in religious educational institutions from discrimination, and the need for religious freedom to be protected under Commonwealth anti-discrimination laws.

4. Given the overwhelming response, this Background Paper offers a more detailed discussion of views than will be possible in the Final Report for this Inquiry. Accordingly, this Background Paper includes a number of direct quotations from submissions and survey responses that provide a sample of the many different views expressed to the ALRC. Quotations have been selected on the basis of their relevance to the key themes and issues identified, and to represent the diversity of views shared by stakeholders. All views expressed to the ALRC have directly informed the development of recommendations and the discussion of issues that will be contained in the Final Report.

5. The ALRC recognises and appreciates the time and effort invested by organisations and individuals in contributing to this Inquiry, particularly in light of the many previous public consultations on related issues over the past four decades. Since 1984, Australia's anti-discrimination laws have been the subject of over 25 inquiries or law reform proposals. The ALRC also acknowledges the lived experiences shared by students, parents, and staff from religious educational institutions. Together, these contributions have supported the ALRC to better understand the role of religious educational institutions in Australian society, the communities that grow around these institutions, community member experiences within these institutions, and the need for better coverage of anti-discrimination laws in these contexts.

6. This Background Paper includes:

- an overview of the Inquiry approach including the methodology adopted to create an evidentiary base for the ALRC's recommendations; and
- analysis and discussion of key themes and interrelated issues which emerged from consultations, submissions, and survey responses.

1 ALRC, 'Religious Educational Institutions and Anti-Discrimination Laws' (4 November 2022) <<https://www.alrc.gov.au/inquiry/anti-discrimination-laws/>>.

2 The Terms of Reference for this Inquiry are found [here](#)

Overview of findings

7. People told the ALRC that concepts of **dignity and respect** are very important in this Inquiry.

8. Many people stated that religious educational institutions are important to them. People described feeling a strong sense of community within those institutions, and that the institutions are genuinely committed to caring for students and staff. For many people connected with religious educational institutions, their care and concern is driven by their religious belief.

9. The ALRC heard that there is significant **diversity** between and within religious educational institutions. Issues covered by the *Sex Discrimination Act* can be difficult terrain for some institutions because of (in some cases) longstanding norms in religious communities regarding the roles of men and women, gender, and sexual ethics. In addition, some institutions are very supportive and inclusive of different religious beliefs and people who identify as LGBTQ+, or who may be divorced or living in a de facto relationship.

10. The ALRC heard that religious educational institutions have no intention or desire to discriminate against students and staff. However, some people within religious institutions described reform to the *Sex Discrimination Act* as a threat to the existence and operation of religious educational institutions. For instance, the proposed repeal of exceptions for religious educational institutions was seen by some as interfering with key aspects of the manifestation of religion, such as deciding enrolment and employment practices, and the teaching of religion.

11. The ALRC heard from some people that in the context of religious educational institutions, different treatment of individuals may be necessary to maintain a harmonious community of faith, or to support the transmission of **values and beliefs**. Some people were concerned that changes in the law might impact the ability of religious educational institutions to maintain their religious character, authenticity as faith communities (for example, through appropriate role modelling), and their role as sheltered **spaces** from secular society. For some, the proposed reforms were seen as unnecessary, because of the view that people have a **choice** to study or work at a different educational institution.

12. For others, including people who are connected with religious educational institutions and who would be protected by the proposed reforms, the reforms were seen as necessary. The ALRC heard that exclusion and discrimination do sometimes occur and can cause serious harm, in part because of the nature of community ties within institutions. Some people described how a lack of protection in the law means that even though some institutions are supportive and inclusive, things can **change** quickly with a change in leadership. Protection in the law was seen as providing certainty for community members, by setting minimum expectations. Some challenged the idea that people can or should simply leave their communities of faith. The right to freedom of religion or belief was seen as belonging to all people. Some people highlighted the impact on their religious freedom of not being able to express an alternative view within a religious educational institution. Others pointed to differences between the views of parents or staff and the views of some religious leaders.

13. Some highlighted the public good of religious educational institutions. The ALRC heard that most institutions have open enrolments and function in a societal context of compulsory education with high levels of public funding. Given the size of the sector, these institutions were identified as serving an important function in society. Acknowledging the right to **education** and the importance of developing respect for different viewpoints, religious educational institutions were recognised as being different from purely religious spaces.

Key themes and issues

14. Throughout this Background Paper, the ALRC has sought to reflect fairly the range of views and complex issues raised by a large and diverse group of stakeholders. The ALRC's analysis of consultations, submissions, and survey responses reveals several values and concerns that were shared by a large majority of stakeholders. This 'common ground' is represented in **Figure 1**.

Figure 1: Shared values and concerns



15. In contrast, a greater diversity of views was expressed on how best to reflect these shared values. The main issues on which ALRC heard sharply diverging views, in relation to religious educational institutions, are represented in **Figure 2**.

Figure 2: Issues with strong diverging views



16. The analysis below is structured according to six interrelated themes that emerged from consultations, submissions, and survey responses. Accordingly, the remainder of this Background Paper is divided into sections addressing the themes reflected in **Figure 3**.

Figure 3: Interrelated themes emerging from stakeholder engagement



Dignity and respect

17. The ability for all people to live with dignity and respect was acknowledged as critically important by religious organisations, non-government organisations, theological colleges, and individuals. Some relevant sentiments expressed to the ALRC include the following:

Human dignity is central to the expression and protection of all human rights. The recognition and protection of human dignity underlies and holds unconditional status in the international human rights framework. All of the human rights at issue in this Inquiry are important to human dignity. Although people may hold differing views about how difficult issues should be resolved, the methods used to resolve them should promote respect.³

Every person is precious and entitled to live with dignity because they are God's children, and that each person's life and rights need to be protected or the human community (and its reflection of God) and all people are diminished.⁴

Everyone deserves to be treated with dignity and respect no matter where they work or study. LGBTQ+ people are simply asking for the freedom to express who they are and whom they love, in a manner which is equal to their colleagues and peers, without adverse consequences for their employment or education.⁵

Relating to others with kindness and dignity irrespective of their gender, sexual orientation, and relationship status is crucial for how we operate as a college.⁶

I know that same sex attracted and trans children attend our schools. These children should be and are treated with respect and love as are all children in the school.⁷

Human dignity is central to the expression and protection of human rights. We agree that people may disagree about how difficult views should be resolved. It is also true that people hold differing views about what is needed to have human dignity in relation to their identity.⁸

Respecting the dignity of people

18. Religious organisations emphasised that religion is intricately tied to dignity.⁹ Many religious bodies emphasised that religious educational institutions are highly capable of dealing with complex issues — including those at the intersection of religious freedom and equality for LGBTQ+ people — in nuanced ways that respect the dignity of students and staff.¹⁰ A consultee, who worked as a teacher and was a bureaucrat in a peak educational body, reflected that school-based responses to complex issues can be quietly at odds with official positions adopted by peak educational bodies and religious hierarchies.

Respect for religion and religious people

19. Some individuals and religious bodies emphasised that religious beliefs and practices should also be afforded respect, particularly in the context of increasing secularism and pluralism within society. Some individuals and institutions holding 'traditional' beliefs on gender, marriage, and sexuality felt that others within the general community no longer afforded them respect. They described experiences of being mocked or shunned for expressing their beliefs or for simply

3 Transgender Victoria, *Submission 211*.

4 Uniting Church in Australia Assembly, *Submission 425*.

5 Equality Australia, *Submission 375*.

6 Sydney Missionary and Bible College, *Submission 205*.

7 R Dickens, *Submission 276*.

8 Islamic Society of South Australia, *Submission 389*.

9 See, eg, Anglican Youthworks, *Submission 176*.

10 Bishops of the Australasian-Middle East Christian Apostolic Churches, *Submission 388*; Australian Catholic Bishops Conference, *Submission 406*.

being religious. Others also expressed the view that these traditional beliefs are threatened by secular institutions, including the law.

20. Some individuals and religious bodies emphasised that religious rights and practices should also be afforded respect, particularly in light of secularism, pluralism, and proposed law reforms. For example:

Religious rights and practices should be respected and protected on an equal level (with other competing rights) rather than being viewed as an exemption ... Our society needs to be very reticent in 'blurring' the lines between secular and sacred.¹¹

Allowing a diversity of institutions to coexist [peacefully] provides true diversity in a multicultural society ... We can't be truly multicultural unless we respect the rights of all people of all religions to practise their faith without harassment or interference.¹²

New law should not weaponise things against faith beliefs.¹³

21. Shock and distress were expressed by some religious bodies and organisations who were concerned that anti-discrimination law frames certain religious beliefs as 'wrong', and that proposed reforms deny respect for these beliefs even within their own communities.¹⁴ For instance, one religious body expressed fear that the ALRC's proposals would mean that certain views about gender and sexuality could not be held or taught, or that alternative views must be taught:

Proper religious education in the Christian tradition asserts the truth of the Christian story; it is not one story that sits alongside equally-valid others, but rather a truth that is to be accepted to the exclusion of other claims. Allowing a teacher to present religious doctrine, whether it be about marriage or sexuality or other teachings, as just one idea undermines the ability of a school to teach religion authentically because it necessarily invites students to a 'cafeteria Christianity,' accepting some religious teachings and rejecting others. Any attempts to impose this style of education on every religious school is manifestly unreasonable.¹⁵

11 S Lamont, *Submission 302*.

12 R Boneham, *Submission 271*.

13 Catholic Secondary Principals Australia, *Submission 363*.

14 Australian Christian Churches, *Submission 80*; Australian Christian Lobby, *Submission 299*; Not published, *Submission 318*.

15 Bishops of the Australasian-Middle East Christian Apostolic Churches (n 10).

Community

Support and belonging

22. A sense of community and belonging is important to many students, staff, and parents at religious educational institutions, which are seen as more than just providers of education and employment.¹⁶ A sense of community was closely tied to the valuing of community members as individuals, genuine care and concern for students and staff and, for many, shared values and beliefs amongst members.¹⁷

23. One submission highlighted the role that religious schools can play in supporting students from minority communities who face discrimination and particular challenges in the general community.¹⁸

24. For a number of individuals and religious educational institutions, alignment between the core beliefs of the individual and the community is seen as crucial to maintaining a sense of community. Some individuals expressed the view in consultations that being legally required to accept students or employ staff who challenge or do not share certain religious beliefs would be highly disruptive to the harmony of the community and its purpose.

25. On the other hand, while many described religious educational institutions as inclusive and supportive, some former students, parents, and staff of religious schools recounted personal experiences of denial of opportunities, lack of visibility, or exclusion from religious educational institutions because of their sex, sexual orientation, or gender identity (see further below). For some individuals, the harms this caused were exacerbated precisely because it happened within their own community, or resulted in the loss of their whole community.¹⁹ For example:

I am now extremely fearful that I can have my employment terminated because of my sexuality. I am devastated that I am unable to assist my students, and very upset that my teaching career has been damaged by this, as I had always planned to [spend] my career at ... [this school]. It has been my community, given me a sense of value, allowed me to assist students and make a positive contribution to others.²⁰

The concept of a shared community is very important, particularly when it is a community created by a unifying belief system; however, the phrase 'community of faith' is often used to create a community based on exclusion. I shared the belief system of the 'community of faith' that I was raised in, but was still rejected from that community because I couldn't be an 'acceptable' type of person (i.e. straight and submissive). Therefore, a community of faith can either be beneficial or detrimental depending on whether it focusses on inclusion or exclusion.²¹

16 ALRC Survey, 2023 (Student in a school in the last 5 years; 18–24 years old); ALRC Survey, 2023 (Student in a university of theological college in the last 5 years; 45–54 years old); ALRC Survey, 2023 (Parent in a school in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Staff in a school in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Principal in a school in the last 5 years; 45–54 years old); ALRC Survey, 2023 (Dean in a university in the last 5 years; 55–64 years old).

17 ALRC Survey, 2023 (Volunteer in a school in the last 5 years; age not specified); ALRC Survey, 2023 (Parent and teacher in a school in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Leader in a school in the last 5 years; 65+ years old); ALRC Survey, 2023 (Parent in a school in the last 5 years; 55–64 years old); ALRC Survey, 2023 (Parent, staff and board member in a school in the last 5 years; 45–54 years old).

18 Australian Muslim Advocacy Network, *Submission 416*.

19 Name withheld, *Submission 347*; Name withheld, *Submission 415*; D Patterson, *Submission 206*; Name withheld, *Submission 112*.

20 Not published, *Submission 343*.

21 ALRC Survey, 2023 (Other capacity in a theological college in the last 5 years; 25–34 years old).

Communities of faith

26. The term ‘community of faith’ was used by some religious bodies, non-government organisations, parents, and staff to describe religious educational institutions. Many of them said that these communities are formed on the basis of shared values, beliefs, and purpose.²² Some identified these values and beliefs as fundamental in defining a community of faith.²³ For example:

A community of a particular faith cannot build such if all the members of the community do not support the beliefs and values of that community.²⁴

It’s important to have a sense of belonging. Knowing you matter and have a place in your community. To know you are included in the community and able to contribute to like minded peers.²⁵

[Religious educational institutions create] a sense of community among students, faculty, and staff by sharing common beliefs, values, and traditions. This can help create a supportive and inclusive environment where individuals can feel a sense of belonging.²⁶

Human beings are relational beings that crave connection with others and help each other. Communities of faith understand that there are shared beliefs and values that are important to a young person’s character development, alongside the intellectual and physical growth that happens during their schooling. Shared understand[ings] that are grounded in the faith scriptures/beliefs provid[e] the foundation for that development.²⁷

27. Some religious schools, non-government organisations, peak educational bodies, academics, and individuals identified institutional autonomy as crucial to the existence, integrity, and maintenance of a community of faith.²⁸ For example:

We must be allowed ‘reasonable autonomy’ to preserve our right to religious freedom.²⁹

[A community of faith as an association] must have the legal freedoms to determine its membership, staffing, and conduct/culture rules to maintain the integrity of its purpose to model a way of life and to promote and express its organising beliefs and practices.³⁰

The internal structure of a religious organisation and the regulations governing its membership must be seen as a means by which such organisations are able to express their beliefs and maintain their religious traditions.³¹

Determining who belongs to a particular religion is ... a wholistic analysis. Different religions take different approaches to determining membership.³²

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- 22 P Bellas, *Submission 245*; P Murray, *Submission 248*; P Crocker, *Submission 340*; S Lamont (n 11); J Alvaro, *Submission 349*; T & P Stuart, *Submission 128*; T Aiashi, *Submission 145*; M Flentje, *Submission 233*; M Millington, *Submission 238*; M Perry, *Submission 270*; J Haack, *Submission 281*; A Walmsley, *Submission 329*; Campaign Submission 1, *Submission 330*; N Hill, *Submission 342*; R Mitchell, *Submission 57*; E Wicks, *Submission 62*; T King, *Submission 65*; M & R Pryor, *Submission 71*; I & D Mullins, *Submission 73*; Not published, *Submission 246*; Human Rights Law Alliance, *Submission 96*.
- 23 ALRC Survey, 2023 (Student and staff member in a school and post-secondary college in the last five years; 35–44 years old); ALRC Survey, 2023 (Parent, staff member and volunteer in a school, university, or theological college in the last five years; 45–54 years old); ALRC Survey, 2023 (Student and volunteer in a school and post-secondary college in the last five years; 35–44 years old).
- 24 Healinglife Church and Ministries, *Submission 9*.
- 25 ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 35–44 years old).
- 26 ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 35–44 years old).
- 27 ALRC Survey, 2023 (Teacher or chaplain in a school in the last 5 years; 45–54 years old).
- 28 S Lamont (n 11); Institute for Civil Society, *Submission 399*; Shore (Sydney Church of England Grammar School), *Submission 424*; Associated Christian Schools, *Submission 193*; K Donnelly, *Submission 227*; Free Reformed School Association (Western Australia), *Submission 256*; Association of Independent Schools of the ACT (AISACT), *Submission 160*; Institute for Civil Society; M Fowler, *Submission 201*; S French, *Submission 305*; National Civic Council, *Submission 220*.
- 29 Immaculate Heart College, *Submission 182*.
- 30 Institute for Civil Society (n 28).
- 31 S French (n 28).
- 32 R Barker, *Submission 166*.
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Schools, characterised by a set of beliefs should not have those beliefs overruled by an (elected) authority.³³

28. Some tied the exercise of institutional autonomy to the capacity of a religious educational institution to determine its enrolment and employment practices. For some people, this meant the ability to preference students and staff on the basis of their religious affiliation or adherence. While for others, it meant welcoming non-adherents as members so long as they were willing to support the ethos and culture of the school.³⁴

29. There were strong views from some religious bodies and religious schools that religious schools should be free to appoint staff on the basis of their religious beliefs or activity.³⁵ Some individuals expressed similar views, such as:

It should remain open to schools to preference staff with any role, based on the staff member's religious belief or activity. Preferential recruitment should not be limited to persons engaged in the teaching, observance, or practice of the religion. The religious ethos of a school cannot be maintained unless all persons involved in its operation share the ethos.³⁶

30. However, other religious bodies expressed the opposite view.³⁷ In addition, some parents, staff, and academics expressed the concern that the concept of a 'community of faith' is used to exclude people with shared values, but certain different religious beliefs, on discriminatory bases.³⁸ Some consultees said that the idea of a 'community of faith' can lead to the problematic blurring of churches, mosques, and temples with educational institutions. These stakeholders presented the view that schools are not the same as these places of worship, and that treating them as such could be dangerous.

Authenticity within communities

31. Authenticity – described as being true to one's faith – was identified by some religious bodies, religious schools, and parents at religious schools as central to the integrity of communities of faith.³⁹ Two key elements used to illustrate authenticity were the integration of faith perspectives throughout the curriculum and educational experience,⁴⁰ and positive role modelling of faith by school leadership and staff.⁴¹ A number of views were expressed along these lines, including:

Education is more than the transfer of information because the student is more than a receptacle of knowledge. Education impacts the whole person. It is modelled by teachers as well taught by them. It involves how you live not just what you know. The most effective teaching is deeply and inherently relational and engages students at multiple levels. In the context of an institution such as a school,

33 ALRC Survey, 2023 (Parent or carer in a school in the last five years; 45–54 years old).

34 Free Reformed School Association (Western Australia) (n 28); Islamic Society of South Australia (n 8); University of Divinity, *Submission 115*; Presbyterian Christian Schools NSW (Low-Fee Christian Schools Board), *Submission 356*; Independent Education Union, *Submission 387*; Executive Council of Australian Jewry, *Submission 377*; Australian Council of Jewish Schools, *Submission 396*; Australian National Imams Council, *Submission 401*; The Association of Independent Schools of New South Wales, *Submission 154*; Association of Independent Schools of the ACT (AISACT) (n 28); Public Affairs Commission of the Anglican Church of Australia, *Submission 225*; Australian Catholic Bishops Conference (n 10).

35 Free Reformed School Association (Western Australia) (n 28).

36 D Walter, *Submission 199*.

37 See, eg, Uniting Church in Australia Assembly (n 4); Hindu Council of Australia, *Submission 88*.

38 See, eg, S Kearney, *Submission 418*.

39 ALRC Survey, 2023 (Parent or carer in a school in the last five years; 45–54 years old); ALRC Survey, 2023 (Parent and volunteer in a school or early learning centre in the last 5 years; 35–44 years old); Bishops of the Australasian-Middle East Christian Apostolic Churches (n 10); Australian Catholic Bishops Conference (n 10); S Lamont (n 11); Catholic Education Archdiocese of Canberra and Goulburn, *Submission 328*.

40 Shore (Sydney Church of England Grammar School) (n 28); Bishops of the Australasian-Middle East Christian Apostolic Churches (n 10); Australian Catholic Bishops Conference (n 10).

41 ALRC Survey, 2023 (Support staff in a school in the last 5 years; 55–64 years old); ALRC Survey, 2023 (Parent in a school or early learning centre in the last 5 years; 65+ years old); ALRC Survey, 2023 (Parent and volunteer in a school or early learning centre in the last 5 years; 35–44 years old); Institute for Civil Society (n 28); T McCorkell, *Submission 258*; S Lamont (n 11); Not published, *Submission 185*; Not published, *Submission 315*; The Presbyterian Church of Victoria, *Submission 195*.

the context of learning, the co-curricular activities, interactions with fellow students, teachers and staff outside of the classroom, what is taught and how it is taught, each have a role to play.⁴²

Religious education is a whole school project, carried out through the school purpose, curriculum (beyond religious studies) and methods of instruction (pedagogy).⁴³

[Religious schools] have been established to convey secular knowledge within the context of a religious worldview, and to engage students in providing a moral framework according to the tenets of the religion that the institution represents in addition to teaching religious theology and practice.⁴⁴

A community that welcomes families of all types of faith and care[s] for, nurture[s] and love[s] and shape[s] their children in a holistic environment. The community is based on a genuine Christian faith with clear leadership and positive role modelling that has purpose and love.⁴⁵

To maintain a faith-based learning community, our staff must teach and model and live lives that reflect the faith they confess to hold.⁴⁶

It is particularly important that any staff who have significant contact with students share the school's ethos and accede to the relevant religious beliefs. Students can be just as much influenced by general conversation with a mathematics teacher (for example) as by the formal teaching of a teacher of religion.⁴⁷

Freedom of identity

32. Freedom to express one's identity is important to individuals and to the way they associate with others, including with people of the same faith.

33. Several past students and staff of religious educational institutions raised the importance of having the opportunity to be authentic about one's identity within a community such as a religious educational institution, including when this identity incorporates being LGBTQ+. A number of these individuals emphasised the significant psychological distress that can be caused by being forced to hide part of one's identity. They expressed a need for safe and inclusive cultures within religious educational institutions to demonstrate to LGBTQ+ staff and students that there is space in their community for people like them.⁴⁸

34. The ALRC heard from individuals, religious bodies, peak educational bodies, and non-government organisations that religious educational institutions, as communities of faith, also seek to manifest and express identities that reflect doctrinal interpretations, values, and beliefs.⁴⁹ Some religious bodies and individuals pointed to a state of flux within religious institutions, whereby doctrinal interpretations are evolving to be more inclusive of LGBTQ+ people.⁵⁰

35. Members of the LGBTQ+ community told the ALRC that they are already members of religious educational institutions, even if their identities are not acknowledged or affirmed by leadership or other members:

Religious educational institutions who want to discriminate on the basis of sexual orientation often don't realise that those people are already within their staff/student body.⁵¹

42 Moore Theological College Governing Board, *Submission 99*.

43 Islamic Society of South Australia (n 8).

44 Muslim Legal Network (NSW), *Submission 419*.

45 ALRC Survey, 2023 (Parent or carer and volunteer in a school or early learning centre in the last 5 years; 35–44 years old).

46 ALRC Survey, 2023 (Chaplain in a theological college in the last 5 years; 35–44 years old).

47 D Walter (n 36).

48 ALRC Survey, 2023 (Affiliation not specified; age not specified); Name withheld, *Submission 112*.

49 S French (n 28); Anglican Church Diocese of Sydney, *Submission 189*; M Fowler (n 28); National Catholic Education Commission, *Submission 409*; Human Rights Law Alliance (n 22).

50 P Sutton, *Submission 184*; Catholics for Renewal, *Submission 124*.

51 Name withheld, *Submission 112*.

The ubiquity of faith-based schools (30% of all schools in Australia, and sometimes the only available option) means that some LGBTIQ+ people will inevitably be enrolled at such schools and may come to understand their identity while at those schools. It is clearly not realistic to expect students to identify personal characteristics about themselves that may result in discrimination prior to their enrolment and to seek to avoid schools that have an exemption to the prohibition against discrimination against them.⁵²

36. Current and former students and staff at religious schools described a spectrum of approaches towards LGBTQ+ people (and their associates and supporters), ranging from inclusion, to 'don't ask, don't tell' policies, to bullying, and overt exclusion:

There are some Catholic educational institutions that support LGBTIQ+ members of their community. There are many Catholic educational institutions that do not actively discriminate against LGBTIQ+ staff and students, however, there are also many who enforce a strict 'Don't Ask Don't Tell' policy that has a chilling effect in silencing the rights and voices of LGBTIQ+ Catholics, their loved ones and supporters.⁵³

A transgender boy was told by his Christian school to find another school after he advised them that he had changed his name and pronouns in accordance with his gender identity. He had always been a respectful, polite and an academically dedicated student. After leaving the school, he experienced poor mental health because he had to leave all of his close friendships behind. Despite how unsupportive his original school was, he eventually decided to re-enrol to be with his friends. On his return the school continued to refuse to acknowledge his name, pronouns or allow him to wear a uniform that aligned with his gender identity.⁵⁴

I was instructed [by the principal] not to speak with anyone about my sexuality and that to do so would incur consequences. It was made clear to me that everything would be fine if I remembered that I could 'get through' this and believe change was possible ... Finally, I'd had enough and in an emotional and spontaneous moment I came out as Gay in class. The consequences and retribution for this was swift ... I was suspended for what I had done as I had been explicitly instructed not to tell anyone.⁵⁵

I taught at [C]atholic high schools for 25 years. I was a year co coordinator for the last 13 years. When my partner and I decided after 18 years together to have a child I knew that I had to resign my position. I lived a professional life in the 'don't ask, don't tell.' [I]t was made clear to me by a friend who worked for the [Catholic Education Office] that I could not remain. It would get messy and I would never be able to acknowledge my daughter, access caregiver leave without maintaining an elaborate lie. No I was not removed, I resigned realising I could no longer maintain the double life and care for my family. I knew that even though a practising [C]atholic, the upholding of Catholic ethos in my contract would be held against me. I gave up my career to raise my beautiful daughter and now work as an art therapist. I suffered a great loss of identity in not being able to continue my career.⁵⁶

[Another] student ... was bullied relentlessly by his peers, and when the school asked him if he was gay, he admitted to it. The principal ... advised him to hide his sexuality, and that 'invisibility' and 'discretion' would protect him ...⁵⁷

I was told, and believed, that the school was acting with 'grace' towards me. I dared not tell anyone what I feared to be true about me – that I was one of the abominations, a lesbian. I knew that if I did, there would be no more grace. So I continued to convince myself that I wasn't gay.⁵⁸

52 Australian Human Rights Commission, *Submission 384*.

53 Not published, *Submission 410*.

54 LGBTI Legal Service Inc, *Submission 427*.

55 Not published, *Submission 164*.

56 Personal account, quoted in Rainbow Families, *Submission 217*.

57 Personal account of former student of Hillcrest Christian College, quoted in D Patterson (n 19).

58 Name withheld, *Submission 420*.

37. One non-government organisation shared with the ALRC an account of a young child of a gay parent who was told not speak about her father's sexuality or relationship with a male partner.⁵⁹

38. Some people described the forced secrecy and isolation they experienced by having their identity denied by those in leadership, and the harms associated with hiding their LGBTQ+ identity or relationships:

[The deputy principal] felt the school community would prefer to pretend people like me didn't exist ... working in an environment that required me to be 'closeted' to avoid raising concerns of staff and families, had seriously negative impacts on my own mental health ... I had the extra unwritten expectation that I would 'present as straight', that was nowhere to be found in the code of conduct.⁶⁰

Students, gay parents and staff hide their true identities and do not feel truly accepted and equal, so this leads to distress, depression and some cases of self harming. Staff either leave or are ostracised out. Children think they will go to hell.⁶¹

I noticed that students whom I suspected were LGBT were withdrawn and obviously unhappy. It was not possible to thrive in that environment as an openly gay student (or staff member). Students who had 'sinned sexually' (for example, were gay, or who had fallen pregnant) were barred from talking about their experiences or discussing their sexuality. Some students would begin to act out under the incredible strain of forced silence, closeting, innuendo and bullying. At this point they were able to be punished for their inappropriate behaviour; some such students were suspended so that their behaviour wouldn't adversely affect others. It was extremely rare for a student to be expelled; instead, the parents would be encouraged to withdraw their child so that the student didn't have the black mark of expulsion against their name. This was viewed as a gracious act. Staff sometimes joked about troublesome students who were 'encouraged to pursue excellence elsewhere'.⁶²

39. One peak educational body said that LGBTQ+ staff at religious educational institutions should be free to express their identities and not be denied professional opportunities because of their identity.⁶³ Former staff (and students) at religious schools recounted the devastating impact of being denied leadership positions because of their LGBTQ+ identity.⁶⁴

40. Staff were identified as important role models for their students, with varying views expressed about the significance of a staff member's personal identity and private life in performing this role. Some non-government organisations, parents, and staff (current and former) cited a need for LGBTQ+ staff to be visible role models for students (and other staff) as a way of modelling inclusion and respect in their school communities.⁶⁵ Other parents and religious schools thought it inappropriate for staff who are openly LGBTQ+ to be role models for students, as this did not reflect their beliefs on sexual ethics.⁶⁶ A senior leader in a religious educational institution stated that the expected degree of adherence to a religious moral code may depend on the nature of the staff member's role:

The level of adherence to the moral code and practicing of the beliefs changes slightly depending on the visibility of the staff member and the amount of contact with students and community. But ideally all roles need staff who are cohesive to the shared values and goals of the institution to enable the image of the school to be congruent in the public eye.⁶⁷

59 Equality Australia (n 5).

60 Name withheld, *Submission 112*.

61 ALRC Survey, 2023 (Affiliation not specified; age not specified).

62 Name withheld, *Submission 420*.

63 Catholic Secondary Principals Australia (n 13).

64 Not published, *Submission 164*; Name withheld, *Submission 112*.

65 Rainbow Families Queensland, *Submission 127*; Equality Tasmania, *Submission 423*; Name withheld, *Submission 420*.

66 Presbyterian Church of Australia, *Submission 186*; Presbyterian Church of New South Wales, *Submission 235*; Australian Christian Churches (n 14); A Deacon, *Submission 4*; Freedom for Faith, *Submission 203*; Not published, *Submission 165*.

67 ALRC Survey, 2023 (Principal or dean in a school or university in the last 5 years; 35–44 years old).

41. A former staff member of a religious school suggested that rendering invisible LGBTQ+ members of a community of faith contributes to the 'othering' of LGBTQ+ people, who are then perceived as 'outsiders'.⁶⁸ The idea that members of the LGBTQ+ community lack visibility within religious educational institutions was reinforced by views expressed by many parents, teachers, and volunteers at religious educational institutions who referred to anti-discrimination laws as benefiting only a small percentage of the population.⁶⁹

42. Some religious bodies and academics said that the way that students identify and behave (reflecting their moral character) is an important factor in selecting role models (such as school captains) in religious educational institutions. For instance, one of the views expressed was that it would be inappropriate for an LGBTQ+ student in an active same-sex relationship to perform the role of school captain as they would not be able to model Christian living.⁷⁰

Care and concern

43. Peak educational bodies and religious organisations affirmed that religious educational institutions owe students a duty of care, including in protecting vulnerable students from the risk of harm:

It must be emphasised that Islamic Schools do not set out to discriminate against staff and students. This would be antithetical to the Islamic concept of justice. Further, there is no record of Islamic Schools violating discrimination laws or failing their duty of care obligations towards students.⁷¹

Anglican schools are bound by a duty of care to our young people and the safety and wellbeing of our students is the top priority of every school.⁷²

In the context of religious educational institutions, the duty of care to children must be paramount. Children are usually the most vulnerable and at greatest risk of harm. There [has] been much evidence of trauma and adverse impacts, sometimes suicidal, suffered by children in some religious contexts where they have been condemned due to their sexuality or gender identity, all at a time when they should be nurtured and given a sense of dignity and self-worth.⁷³

44. Peak educational bodies and religious bodies emphasised the genuine care and concern that religious educational institutions hold for students, and the need for proactive approaches and careful decision-making that support the best outcomes for students:

Religious schools (including Christian schools like our member schools) have been part of the educational fabric of this country for hundreds of years. Throughout this time, religious schools have delivered valuable education services to the community and demonstrated genuine care and commitment to their students.⁷⁴

[Religious educational institutions] offer proficiency and genuine care for the welfare and learning of students founded on their strong religious beliefs and values.⁷⁵

68 Name withheld, *Submission 347*.

69 ALRC Survey, 2023 (Volunteer in a university in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Former parent and volunteer in a school; 65+ years old); ALRC Survey, 2023 (Parent in the last 5 years in a school; 35–44 years old); ALRC Survey, 2023 (Parent in a school in the last 5 years; 45–54 years old); ALRC Survey, 2023 (Teacher in the last 5 years in a school; 45–54 years old); ALRC Survey, 2023 (Affiliation not specified; 25–34 years old); ALRC Survey, 2023 (Volunteer in a youth camp in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Volunteer in a school in the last 5 years; 35–44 years old); Not published, *Submission 371*.

70 Presbyterian Church of Australia (n 66).

71 Islamic Council of Victoria, *Submission 301*.

72 Anglican Schools Australia, *Submission 385*.

73 Anglican Social Responsibilities Commission (Diocese of Perth), *Submission 98*.

74 Associated Christian Schools (n 28).

75 Australian Association for Religious Education, *Submission 306*.

Anglican schools provide appropriate and caring pastoral support and adjustments to allow all students to feel welcome and safe within the school community.⁷⁶

Proactive approaches are needed instead of reactive or deficit models. There are complex cases of Principal decision making focused on the best outcomes for students despite pressures from different quarters.⁷⁷

45. There was a general view that religious educational institutions demonstrate care and compassion towards students and have supportive policies and practices in place.⁷⁸ Religious bodies, theological colleges, government agencies, and individuals recognised that compassion, care, and inclusion are central to the work of religious educational institutions in society:

As a theological college, our commitment is to address difficult issues like domestic violence and abuse, gender, and sexuality, in such a way that trains students for being practitioners in a religious setting and at the same time models how to approach these complex issues when students are employed in their vocational religious contexts. Addressing these issues is a genuine necessity for their training and is in the long-term interests of our students.⁷⁹

Our Lutheran congregation and its school hold to the teachings of Jesus Christ and as such we welcome with love and compassion anybody, regardless of who they are ...⁸⁰

As someone who valued learning about Christianity at my school, I can attest to the fact that a faith-based education instils valuable Christian values such as compassion, empathy, and respect.⁸¹

To follow Jesus is to love your neighbour, to show compassion to those who are in need, and to build inclusive communities.⁸²

[Many faith-based schools] speak about ... their desire for education that teaches respect and tolerance for differences alongside religious teachings that promote love, justice, and compassion.⁸³

46. Demonstrating the importance of these values, some former students and staff at religious schools recounted the devastating impact on their lives (including their health, wellbeing, and finances) when care and support were withdrawn by their school communities because of their LGBTQ+ identity, or because they supported a LGBTQ+ student.⁸⁴ One former staff member described the deep distress and concern they felt for vulnerable students when their formal incident reports of peer-to-peer bullying — on the basis of (perceived) sexual orientation and gender presentation — were not addressed or not adequately addressed by the school executive:

Both [students] were so badly affected by their experiences at the school during that year, and by the failure of school leadership to protect or support them, that they ended up leaving the school ...⁸⁵

76 Anglican Church Diocese of Sydney (n 49).

77 Catholic Secondary Principals Australia (n 13).

78 Australian Catholic Bishops Conference (n 10); Anglican Church Diocese of Sydney (n 49); The Presbyterian Church of Victoria (n 41); Sydney Missionary and Bible College (n 6); St Paul's Lutheran Congregation Henty NSW, *Submission* 317; Presbyterian Christian Schools NSW (Low-Fee Christian Schools Board) (n 34); Catholic Education Tasmania, *Submission* 397; National Catholic Education Commission (n 49); Not published, *Submission* 310.

79 Sydney Missionary and Bible College (n 6).

80 St Paul's Lutheran Congregation Henty NSW (n 78).

81 D MacCulloch, *Submission* 86.

82 Activate Church, *Submission* 283.

83 Commissioner for Children and Young People (SA), *Submission* 360.

84 Name withheld, *Submission* 347; Name withheld, *Submission* 420; Name withheld, *Submission* 415; Name withheld, *Submission* 112.

85 Name withheld, *Submission* 347.

47. A legal professional organisation raised concerns over a direct conflict between practices mandated by a religious school and the school psychologist's professional duty of care:

As school psychologist, the employee was instructed to engage in conversations with the LGBTQA+ students based on conversion therapy ideology. This created a direct conflict with her professional duty of care to provide appropriate treatment. Her employer also instructed her to disclose information about the sexuality and sexual activity of students who had provided this information during confidential sessions with her.⁸⁶

Exclusion and harm

48. Exclusion from education and work — and loss of one's community — on the basis of protected characteristics and resulting harms were identified as serious issues impacting, or with the potential to impact, vulnerable students and staff.

49. One group of academics highlighted that various communities and individuals, including LGBTQ+ people, women, and girls have long histories of marginalisation and exclusion in Australia.⁸⁷ They told the ALRC that young people particularly need to be protected from harm in schools:

Protecting young people from such expressive harms is particularly important in the context of schooling. School is where students learn formative lessons with respect to gendered and sexual expectations and their individual worth and the worth of their peers, often grounded in the attributes that they each hold. Such formative lessons are, in significant part, learnt from messaging contained within the content of the school curriculum or in extra-curricular aspects of school life.⁸⁸

50. One non-government organisation emphasised the need to protect vulnerable LGBTQ+ students from psychosocial harms that may become manifest if it is taught through school curricula that students are wrong or sinful because of their LGBTQ+ identity.⁸⁹ More broadly, another non-government organisation stated that exclusion from a community or denial of opportunities within a community on the ground of a protected attribute can cause significant harm to relationships, dignity, and mental health.⁹⁰

51. Former students and staff shared accounts of the exclusion they faced while they were involved in religious schools, including the withdrawal of friendship, respect, support, and leadership opportunities and the sanctions they faced (such as termination) after coming out as gay or trans.⁹¹ For example:

As I grew and started to become who I am, I was acutely aware that my same sex attraction was only becoming more pronounced. I also began to understand more and more that my church and school community felt that in the eyes of the Lord this was a sin and did not represent that which God willed for my life. I simply cannot state in terms clear enough the depth of the mental and emotional torment I began to experience on an almost daily basis because of this ... I was no longer allowed to be a leader in any capacity, despite my upstanding character and being told I would become a prefect prior to disclosing I was gay, the risk now that I could be elevated to a leadership position and then come out as gay was too high. The school desperately did not want 'the gay issue' being discussed. I couldn't be a prefect anymore ... I just wanted to be loved, accepted and understood. The final two years of my schooling were completely overshadowed by the disciplinary actions [in response to me coming out as gay] and emotional hell of simply existing. To be made to feel like a criminal for how I feel and think.⁹²

86 LGBTI Legal Service Inc (n 54).

87 Australian Discrimination Law Experts Group, *Submission 75*.

88 Ibid.

89 ACON, *Submission 191*.

90 Kingsford Legal Centre, *Submission 339*.

91 Personal account of a teacher at a large, Victorian CSA school, cited in D Patterson (n 19); Equality Australia (n 5).

92 Not published, *Submission 164*.

52. Others described harms related to exclusion as seriously affecting their own or others' mental health, wellbeing, and capacity to learn or teach.⁹³ These accounts reflected the views of experts and children's commissioners who cited the disproportionate mental health related harm experienced by people with LGBTQ+ identities, including in education:

There is a clear link between experience of discrimination on the basis of gender and sexuality, and negative mental health impacts on LGBTQIA+ identifying students.⁹⁴

Although some religious schools welcome all students, many young people have told me they feel unsafe in religious school environments. These findings are consistent with research showing that LGBTQ+ young people have disproportionately poorer mental health outcomes compared to the general population and that this is directly related to their experiences in society and service systems, including school environments.⁹⁵

LGBTIQ+ young people aged 16 to 17 are more likely to attempt suicide in comparison to the general population, specifically they are almost five times more likely to have attempted suicide in their lifetime. They are also more likely to suffer from poor mental health, including suffering from depression (48.3%) and anxiety (63.8%). Any life challenge for them will be heightened and compounded if they are navigating environments of exclusion.⁹⁶

53. One former staff member at a religious school described a school culture that enabled exclusion and discrimination against LGBTQ+ students through unaddressed bullying, which contributed to significant negative health impacts for these students:

I witnessed a number of incidents of bullying of students by both staff and peers, related to those students' sexual orientation or perceived sexual orientation or their gender presentation ... [As an example, at] a time when I was out of the classroom, [a] group of Year 6 boys had told [a student] that he was 'going to hell' and was 'demon possessed', and in response the student made another serious attempt to harm himself, in the classroom.⁹⁷

54. One staff member shared that when they did act to protect LGBTQ+ students from bullying, they faced negative consequences:

I teach in a Catholic High School and I almost lost my job last year for reprimanding a student who was yelling out homophobic things in class. I had to get help from the union, write a formal letter and have an interview with the Principal to argue that I wasn't promoting ant[i] Catholic Views.⁹⁸

55. These personal accounts were reflected in broader findings shared with the ALRC. For instance, one government agency addressed the prevalence of homophobic and transphobic bullying in schools (generally) and the limited intervention from teachers:

We highlight the findings of our report that bullying – ranging from broad homophobic comments to direct physical harassment – was widespread among all school sectors, and that students felt teachers' intervention was limited ... Some students felt a lack of teacher intervention made bullying behaviours even more harmful. Others felt the teacher's lack of intervention was evidence that teacher's personal views aligned with the bullying.⁹⁹

56. Several government agencies drew attention to findings that discrimination against young people with LGBTQ+ identities can, in some instances, result in physical violence while at school (the findings relate to all schools, not just religious schools).¹⁰⁰

93 Name withheld, *Submission 420*; Name withheld, *Submission 112*.

94 Black Dog Institute, *Submission 221*.

95 Commissioner for Children and Young People (SA) (n 83).

96 Wear It Purple, *Submission 197*.

97 Name withheld, *Submission 347*.

98 Personal account, quoted in Rainbow Families (n 56).

99 NSW Advocate for Children and Young People, *Submission 209*.

100 Ibid; Commissioner for Children and Young People (SA) (n 83); Not published, *Submission 300*.

57. Several religious bodies and religious schools stated that a pastoral care approach guides the actions of religious schools and that there is no intent to exclude or discriminate against students or staff with protected attributes:

The approach taken in faith-based schools is one of pastoral support, rather than exclusion, and it is an approach adopted for all people, in all walks of life.¹⁰¹

The day-to-day reality of life in a Catholic school demonstrates that it does not involve any inherently discriminatory practices. On the contrary, it is part of the religious mission of a Catholic school to teach and nurture all students who are part of it, whatever their story.¹⁰²

Christian schools have no desire or motivation to exclude any student from the message of hope that Christ offers to all.¹⁰³

There is certainly no intent to suggest or advocate for some exclusionary practice or discrimination ...¹⁰⁴

58. One peak educational body stated that no discrimination should occur as their affiliated schools demonstrate a compassionate and inclusive approach towards students and staff.¹⁰⁵ In contrast, some former and current staff and parents at religious schools expressed the view that religious schools have a right to exclude people to maintain a homogeneity of values and beliefs, and that statements of belief and codes of conduct serve a key function to this end:

If the students don't agree with [the school's code of conduct], the family should find another appropriate school that shares the same values and beliefs.¹⁰⁶

Schools should have the right to refuse anyone they do not believe fits the values of the school ... Schools should be free to decide these things to keep the homogeneity of the values.¹⁰⁷

59. The ALRC heard from some individuals and legal professional organisations that requirements for religious schools to be upfront about policies that have a discriminatory effect only entrench discrimination where accommodation of diversity within those schools may otherwise be possible.

60. The exclusion of women from employment was another issue raised by former staff at religious schools. For instance, some people recounted that women had been excluded from particular positions on the basis that they were of childbearing age, or because they had married a divorcee, or because of religiously-based ideas about appropriate roles for men and women:

Working at some schools, women staff have not been given opportunities as they were at reproductive ages.¹⁰⁸

I had been offered employment (back in the 1990's) which ... was rescinded after I married a man who had been divorced (even though the teaching in the Bible allows for divorce and remarriage under certain circumstances, this educational organisation [held] different views).¹⁰⁹

101 Australian Christian Churches (n 14).

102 National Catholic Education Commission (n 49).

103 Not published, *Submission 246*.

104 Australian National Imams Council (n 34).

105 Catholic Secondary Principals Australia (n 13).

106 ALRC Survey, 2023 (Parent or carer, teacher and volunteer in a school or early learning centre in the last 5 years; 25–34 years old).

107 ALRC Survey, 2023 (Former teacher in a school; age not specified).

108 ALRC Survey, 2023 (Teacher or chaplain in a school or early learning centre in the last 5 years; 45–54 years old).

109 ALRC Survey, 2023 (Former student, staff and volunteer in a school or theological college; 45–54 years old).

Values and beliefs

Role in transmitting values and beliefs

61. Parents identified religious schools as important partners in supporting them (and their families) to pass on religious values and beliefs to their children.¹¹⁰ The role of religious schools was variously characterised as ‘promoting’, ‘influencing’, ‘instilling’, ‘reinforcing’, ‘demonstrating’, ‘transmitting’, and ‘modelling’ particular values and beliefs.¹¹¹

62. Alignment of parental and family values and beliefs with those of a religious school was stated to be important for some parents.¹¹² In relation to staff, the alignment of personal values and beliefs to those of a religious school was seen, by some parents, as an important foundation for role modelling and in turn, the authenticity of a community of faith.

Adherence to values and beliefs

63. Varying degrees of affinity with the values and beliefs of a religious educational institution were presented as thresholds to belonging to a religious educational institution community (for students and staff). These were stated as the need to ‘respect’,¹¹³ ‘support’,¹¹⁴ ‘reflect’,¹¹⁵ ‘mirror’,¹¹⁶ ‘share’,¹¹⁷ ‘subscribe to’,¹¹⁸ hold ‘similar’¹¹⁹ or the ‘same’¹²⁰ values and beliefs (and in some instance, worldview).¹²¹ For example:

Where individuals choose to be part of a school’s community (whether as a parent, student or employee), there is a legitimate expectation of respect for the beliefs and values upon which the school is founded and operates.¹²²

64. Some staff and parents expressed a preference for complete adherence, by both staff and students, to an educational institution’s expressed values and beliefs in order to build a community of faith.¹²³ Those staff and parents were generally supportive of staff codes of conduct.¹²⁴ For example:

One of the important roles that Christian school staff have is to exemplify an authentic Christian faith community ... This should be reflected in the lessons, relationships and actions of staff.¹²⁵

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- 110 ALRC Survey, 2023 (Parent and volunteer in a school in the last 5 years; 45–54 years old); ALRC Survey, 2023 (Parent and support staff in a school or early learning centre in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Parent and volunteers in a school in the last 5 years; 35–44 years old).
- 111 ALRC Survey, 2023 (Teacher in a school in the last 5 years; 25–34 years old); ALRC Survey, 2023 (Student, teacher and parent in a school, university or theological college in the last 5 years; 45–55 years old); ALRC Survey, 2023 (Parent in a school in the last 5 years; 34–45 years old); ALRC Survey, 2023 (Volunteer in a school or early learning centre in the last 5 years; 25–34 years old); ALRC Survey, 2023 (Student in a school, university or theological college in the last 5 years; 25–34 years old).
- 112 ALRC Survey, 2023 (Former teacher in a school; 65+ years old); ALRC Survey, 2023 (Parent, teacher, and volunteers in a school in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Parent in a school in the last 5 years; 55–64 years old); E Brown, *Submission 38*.
- 113 Associated Christian Schools (n 28).
- 114 Healinglife Church and Ministries (n 24).
- 115 P Bellas (n 22).
- 116 Association of Independent Schools of the ACT (AISACT) (n 28).
- 117 University of Southern Queensland Law, Religion, and Heritage Research Program Team, *Submission 202*.
- 118 S Lamont (n 11).
- 119 S C (a minor), *Submission 121*.
- 120 N Easton, *Submission 278*.
- 121 H Bootes, *Submission 109*; G Murray, *Submission 139*; P Jackson, *Submission 173*; Not published, *Submission 185* (n 41); G Beimers, *Submission 286*; G Grosvenor, *Submission 3*; S French (n 28).
- 122 Associated Christian Schools (n 28).
- 123 ALRC Survey, 2023 (Staff in a school in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Parent in a school in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Former teacher in a school; 65+ years old); ALRC Survey, 2023 (Former student in a school or theological college; 25–34 years old).
- 124 ALRC Survey, 2023 (Teacher and parent in a school or early learning centre in the last 5 years; 25–34 years old); A Sabahat, *Submission 267*; A Mohammed, *Submission 268*; F Nisar, *Submission 269*; K Foster, *Submission 400*; R Santos, *Submission 77*; A Hassan, *Submission 78*; M Butt, *Submission 85*; Australian Association for Religious Education (n 75); Australian Christian Higher Education Alliance, *Submission 208*; Lutheran Education Australia, *Submission 402*.
- 125 ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 45–54 years old).
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Schools should be able to set their standards for their code of conduct and if students don't agree with it, the family should find another appropriate school that shares the same values and beliefs.¹²⁶

65. Several religious bodies, religious schools, academics, and non-government organisations told the ALRC that religious educational institutions should be free to select all staff on the basis of religious belief.¹²⁷ Some individuals, religious bodies, and academics qualified this view by stating that giving preference to staff on this basis should not amount to discrimination on other protected grounds:

[I] recognise the validity of [the religious educational institution's] position regarding the importance and legal protection necessary for Christian schools to be able to hire staff who are organisationally and missionally aligned as people sharing a Christian faith – but this cannot be at the expense of institutional exclusion and active discrimination of LGBTQI staff, students and their advocates AND be government funded discrimination.¹²⁸

[Religious educational institutions] should have a substantial degree of autonomy to determine which positions need to have a religious preference (providing this does not discriminate on the basis of protected grounds).¹²⁹

66. Human rights commissions, non-government organisations, academics, unions, teachers, and parents further qualified this view, stating that religious educational institutions should only be permitted to select particular staff on the basis of religion if it is a genuine occupational requirement or inherent requirement of the particular role.¹³⁰ Some non-government organisations and legal professional organisations described inherent requirements, and a right to terminate staff who undermine the ethos of an institution, as potential loopholes to permit discrimination.¹³¹

67. Some religious schools, non-government organisations, and parents expressed the view that the enrolment and employment practices of religious educational institutions should not be unduly differentiated from the membership practices of other organisations, such as political parties, which may discriminate on the basis of relevant beliefs, and that to make a distinction would be unfair to religious educational institutions.¹³² For example:

Political parties will continue to be able to hire staff that support their values, while religious educational institutions will be restricted.¹³³

Effect of changes in expectations

68. The relationship between values and beliefs and doctrinal interpretation was raised in the context of school policies (including statements of belief). Former parents and staff of a religious

126 ALRC Survey, 2023 (Parent or carer and teacher in a school or early learning centre in the last 5 years; 25–34 years old).

127 A Deagon (n 66); P Parkinson, *Submission 95*; Freedom for Faith (n 66); S French (n 28); Not published, *Submission 89*; The Association of Independent Schools of New South Wales (n 34); Islamic Council of Victoria (n 71); Presbyterian Christian Schools NSW (Low-Fee Christian Schools Board) (n 34); Islamic Society of South Australia (n 8); Australian Catholic Bishops Conference (n 10); Australian Christian Churches (n 14); Executive Council of Australian Jewry (n 34).

128 D Patterson (n 19).

129 University of Southern Queensland Law, Religion, and Heritage Research Program Team (n 117).

130 ALRC Survey, 2023 (Parent or carer in a school in the past 5 years; 55–64 years old); ALRC Survey, 2023 (Teacher in a school in the past 5 years; 45–54 years old); Equality Australia (n 5); Victorian Equal Opportunity and Human Rights Commission, *Submission 255*; Diversity Council Australia, *Submission 398*; Australian Council of Trade Unions, *Submission 411*; Australian Discrimination Law Experts Group (n 87); Public Interest Advocacy Centre, *Submission 405*.

131 Thorne Harbour Health, Brave Network and SOGICE Survivors, *Submission 213*; Law Council of Australia, *Submission 428*; Pride in Law, *Submission 251*.

132 ALRC Survey, 2023 (Parent or carer and teacher in a school in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 25–34 years old); ALRC Survey, 2023 (Former support staff in a school; 55–64 years old); ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 45–54 years old); I Truscott, *Submission 31*; Not published, *Submission 315*; Not published, *Submission 324*; E Brown (n 112); N Huxham, *Submission 58*; L Parker, *Submission 147*; Freedom for Faith (n 66); Ambrose Centre for Religious Liberties, *Submission 394*; Catholic Education Tasmania (n 78); Institute for Civil Society (n 28); A Deagon (n 66); Catholic Women's League of Victoria and Wagga Wagga, *Submission 187*.

133 Not published, *Submission 178*.

school shared their experiences of a sudden change in the school's statement of belief, without consultation, which introduced a narrower and more conservative doctrinal interpretation, many years after they had become members of their school. They recounted the subsequent significant distress experienced by members of their school community, including by LGBTQ+ students, their parents, staff, and associates, who did not feel they could support the change in policy. They told the ALRC that the idea that a parent will know what they are 'signing up to' does not reflect reality, particularly in a school where a child may be enrolled at the age of five.

Importance of intra-religious freedom

69. Some parents told the ALRC that an expectation of complete adherence to strict doctrinal interpretations left little or no space for diversity in expressing faith as a person with a LGBTQ+ identity, or for a person who is divorced or in a de facto relationship, or pregnant and not married. Parents of students attending religious schools told the ALRC that having teachers who represent diverse identities supports student wellbeing within religious schools, particularly for religious students:

Having a mixture of teachers in the schools [reassures] students that [are] maybe going through decisions that there is a life that is supported beyond school.¹³⁴

It is crucial for students who are just growing into an awareness and understanding of their sexual orientation or gender identity, to have adults on staff in their school environment who can model a healthy self-concept and integration of their sexual or gender identity with their faith identity.¹³⁵

Teaching religious doctrine

70. The teaching of religious doctrine forms part of the right to manifest one's religious belief. The teaching of sexual ethics in religious schools was identified, specifically, by many as a key issue of importance, with a spectrum of views expressed.

71. Drawing on Australian research into the views of young people towards sexuality and relationships, one non-government organisation stated that young people want to access inclusive and realistic information about sexual and gender diversity, and a range of other issues related to safe and consensual sexual relationships — including issues related to domestic violence.¹³⁶

72. Some individuals and unions referred to nationally published data (in this instance relating to patriarchal concepts within different religions) to draw links between the religious tenet of 'male headship' and experiences of intimate partner violence against women.¹³⁷

73. One religious body told the ALRC that teaching religious beliefs on matters of sexuality and relationships is important, not only because these beliefs are in accordance with religious doctrine, but also because they contribute to the flourishing of young people as individuals.¹³⁸ There were also views expressed about the ability of parents to choose an education for their children that aligns with their views on sexual ethics:

'No human right may be invoked to destroy another human right' supports that any imputed freedom of sexual orientation in the wider population should not undermine parents' rights to determine the sexual ethics by which their children are educated and modelled.¹³⁹

¹³⁴ ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 35–44 years old).

¹³⁵ ALRC Survey, 2023 (Student and parent or carer in a school or early learning centre in the last 5 years; 45–54 years old).

¹³⁶ Public Health Association of Australia, *Submission 421*.

¹³⁷ A Eager, *Submission 153*. See generally Australian Education Union, *Submission 395*.

¹³⁸ Bishops of the Australasian-Middle East Christian Apostolic Churches (n 10).

¹³⁹ R Crook, *Submission 183*.

There is no need for legislation that forces ... emerging sexual ethics on school communities that for various reasons cannot share them.¹⁴⁰

Religious belief and practice will influence which school [parents] select for the children and what they teach their children about sexuality, gender, and sexual ethics.¹⁴¹

74. Religious organisations, unions, non-government organisations, and individuals expressed strong concern that certain religious teachings (such as those that oppose LGBTQ+ identities and relationships) may be discriminatory. While these submissions supported the freedom to teach religious doctrine, it was conditional upon the exercise of a duty of care towards students and staff, and the need for such teachings not to be discriminatory in effect:

While religious education institutes should be free to teach doctrine to students, this cannot be done without a duty of care, especially for queer students.¹⁴²

A school of faith should be free to discuss its religious doctrine within the confines of the [Sex Discrimination Act], but duty of care to children can only be realised if we restore programs like Safe Schools to be implemented across education providers.¹⁴³

Legislation should not protect the teaching in schools of religious doctrines that could damage the well-being and self-esteem of LGBTIQ+ students or protect religious teachings that deny basic rights and freedoms.¹⁴⁴

There is significant research that shows that LGBTIQ+ people who grow up in purity cultures and are told that homosexuality is a sin experience higher rates of depression and anxiety. This has been associated with stigma, prejudice and discrimination. To force them to teach a curriculum that reinforces that message is discriminatory, and should be illegal.¹⁴⁵

75. A peak educational body told the ALRC that religious educational institutions should be permitted to teach their specific beliefs on sex, sexuality, and gender, noting that duty of care, accreditation, and curriculum requirements already apply as a matter of course.¹⁴⁶

76. Concerns about the discriminatory effect of some religious doctrinal teachings were accompanied by the view that religious teachings should not be harmful to LGBTQ+ students and staff.¹⁴⁷ For example:

I was very clear in my mind that I was not prepared to follow [the principal's] directive [to teach that homosexuality was sinful and not to express any alternative Christian perspectives] as I knew that this messaging would increase Student 1's risk of further self harm or suicidality.¹⁴⁸

Teaching a student who experiences same-sex attraction that homosexuality is immoral and sinful is likely to cause deep psychological harm to the student and cause them to suppress their innate sexuality.¹⁴⁹

77. How to teach religious doctrine while upholding a duty of care towards students and staff was explored in detail by one religious organisation.¹⁵⁰

140 G Small, *Submission 25*.

141 R Barker (n 32).

142 Queer Department of the National Union of Students and Queer Office of University of Technology Sydney Students' Association, *Submission 252*.

143 Pride in Protest, *Submission 260*.

144 Women's Wisdom in the Church, *Submission 341*. See also, Australian Catholic Coalition for Church Reform, *Submission 348*; Concerned Catholics Tasmania, *Submission 355*; For the Innocents, *Submission 366*.

145 Queer Unionists in Tertiary Education, *Submission 321*.

146 Associated Christian Schools (n 28).

147 Victorian Pride Lobby, *Submission 123*; L van Leent, M Jeffries, N Barnes S Jowett, *Submission 158*; Australian Education Union (n 137); NSW Council for Civil Liberties, *Submission 407*; Uniting Network Australia, *Submission 408*.

148 Name withheld, *Submission 347*.

149 Aleph Melbourne, *Submission 179*.

150 Anglican Social Responsibilities Commission (Diocese of Perth) (n 73).

78. One religious body highlighted the contested nature of doctrines regarding sexuality within certain religions and asserted that, while the State should play no role in doctrinal debates, it does have an obligation to protect citizens from harm.¹⁵¹ For other religious bodies, the implication that religious teachings could be harmful was seen as offensive and reflecting anti-religious sentiment,¹⁵² and as underestimating the resilience of students.¹⁵³

Diversity and change

79. The ALRC heard from a diversity of religious educational institutions and educational representative bodies in Australia who presented a range of views on sexuality, gender identity and relationships, enrolment and employment practices, and practices for supporting the inclusion of students and staff.

80. In relation to enrolment, a small number of schools (for example, Free Reformed Churches of Australia, some Orthodox Jewish schools) offer enrolment to students who are members of a specific faith community or who live in close proximity to the school. A limited number of schools also limit employment to staff who are members of a specific faith community (for example, Free Reformed Churches of Australia). Most other religious schools in Australia have open enrolment policies.

81. The ALRC heard that a diversity of views exists between (and within) religious institutions and schools on marriage, sexual orientation, and gender identity.¹⁵⁴ For example:

The contemporary societal approach towards diverse genders and relationships is distinct to the traditional teachings and interpretations of various religions. Parents choose to send their children to faith-based schools so they can teach these issues in a manner which is sensitive to their beliefs and practices.¹⁵⁵

I am a Christian and I understand that all school communities and Christian communities will have a mix of values that we agree with and disagree with (I did not agree with the belief that marriage is only between a man and a woman).¹⁵⁶

Within the Christian community there exists a broad spectrum of understandings of human sexuality and gender identity, and of interpretations of the Biblical texts which touch on these issues.¹⁵⁷

Not all Christian schools subscribe to the same notions even within Christianity ...¹⁵⁸

82. This diversity of views was also reflected in submissions made by religious bodies and individuals.

151 Catholics for Renewal (n 50).

152 Freedom for Faith (n 66); Australian Catholic Bishops Conference (n 10); Australian Christian Churches (n 14).

153 Australian Christian Churches (n 14).

154 Catholic Secondary Principals Australia (n 13); Anglican Schools Australia (n 72); N Francis, *Submission 284*.

155 Muslim Legal Network (NSW) (n 44).

156 Name withheld, *Submission 112*.

157 Name withheld, *Submission 347*.

158 ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 35–44 years old).

83. Respect for the views of students, their parents, and staff (which may differ from those of religious leaders) was acknowledged by some religious bodies and former staff at religious schools as necessary to protect everyone's right to freedom of religion or belief.¹⁵⁹ The silencing of different views was identified by former staff of religious schools and by non-government organisations as a restriction on the right to freedom of religion or belief.¹⁶⁰ For example:

The school executive was unwilling to allow any freedom of conscience or belief in the matter of Christian attitudes to sexual and gender minorities ... my treatment by the school also indicated a determination to silence and exclude anyone who showed openness to a different understanding or approach to the treatment of sexual minorities ...¹⁶¹

Faith communities have a diversity of views on matters concerning sexual orientation and gender identity, including among people within the same faith community. The freedom of thought, conscience and belief is a human right enjoyed by everyone, and includes the right for a person of faith or no faith to have their own beliefs on these matters without unjustified discrimination.¹⁶²

84. The ALRC heard from others, however, that a unified perspective on matters relating to doctrinal interpretation was essential for differentiating religious educational institutions from secular educational institutions:

True education is meant to inform life and faith is fundamental in that. If the community of faith has strongly opposing beliefs, values and practices then they cannot present a unified view in the education they offer and are no different ... to a secular educational institution.¹⁶³

85. Drawing on personal experiences, former staff of religious schools noted the potential for a person's religious beliefs and attitudes to change over time.¹⁶⁴ For example:

Young people are at a formative stage of development and their religious beliefs may change over time, including in ways that are different from their parents.¹⁶⁵

I had been exposed to different theological viewpoints, and now understood that there are many committed Christians who believe that you can be gay and Christian, that you do not have to choose between your gender identity or sexual orientation and Christian faith.¹⁶⁶

86. Some former staff and parents at religious schools, including one former school principal, sought to distinguish their own beliefs on sexual ethics, sexual orientation, and gender identity from those expressed by the religious institutions with which they were affiliated, on the basis that the institutional view was no longer reflective of their own, or other evolving views within their community of faith:

I am also troubled by organisations, who portray themselves as speaking on behalf of a faith community. Many individuals, myself included, do not see such organisations ... as speaking on behalf of the faith community.¹⁶⁷

I tried to change [the institution's LGBTI] position from the inside. I thought my strong allegiance and contribution to [the institution] and its schools would give me influence here towards positive change. However, I came up against a very conservative board that would not compromise or soften [its] position. In the end, I simply had to walk away.¹⁶⁸

159 Catholics for Renewal (n 50); Not published, *Submission 410* (n 53).

160 Not published, *Submission 410* (n 53).

161 Name withheld, *Submission 347* (n 19).

162 Equality Australia (n 5).

163 ALRC Survey, 2023 (Support staff and volunteer in a school, university, theological college or other post-secondary college in the last 5 years; age not specified).

164 Name withheld, *Submission 112*.

165 Australian Human Rights Commission (n 52).

166 Name withheld, *Submission 420*.

167 Not published, *Submission 393*.

168 Personal account from ex-principal of a large Christian school, quoted in D Patterson (n 19).

87. These perspectives were accompanied by a sense that some religious schools were missing an opportunity to interpret religious texts, in light of changing social contexts, to protect LGBTQ+ minorities:

I encourage religious schools, as places of learning, to truly wrestle with biblical interpretations that inform the policy and practice, rather than adopt an interpretation shaped by the prevailing voices of conservative power, that neglects the social and historical context of the biblical world ... The strength of our religious belief within a democratic society and especially a government funded religious school, should be humble and compassionate enough to live with diversity of thought and lifestyle, protecting the minorities.¹⁶⁹

88. Other staff described how their school's approach towards the inclusion of LGBTQ+ people changed when a new school leader was appointed.¹⁷⁰

89. The inclusion or exclusion of people from religious educational institutions on the basis of LGBTQ+ identity (or those who affirm LGBTQ+ people) was raised as an issue that impacts the diversity of voices within a school:

If we take [the] position of sending off all Christian staff who are same-sex attracted (and in some cases, all of the staff who affirm same-sex relationships) to 'other schools', how sad is it that their voices and experiences are not represented in Christian schools.¹⁷¹

169 Ibid.

170 Personal accounts, cited in Equality Australia (n 5).

171 D Patterson (n 19).

Education, diversity, and choice

90. Having a diversity of educational options from which to choose is important for parents and students, as is an ability to exercise that choice.¹⁷²

Reasons for educational choices

91. While parents choose to send their children to religious schools for different reasons, one reason for selecting a particular religious school was because of the affinity between the school and family-held values and beliefs.¹⁷³ The ALRC also heard that alignment between the culture and faith of a family and the culture and faith of a school can be an important factor in educational choice, including for First Nations families:

Indigenous schools, and other independent schools which aim to maintain ethno-religious or cultural-spiritual connection, including language, are expressions of the health of Australia's multi-cultural social fabric, and should be valued as such. That parents value the freedom to pursue their religious and cultural aspirations for their children by exercising choice among diverse schooling options is evidenced in school enrolment data.¹⁷⁴

92. Other reasons parents choose to send their children to religious schools included:

- perception of higher educational standards;¹⁷⁵
- best locally available private education option;¹⁷⁶
- proximity to home;¹⁷⁷
- availability of transport;¹⁷⁸
- size of the school;¹⁷⁹
- pathways to tertiary education;¹⁸⁰ and
- the school is seen as the 'best fit' for the child (in terms of educational experience and opportunities for success).¹⁸¹

Diversity of educational options

93. Individuals, peak educational bodies, and religious bodies and organisations voiced strong concerns that the parental liberty to choose a religious and moral education for one's child, in conformity with one's own convictions, should not be limited.¹⁸² Some parents saw the proposed law reforms as a limitation on this right, and expressed concern that reforms would create greater uniformity and less diversity in education, making religious schools indistinguishable from secular schools.¹⁸³

172 Independent Schools Queensland, *Submission 119*; The Association of Independent Schools WA, *Submission 210*.

173 E Brown (n 112).

174 Association of Heads of Independent Schools of Australia, *Submission 196*.

175 ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 45–54 years old); Just.Equal Australia, *Submission 422*.

176 S Kearney (n 38).

177 ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 45–54 years old); ALRC Survey, 2023 (Teacher in a school or theological college in the last 5 years; 55–64 years old); ALRC Survey, 2023 (Support staff in a school or theological college in the last 5 years; 45–54 years old); ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 35–44 years old); Just.Equal Australia (n 175).

178 ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 35–44 years old).

179 ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 35–44 years old).

180 A Youth Advisory Committee Member quoted in Commissioner for Children and Young People (WA), *Submission 373*.

181 Association of Independent Schools of the ACT (AISACT) (n 28).

182 I Waller, *Submission 311*; C Foster, *Submission 312*; J Alvaro (n 22); Australian Christian Churches (n 14); National Catholic Education Commission (n 49); Catholic School Parents Australia, *Submission 247*; Association of Heads of Independent Schools of Australia (n 174); G & N Dethlefs, *Submission 36*.

183 K Nunn, *Submission 13*; M Yew, *Submission 167*; S Lamont (n 11); P Parkinson (n 127); P Quin, *Submission 79*; M Vieira, *Submission 137*; Campaign Submission 2, *Submission 331*.

94. Some parents emphasised the financial sacrifice they make in exercising their choice to send their child to a religious school.¹⁸⁴ For example:

Parents choose to send their children to these schools and often sacrifice to pay the additional fees required. They need to be assured their children are educated to the standards they choose.¹⁸⁵

Parent of faith send their children to these schools to be taught in an environment where their faith [and] values are upheld. The parents pay substantial money at a sacrifice to ensure that.¹⁸⁶

Limiting educational choices

95. A contrasting view shared with the ALRC was that the current exceptions for religious educational institutions in the *Sex Discrimination Act 1984* (Cth) limit parental choice by allowing discrimination against LGBTQ+ students, parents, and staff in some religious schools,¹⁸⁷ making them unavailable or less welcoming to some religious and non-religious families.

96. The ALRC heard from some religious individuals in consultations who disagreed with any exclusionary practices and saw their freedom of choice to participate in publicly funded educational institutions of their own religion as diminished by the existing exceptions in anti-discrimination law.

Religious educational institutions as voluntary associations

97. Some submissions expressed strong views about the voluntary nature of association within a religious educational institution. Enrolment or employment at a particular school was often framed as a ‘choice’ and tied to expectations of adherence to the values and beliefs of a community of faith (and the liberty of parents to send their children to religious schools).¹⁸⁸

98. The view was also expressed that students and staff have the ‘freedom to leave’ if the values and beliefs of the institution do not align with those held or ‘lived out’ by the individual or family.¹⁸⁹ This perspective was often justified by reference to the diversity of other (secular) educational institutions from which students and staff could choose:

In every region where our member schools operate, there [is] a diverse range of schools operating (which are based on different beliefs and values – whether derived from religion or a secular viewpoint). Individuals have a choice regarding where they decide to study or work.¹⁹⁰

With a well-established tradition of school choice in education and with an extensive secular public school system in each state and territory, religious schools should be allowed to teach and uphold

184 ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 45–54 years old); ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 65+ years old); Australian Union Conference of Seventh-day Adventists, Adventist Schools Australia, *Submission 138*; St Paul’s Lutheran Congregation Henty NSW (n 78).

185 G McCallum, *Submission 136*.

186 ALRC Survey, 2023 (Former parent or carer in a school; age not specified).

187 Just.Equal Australia (n 175).

188 C Ryan, *Submission 157*; A Strydom-Hensen, *Submission 241*; G Small (n 140); T McCorkell (n 41); C McDade-Broer, *Submission 308*; K Booth, *Submission 108*; G Maskelyne, *Submission 129*; Not published, *Submission 350*; K Foster (n 124); D MacCulloch (n 81); Australian Christian Churches (n 14); Anglican Youthworks (n 9); Associated Christian Schools (n 28); Anglican Church Diocese of Sydney (n 49); The Presbyterian Church of Victoria (n 41); Association of Heads of Independent Schools of Australia (n 174); Catholic School Parents Australia (n 182); Council of Catholic School Parents NSW and ACT, *Submission 288*; HillSide Christian College Staff, *Submission 290*; Australian Association for Religious Education (n 75); Hillside Christian College Association and Board of Governance, *Submission 338*; Bishops of the Australasian-Middle East Christian Apostolic Churches (n 10); Australian National Imams Council (n 34); Lutheran Education Australia (n 124); National Catholic Education Commission (n 49); Australian Muslim Advocacy Network (n 18).

189 ALRC Survey, 2023 (Staff in a school in the last 5 years; 65+ years old); ALRC Survey, 2023 (No direct involvement; 65+ years old); ALRC Survey, 2023 (Affiliation not specified; 55–64 years old); ALRC Survey, 2023 (Staff, parent or carer and board member in a school in the last 5 years; 35–44 years old); ALRC Survey, 2023 (Staff, parent or carer and volunteer in a school in the last 5 years; 55–64 years old); ALRC Survey, 2023 (Parent or carer in a school or early learning centre in the last 5 years; 35–44 years old); Anglican Church Diocese of Sydney (n 49); R Barnett, *Submission 122*; I Benson, *Submission 413*; Healinglife Church and Ministries (n 24); A Deagon (n 66); Australian Federation of Islamic Councils, *Submission 84*; Hillside Christian College Association and Board of Governance (n 188); Christian Voice Australia & CitizenGo, *Submission 378*.

190 Associated Christian Schools (n 28).

their religious beliefs in accordance with general curriculum and legal requirements. No family is required to send their children to a Catholic school, or to stay at a Catholic school if they do not like Catholic beliefs and teachings.¹⁹¹

Those persons, either parents, children, or teachers, who find discomfort with the sexual ethics of any specialist schools currently have the freedom to patronise schools where the ethic is more accommodating.¹⁹²

Student[s] who think they are or [may be] discriminated against have the choice to go to another educational institution.¹⁹³

99. Other submissions emphasised that there are many legitimate reasons LGBTQ+ staff and students may wish to work or study and remain at a religious school. For example:

- many schools do not make clear their stance on sexuality or gender, and a school's stance can change over time;
- many LGBTQ+ people are religious;
- some LGBTQ+ staff 'come out' later in life, having already worked at the school for some time; and
- in some areas there is only a religious school available.¹⁹⁴

100. One non-government organisation stated that the terms on which some LGBTQ+ students and teachers leave a religious educational institution does not always reflect the exercise of free choice.

In most instances the LGBTQ+ students and teachers who 'leave a faith school' do so under duress and are not technically expelled or sacked.¹⁹⁵

101. Several former students and others emphasised that students ordinarily do not have a choice in which school they attend:

My parents chose this for me, and I will do the same for my children.¹⁹⁶

The choice of school I attended was made by my parents at the time, but especially in later life, I can really see how much I gained by attending such school.¹⁹⁷

Like most children, I had little say or really strong opinion on where I would attend high school. My parents told me they wanted me to go to a Christian school, and as such, so did I ... my heart still breaks for that younger blameless past version of myself who was so tormented by the educational institution he had to attend.¹⁹⁸

From the perspective of minor students undertaking primary and secondary education, their membership in their school communities cannot reasonably be characterised as a voluntary association. They are not there by their own independent choice and they are not free to leave by their own independent choice.¹⁹⁹

191 National Catholic Education Commission (n 49).

192 G Small (n 140).

193 ALRC Survey, 2023 (No specification of affiliation with religious educational institutions; 45–54 years old).

194 Equality Australia (n 5); See also, Commissioner for Children and Young People (WA) (n 180).

195 Just.Equal Australia (n 175).

196 ALRC Survey, 2023 (Former student in a school; 25–34 years old).

197 ALRC Survey, 2023 (Former student in a school; 55–64 years old).

198 Not published, *Submission 164*.

199 Name withheld, *Submission 347*.

Public good

102. Compulsory education benefits individual students and society at large. One non-government organisation highlighted the importance of safe and inclusive services for LGBTQ+ people, including in education which is publicly funded.²⁰⁰ Some non-government organisations pointed to the significant size of the religious educational sector (as an educator and employer) as justification for narrowing existing legislative exceptions for religious educational institutions in anti-discrimination law.²⁰¹

103. Government agencies and individuals recognised that religious educational institutions contribute a public good, including in the context of compulsory education in Australia.²⁰²

104. The ALRC heard that religious educational institutions receive significant public funding in their provision of universal and compulsory education. On this basis, unions, non-government organisations, and individuals expressed the need for religious educational institutions to be accountable to community and taxpayer expectations in meeting standards set by the State.²⁰³ This included fulfilling the aims of education set out under international law, as highlighted by one professional legal body,²⁰⁴ and promoting respect for human rights and the tolerance of different viewpoints:

In a societal and legislative context of universal and compulsory education, every student has a right to belong and to be treated fairly and without discrimination in their educational community.²⁰⁵

Schools, whether government or non-government, are providing a public good at substantial public expense and they must be safe environments for all students to learn and develop.²⁰⁶

200 ACON (n 89).

201 Just.Equal Australia (n 175); Wear It Purple (n 96).

202 Australian Human Rights Commission (n 52); A Deagon (n 66).

203 Just.Equal Australia (n 175); Australian Education Union (n 137); Rationalist Society of Australia, *Submission 81*; L van Leent, M Jeffries, N Barnes S Jowett (n 147); D Patterson (n 19); N Francis (n 154); Not published, *Submission 194*; J Thyer, *Submission 101*. See also, Transgender Victoria (n 3).

204 Kingsford Legal Centre (n 90).

205 Name withheld, *Submission 347*.

206 Australian Human Rights Commission (n 52).

Feeling safe

105. Students, staff, and parents told the ALRC that feeling safe as a member of a religious educational institution is important to them, whether it be on the basis of one's LGBTQ+ identity, or one's religious affiliation.

Safe spaces for LGBTQ+ people

106. Having a 'safe space' to thrive in education and work (for example, free from bullying and discrimination) was identified by former LGBTQ+ students and staff at religious schools and by non-government organisations as critical:

LGBTIQ+ young people often experience significant life challenges within environments that are meant to provide safe havens such as homes and local communities. This is why it is critical that educational institutions embed safe and supportive environments for school students who may be seeking reassurance and care.²⁰⁷

All students, including these students who were becoming aware of their minority sexual orientation or gender identity/presentation, have a right to a safe learning environment.²⁰⁸

Many queer Christians I know 'came out' around 30, or are still largely closeted. These moments of openness and vulnerability need to be encouraged by safe spaces, in families, workplaces and communities.²⁰⁹

I believe queer people of faith need protection.²¹⁰

107. One parent stated that having LGBTQ+ staff who are 'visible' in a religious school can help to create a safe space for LGBTQ+ students, a view that was supported by a national peak health organisation:

If children don't see examples of queer adults in their life, then no matter how much you tell them that who they are is okay, they will have a lot of trouble comprehending it, because they have only ever seen the cis, heterosexual model. To exclude queer and gender diverse staff serves to erase us from the narrative and create a cis, straight world in which queer students will always feel isolated and defective, because they cannot see the future of people like them. The narrative that queer teachers will make students queer is also ridiculous, as demonstrated by the multitude of queer people who only ever had straight teachers. Instead, queer teachers make places safe for queer students, because then they have at least one person who they know will be on their side, who they can look to and see a future for themselves.²¹¹

The capacity of faith-based institutions to refuse to hire or to fire staff on the grounds of sexual orientation or gender identity is not only discriminatory towards LGBTIQ+ personnel, but also results in a lack of staff with lived experience capable of understanding the needs of LGBTIQ+ students.²¹²

108. Former staff of religious schools described the personal 'cost' (including to their mental health, and financially) of working in what they characterised as an 'unsafe' environment for LGBTQ+ people:

I noticed that students whom I suspected were LGBT were withdrawn and obviously unhappy. It was not possible to thrive in that environment as an openly gay student (or staff member) ... My complete denial of my own sexuality had a devastating cost. I was praised for the poignancy and

207 Wear It Purple (n 96).

208 Name withheld, *Submission* 347.

209 Name withheld, *Submission* 112.

210 ALRC Survey, 2023 (Caretaker and parent or carer in a school or early learning centre in the last 5 years; 35–44 years old).

211 ALRC Survey, 2023 (Other capacity in a theological college in the last 5 years; 25–34 years old).

212 LGBTIQ+ Health Australia, *Submission* 372.

effectiveness of my preaching, and continually elevated into leadership roles, while experiencing intense internal struggles.²¹³

[Religious educational institutions] benefited from my teaching skillset and values for as long as I coped with their unsafe environment – and then lost that benefit ... I resigned [mid-2021] primarily because of the psychological strain of being a closeted gay Christian teacher at the school ... I did not return to any classroom until the beginning of 2022 because I needed to ... recover from the build-up of stress over the 2.5 years of working in such an unsafe environment.²¹⁴

In their responses to ... incidents and patterns of peer bullying, school staff culpably failed to create or maintain a safe learning environment for some of the most vulnerable students in their care ... At no time was these students' right to a safe learning environment acknowledged, or any steps taken towards addressing safety concerns raised by my incident reports, or in conversation with teaching staff ... Even if I had become aware of my sexual orientation before leaving the school, it was clear to me that there would have been no possibility of safely acknowledging this to anyone in my workplace.²¹⁵

Safe spaces to express or transmit religious beliefs

109. Others, including a former student of a theological college, and staff presently working at a religious educational institution, said that religious educational institutions offer spaces for them to freely express their religious beliefs without discrimination.²¹⁶ For example:

Tolerance means we can all have our own safe spaces. This school is our safe space. It is a safe space for our families.²¹⁷

I chose to be involved in a [C]hristian school because I am [C]hristian and wanted to work somewhere that had the same values as me, and also to be able to freely express my beliefs without fear of people being unkind.²¹⁸

110. A peak educational body raised the need for students at religious schools to be physically safe and protected from religious intolerance:

It is deeply concerning that in Australia religious intolerance is expressed in anti-social and even criminal behaviours, many of which are aimed at young children attending religious schools.²¹⁹

111. Some parents and former students described religious schools as 'shelters' from the secular world, which serve to support a child's identity formation in alignment with particular religious values and beliefs:

Being [a] [M]uslim we uphold specific beliefs and upbringing values and having our children in such a community of faith makes it easier for our children to know who they are and what they believe in without confusion in their upbringing. This does not mean we exclude them from the wider community or disrespect[t] other people of faith and beliefs but [that we guide them] to know and respect our religion and not feel confused about their sense of identity.²²⁰

Parents can feel strong and trust[t] [that] their children aren't being exposed to things outside of their belief things that are morally and ethically wrong.²²¹

213 Name withheld, *Submission 420*.

214 Name withheld, *Submission 112*.

215 Name withheld, *Submission 347*.

216 ALRC Survey, 2023 (Student in a theological college in the last 5 years; age not specified).

217 HillSide Christian College Staff (n 188).

218 ALRC Survey, 2023 (Teacher in a school in the last 5 years; 25–34 years old).

219 Association of Heads of Independent Schools of Australia (n 174).

220 ALRC Survey, 2023 (Parent or carer in a school in the last 5 years; 35–44 years old).

221 ALRC Survey, 2023 (Former student in a school; 25–34 years old).

112. The role of staff in positively shaping religious educational spaces was also identified by parents and school leaders:

[A religious school] allows ... parents to feel safe that their kids are in the hands of educators and staff that adhere to the same Christian principles as their own.²²²

No staff member's role exists in a 'bubble' without effect on the culture and climate of the organisation. People influence people. We are dealing with faith-based schools where parents and stakeholders want specific influences.²²³

Public or private spaces?

113. Some people described religious schools as 'private' spaces that should be free to operate autonomously without State interference.²²⁴ In contrast, others saw religious education as a public good, given they provide publicly funded (compulsory) education to many and have contributed to the diversity of Australia's multicultural, multi-faith, and pluralistic society.²²⁵

²²² ALRC Survey, 2023 (Parent or carer and volunteer in a school in the last 5 years; 45–54 years old).

²²³ S Lamont (n 11).

²²⁴ Australian Federation of Islamic Councils (n 189); S Lamont (n 11).

²²⁵ Australian Human Rights Commission (n 52).

Navigating change

Fear and uncertainty

114. Non-government organisations, academics, government, a peak educational body, and religious organisations called for certainty in the law.²²⁶

115. Some organisations and individuals expressed fear and uncertainty about what proposed law reforms could mean for religious educational institutions and communities of faith. For instance, one religious body and several individuals told the ALRC that proposed reforms would make religious educational institutions no different from secular institutions.²²⁷ For example:

[The proposed reforms] would result in a Christian school eventually losing much of its faith-based character over time, such that its learning environment would eventually be no different to that of a secular school, except for the inclusion of religious ceremonies and religious classes every now and then.²²⁸

Taking away the ability to maintain a staff body unified in the same beliefs and living according to the school's principles will effectively make faith-based schools religious in name only and no different from their secular counterparts.²²⁹

116. Peak educational bodies, religious schools, and parents voiced concerns that the proposed reforms would bring the practices of religious educational institutions out of alignment with the values and beliefs of some fee-paying parents, requiring some or many schools to close.²³⁰ For example:

The sustainability and viability of a Christian independent school is dependent on its ability to create a faith community that lives out the values it espouses at [e]very point of interaction with its fee paying parents.²³¹

[The proposed law reforms if enacted] would be a dramatic departure from how faith-based schools have always operated, which may force many schools to close.²³²

The interpretation of the legislation as presently understood, without practical exemptions in some cases, challenges the religious practices and adherence to the faith requirements of [Jewish] schools, to the point that without the exemptions, those schools would be unable to continue to offer either secular or religious education. Those schools have stated they would be required to close under those circumstances.²³³

117. A religious body and a non-government organisation stated that proposed reforms posed an existential threat to many religious schools in Australia.²³⁴ Some individuals saw proposed reforms as silencing religious people or as enabling the infiltration of religious educational institutions by secular interests.²³⁵

226 Victorian Equal Opportunity and Human Rights Commission (n 130); Public Interest Advocacy Centre (n 130); National Catholic Education Commission (n 49); Islamic Society of South Australia (n 8); Australian Muslim Advocacy Network (n 18); Australian Discrimination Law Experts Group (n 87); Rationalist Society of Australia (n 203).

227 Australian Christian Churches (n 14); K Booth (n 188); G Maskelyne (n 188); L Dickson, *Submission 150*; G Aitchison, *Submission 224*; S & P Kershaw, *Submission 44*; D Powter, *Submission 48*; E & E Pulfer, *Submission 51*; R Nieass, *Submission 56*; N Huxham (n 132); N Stott, *Submission 61*; Not published, *Submission 391*.

228 Not published, *Submission 391* (n 227).

229 K Booth (n 188).

230 R Barnett (n 189); R Gadsby, *Submission 21*; Not published, *Submission 318*; K Foster (n 124); Australian Christian Higher Education Alliance (n 124); Australian Council of Jewish Schools (n 34); A Deagon (n 66); C Bauer, *Submission 2*.

231 Calvary Christian College (College Council), *Submission 192*.

232 C Bauer (n 230).

233 Australian Council of Jewish Schools (n 34).

234 Human Rights Law Alliance (n 22); Australian Christian Churches (n 14).

235 J O'Connell, *Submission 171*; Not published, *Submission 315*; P & M McCaffrey, *Submission 362*; E Brown (n 112); D Khlentzos, *Submission 175*.

118. Others expressed uncertainty about what the proposed law reforms might mean in practice. For instance, a peak educational body cautioned against unintended consequences for single-sex schools, and schools with an ethno-spiritual or cultural-spiritual foundation (including some First Nations schools).²³⁶ Academics, religious bodies, theological colleges, and non-government organisations told the ALRC that concepts such as ‘reasonableness’ or ‘proportionality’ do not provide concrete guidance as to what actions are permitted in each situation and as such, would cause legal uncertainty.²³⁷ For example:

The application of a proportionality test as a condition for the exemption introduces high levels of uncertainty, both for religious institutions, and also their employees.²³⁸

The narrowing faith exemptions and the inclusion of words relating to proportionality or appropriateness of certain actions would expose schools to lower barriers to legal challenge. The subjective language would make it difficult to predict how courts will interpret the duties of the school.²³⁹

Clarity and coherence

119. The ALRC heard that clarity in, and coherence of the law are important for the successful functioning of religious educational institutions.

120. A peak educational body and a religious organisation told the ALRC that religious educational institutions are already subject to a range of regulatory and community expectations, including from regulatory authorities, peak educational bodies, religious bodies, and parents.²⁴⁰

AISWA absolutely understand[s] the need for protection against discrimination and fully supports the notion that all students and staff should feel safe and included in their education and work environment[s]. However, those protections need to be balanced against the long-established operational latitude that Independent schools currently have, to maintain their autonomy to develop their operation and practices in line with the values and mission of the school and their commitment to parents, whilst still adhering to various legislation and regulations.²⁴¹

121. Some individuals and peak educational bodies emphasised that retaining autonomy (through maintaining existing legislative exceptions) is necessary for them to meet the expectations of parents.²⁴² For example:

Institutions must retain the right to employ people who support and give example to the beliefs and values of the institution. Parents have the right to expect that the teachers and other relevant staff are supportive of the religious beliefs, practice and ethos of the school.²⁴³

122. The ALRC heard from government and peak educational bodies that for anti-discrimination laws to achieve their aims, they must be applied consistently and coherently.²⁴⁴ One peak educational body stressed that narrowing existing legislative exceptions would assist their affiliated schools to manage different pressures and promote student well-being:

The laws are needed so that consistency happens – Principals are motivated in Catholic schools by their commitment to inclusion and being a moral compass and ... are supported in this inclusion by the Catholic Church. Clearly there are issues across the country between Catholic Dioceses and the States and Territories. Laws need to keep people [up] to the intended standard.²⁴⁵

236 Association of Heads of Independent Schools of Australia (n 174).

237 M Fowler (n 28); Sydney Missionary and Bible College (n 6); The Institute of Public Affairs, *Submission 250*; Australian Catholic Bishops Conference (n 10).

238 M Fowler (n 28).

239 The Institute of Public Affairs (n 237).

240 Islamic Council of Victoria (n 71); The Association of Independent Schools WA (n 172).

241 The Association of Independent Schools WA (n 172).

242 P Nolan, *Submission 1*; Council of Catholic School Parents NSW and ACT (n 188).

243 Australian Association for Religious Education (n 75).

244 Minister for Human Rights (ACT), *Submission 390*; Catholic Secondary Principals Australia (n 13).

245 Catholic Secondary Principals Australia (n 13).

123. A former teacher in a religious school and former bureaucrat in a peak educational body shared in a consultation the view that ambiguity in anti-discrimination law creates gaps in protection and can lead to inconsistent approaches depending on who is in leadership.

124. Under Tasmanian law,²⁴⁶ religious educational institutions are not permitted to discriminate against students or staff on grounds equivalent to those in the *Sex Discrimination Act*. The ALRC consulted with a number of people in Tasmania about their experiences. Two former teachers in Tasmania stated that schools find ways to ‘get around’ the state laws. One consultee cited a discrepancy between the inclusive and compassionate work of staff at the school and the antithetical directives from and practices of the school’s governing body. A former bureaucrat in a religious educational institution told the ALRC that in their previous role, they would suggest to teachers to ‘work around doctrinal issues quietly’ to avoid coming into conflict with more conservative views held by religious institutions.

125. The ALRC did not hear any views that the narrowing of legislative exceptions in anti-discrimination laws in some states and territories had in fact caused problems for religious schools. Some government agencies, individuals, and non-government organisations expressed the view that religious educational institutions continue to thrive in jurisdictions where legislative exceptions have been narrowed. For instance, one human rights commission in a jurisdiction with relatively narrow exceptions for religious educational institutions highlighted that changes to anti-discrimination laws in 2002 had not resulted in large numbers of complaints being made against religious educational institutions, either by students or employees, in the two decades since:

Despite being the subject of considerable public discussion in recent years, in [the Queensland Human Rights Commission’s] experience the complaints against religious educational institutions on the basis of sex, pregnancy, sexuality, gender identity, intersex status, or relationship status are very rare, and the few that have been received have been mostly resolved through the conciliation process.²⁴⁷

126. Some governments and professional legal organisations highlighted the importance of coherence in anti-discrimination laws across Australia to ensure that protections afforded to people with protected attributes do not change merely due to their geographic location,²⁴⁸ and that these laws should be easier for religious schools to navigate.²⁴⁹

Inclusion

127. The ALRC heard that religious educational institutions have navigated changes to exceptions from anti-discrimination law in several Australian jurisdictions, and that many inclusive institutions exist in jurisdictions with broad exceptions.

128. Several religious bodies and organisations, principals, and heads of religious educational institutions, emphasised that inclusion of LGBTQ+ people in religious educational institutions is possible, and pointed to the many institutions that already have inclusive values, beliefs, culture, policies, and practices in place. For example:

Each student should be respected and have access to an education in an environment which is safe, and fosters their growth and development as citizens, family members, friends and individuals. All are entitled to an education. Schools should reflect the mainstream values of diversity, inclusion, acceptance and tolerance.²⁵⁰

²⁴⁶ *Anti-Discrimination Act 1998* (Tas).

²⁴⁷ Queensland Human Rights Commission, *Submission 125*. In correspondence with the ALRC, Equal Opportunity Tasmania confirmed that there were few complaints made in Tasmania against religious educational institutions: Letter from Commissioner Sarah Bolt to the ALRC, 23 September 2023.

²⁴⁸ Australian Section of the International Commission of Jurists & International Commission of Jurists Victoria, *Submission 404*.

²⁴⁹ Minister for Human Rights (ACT) (n 244).

²⁵⁰ P Sutton (n 50).

Discrimination in any form is unacceptable. It jeopardises the safe and supportive school environments that are so central to our mission. It undermines the potential of individuals and the cohesion of communities ... Our shared religious ethos and values define the nature of our communities, and those same values call us to welcome families, however they are formed and whatever they look like ... All these are expressions of a deeply inclusive commitment to our faith-based ethos and values.²⁵¹

The harm toward students the proposed legislation seeks to address is bullying through put downs or deliberate exclusion, which is unislamic and unacceptable. Any speech that suggests a person is less human or inferior to others because of their sex or sexual identity goes against the Islamic ethos of always aspiring to act with the best of character and manners.²⁵²

Increasingly Melbourne's leading Jewish schools are genuinely concerned about the well-being of LGBTIQ+ students and are putting policies and practices in place to protect, nurture and strengthen the identities and individuality of these students. The schools proactively adopting these practices fully understand that students who can live as their authentic selves achieve better outcomes at school and in life generally.²⁵³

In our experience, Catholic school communities have been welcoming of difference for more than two centuries in Australia. Catholic schools don't ask for all students or families to be Catholic – although it's important that families who are of the faith have some priority around enrolling in our schools.²⁵⁴

All students, regardless of their background, gender identity or faith are welcome in Catholic schools.²⁵⁵

Our schools regularly enrol students and families who do not agree with the teaching of the Presbyterian Church on sexuality and gender. The schools aim to deal with these differences sensitively and pastorally, and the vast majority of these students and families appreciate the education and care they receive from our schools. Our schools do not refuse or terminate enrolment for students on the basis of sexual orientation.²⁵⁶

129. A range of guidance exists to support schools to be inclusive of LBGTQ+ people. Nevertheless, one government agency highlighted that there can be a lack of awareness amongst many teachers of LBGTQ+ concepts, and suggested that all staff should be trained in this regard.²⁵⁷

130. Some parents expressed the view that it is important for them to know that their children will be accepted by, and supported in, religious schools, irrespective of their own or their child's sexual orientation or gender identity.²⁵⁸

251 Letter from 51 Principals of Religious Schools to the Hon Scott Morrison MP, 26 November 2018 <<http://www.ascschools.edu.au/su/>>.

252 Islamic Society of South Australia (n 8).

253 Aleph Melbourne (n 149).

254 Catholic School Parents Australia (n 182).

255 Council of Catholic School Parents NSW and ACT (n 188).

256 Presbyterian Church of New South Wales (n 66).

257 NSW Advocate for Children and Young People (n 99).

258 Rainbow Families (n 56).

Inquiry approach

131. The methodology employed by the ALRC in this Inquiry included three key research methods (in addition to doctrinal legal research) which generated the data that is the subject of this Background Paper:

- **Consultations:** with stakeholders (organisations and individuals) representing different groups and perspectives, to inform the ALRC on the topic area and the need for reform.
- **Formal submissions:** from stakeholders (organisations and individuals) elicited in response to the proposed law reforms in the [Consultation Paper](#).
- **Survey responses:** from individuals involved in religious educational institutions reflecting their direct experiences of these institutions.

132. Over the course of the Inquiry, the ALRC spoke with **131 consultees**, received **428 formal submissions**, and received over **41,000 survey responses**.



Consultations

133. The ALRC spoke with 131 individuals and organisations in 68 different confidential consultation sessions from November 2022 to September 2023 (see [Appendix A](#)). Consultations were held in-person in Brisbane, Sydney, Canberra, and Melbourne, and online using videocall technology. Consultees were located across all Australian states and territories, as well as the United Kingdom, Canada, Germany, and New Zealand. Some stakeholders directly approached the ALRC and requested a consultation meeting. Other stakeholders were consulted by the ALRC because they:

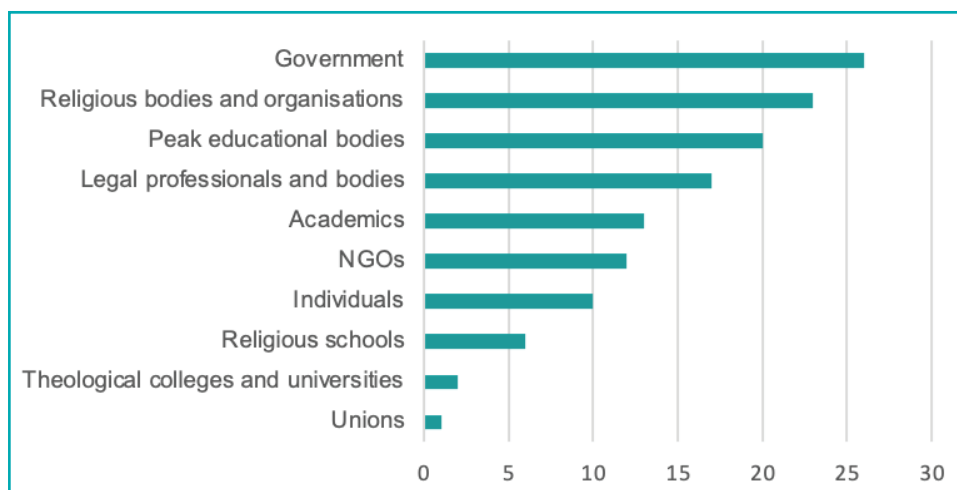
- had previously submitted to other relevant inquiries; or
- had previously engaged with the ALRC in its former (discontinued) Review into the Framework of Religious Exemptions in Anti-Discrimination Legislation; or
- had been recommended by other stakeholders.

134. The ALRC endeavoured to speak with a broad and diverse group of stakeholders in consultations. The various categories of stakeholders and the number of people consulted by the ALRC are set out in [Figure 4](#) below.

135. The ALRC developed consultation questions specific to the expertise and experience of each stakeholder. Consultees were given the opportunity to ask their own questions and to guide discussion. Consultations were attended by ALRC staff and ALRC Commissioners (where possible). The specific matters discussed in each consultation are kept confidential, in order to promote a free and frank exchange of ideas between consultees and the ALRC.

136. Given the confidential status of consultations, the ALRC does not attribute specific statements to individual consultees without express consent.

Figure 4: Consultees by category (number of people)²⁵⁹

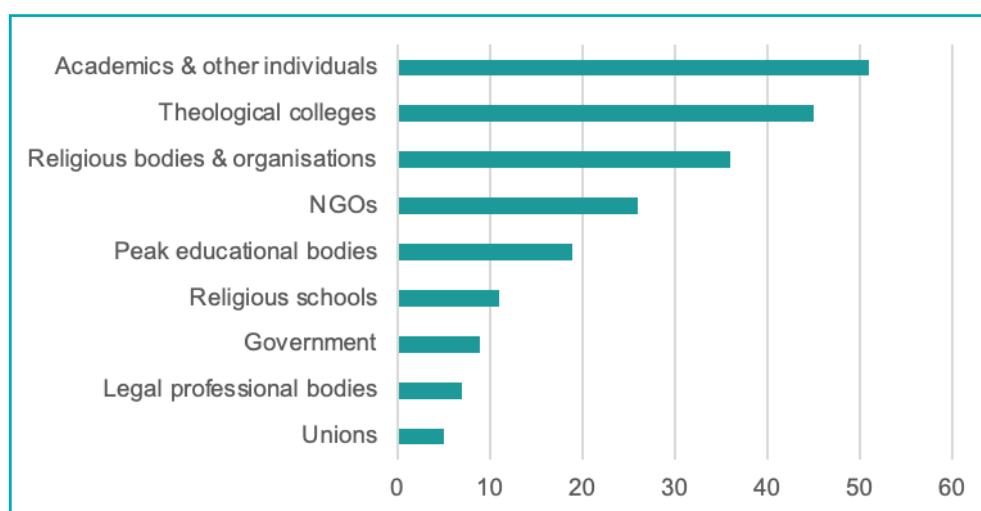


Submissions

137. The ALRC received 428 formal submissions in response to the *Consultation Paper* which was released in January 2023. Of these, 301 submissions were made by individuals and 127 were made by organisations. Submissions provided the ALRC with feedback on the law reform propositions and proposals set out in the *Consultation Paper*. **Figure 5** below outlines the number of formal submissions received by the ALRC, set out by stakeholder group.

138. Submissions made to the Inquiry are published on the [ALRC website](#), with the exception of submissions made confidentially. The ALRC sought and received permission from submission authors to include direct quotes from several confidential submissions in this Background Paper — references to these confidential submissions appear as ‘Not published, *Submission X*’. For privacy reasons, the ALRC has omitted the names of educational institutions from these direct quotes.

Figure 5: Submissions by category (number of authors)²⁶⁰



²⁵⁹ In some instances, the ALRC consulted with multiple representatives from one organisation. This graph represents the total number of consultees engaged, rather than the number of organisations consulted, or the number of consultation sessions conducted.

²⁶⁰ The ALRC received several submissions that were co-signed by multiple authors (for example, academics and theological colleges representing different organisations). To more accurately represent the submissions received, the number of authors of submissions is represented instead of the number of separate submissions.

139. For the purpose of substantively analysing submissions, the ALRC developed a number of specific codes to represent relevant topics raised in submissions. This process involved using NVivo software to identify sentiments and themes within a sample of submissions.²⁶¹ These sentiments and themes were then used to establish preliminary codes. All submissions were read and coded by ALRC staff.

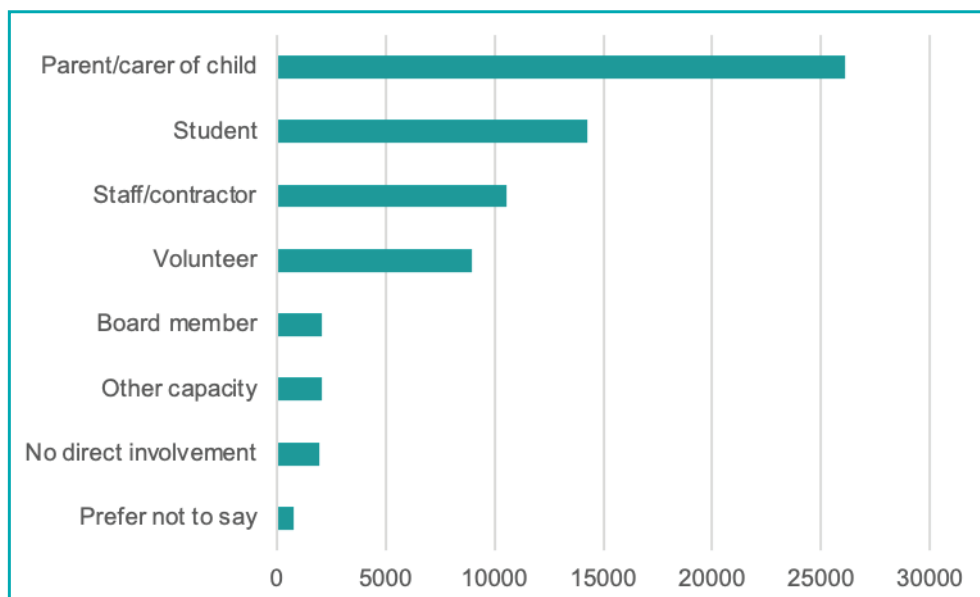
140. Analysis of submissions was an iterative process; new themes were identified and established during the coding process, which required returning to and re-coding previously analysed submissions.

141. The ALRC identified 90 submissions as belonging to one of eight campaign templates. These 90 submissions used either an identical (unmodified) campaign template, or a campaign template with minor modifications. Each campaign submission was reflected separately in the sentiments analysis conducted by the ALRC, however, only one submission from each campaign was analysed for the purpose of understanding the themes raised in those submissions.

Survey

142. The ALRC created a public survey to capture the views and experiences of students, parents, staff, and others involved in religious educational institutions, related to key issues in the Inquiry. The ALRC received 41,057 responses. Survey results were anonymous. It was not compulsory for participants to answer any particular question in the survey, and respondents had the option to choose whether to share any demographic data. **Figure 6** below depicts the number of responses, broken down by reference to the nature of the respondent's involvement in a religious educational institution.

Figure 6: Number of survey responses by category (nature of involvement in a religious educational institution)²⁶²



²⁶¹ In response to propositions and proposals set out in the *Consultation Paper*.

²⁶² The ALRC survey received 41,057 responses from individuals. In approximately 40% of these responses, individuals reported two or more categories of involvement with religious educational institutions. These included current and previous involvement, for instance, an individual may have previously been involved as a student and is currently involved as a parent of a child attending a religious educational institution. **Figure 6** shows the total number of instances of involvements people have, and have had, with religious educational institutions. This figure reflects a total of 66,607 instances of involvement.

143. The survey was not intended to reflect a representative sample of the population. For this reason, sampling was not undertaken, and quantitative data has not been generated from survey responses.

144. The survey was built using Qualtrics software and made available for completion online. The survey was promoted through the *Consultation Paper*, and in the January 2023 *ALRC In Brief* electronic newsletter (2,814 recipients), which included a link to the survey. Other organisations (including religious educational institutions) shared a link to the survey with their parent and staff communities.

145. With the exception of questions aimed at capturing demographic data (such as the nature of the respondent's involvement with religious educational institutions), the survey was comprised of questions that would elicit open-ended responses. For instance:

- Why did you choose to be involved with a religious educational institution?
- What do you see as the good things about religious educational institutions that you have been involved with?
- If you feel comfortable doing so, please describe in a few words how you have experienced or witnessed ... discrimination [on the basis of attributes protected under the *Sex Discrimination Act*].
- What do you think about reforms to change the law so that religious educational institutions would not be allowed to discriminate against students on the grounds of sexual orientation, gender identity, marital or relationship status, or pregnancy?

146. Survey results were analysed by the consulting firm ACT xm. Using Qualtrics' text iQ tool, ACT xm research staff searched for keywords, patterns of words, and phrases to identify key themes and sentiments within open-ended responses to survey questions. A significant number of responses were manually checked to improve the accuracy of the algorithm used to analyse and group the data. ACT xm research staff manually searched and selected quotations to illustrate each broad theme or sentiment expressed.

147. The ALRC was given direct access to the full set of survey responses (as raw data), as well as data grouped by theme and sentiment.

Appendix A Consultations

Note that individuals are listed with the affiliation and title held at the time of consultation.

	Name	Consultee location
1	Leonie Campbell, Law Council of Australia	Canberra
2	Matthew Wood, Law Council of Australia	Canberra
3	Karen Toohey, ACT Human Rights Commission	Canberra
4	Gabrielle McKinnon, ACT Government	Canberra
5	Elizabeth Dixon, ACT Government	Canberra
6	Anthony Odgers, Independent Education Union	Melbourne
7	Alastair Lawrie, Public Interest Advocacy Centre	Sydney
8	Jonathon Hunyor, Public Interest Advocacy Centre	Sydney
9	Liam Elphick, Monash University and Australian Discrimination Law Experts Group	Melbourne
10	Professor Beth Gaze, The University of Melbourne and Australian Discrimination Law Experts Group	Melbourne
11	Dr Alice Taylor, Bond University and Australian Discrimination Law Experts Group	Gold Coast
12	Dr Robin Banks, University of Tasmania and Australian Discrimination Law Experts Group	Hobart
13	Nick Jensen, Australian Christian Higher Education Alliance	Sydney
14	Peter McKeon, Australian Christian Higher Education Alliance and Excelsia College	Sydney
15	Dr Jeannie Trudel, Christian Heritage College	Brisbane
16	Mark Sneddon, Sneddon Legal and Consulting	Sydney
17	Bishop Michael Stead, Anglican Church Diocese of Sydney	Sydney

	Name	Consultee location
18	Peter Fowler, The Anglican Schools Corporation	Sydney
19	Alexander Teh, Australian GLBTIQ Multicultural Council	Melbourne
20	Vanessa Cheng, Australian Association of Christian Schools	Melbourne
21	Adel Salman, Islamic Council of Victoria	Melbourne
22	Reverend Dr Garry Deverell, University of Divinity	Melbourne
23	Professor Luke Beck, Monash University	Melbourne
24	Leonard Hain, Australian Council of Jewish Schools	Melbourne
25	Nechama Bendet, Australian Council of Jewish Schools	Melbourne
26	Aaron Strasser, Adass Israel School	Melbourne
27	Rabbi Yochanon Goldblatt, Yesodei HaTorah College	Melbourne
28	Professor Patrick Parkinson, Freedom for Faith	Brisbane
29	Associate Professor Neil Foster, University of Newcastle and Freedom for Faith	Newcastle
30	Mike Southon, Freedom for Faith	Online
31	Kim Bailey, Freedom for Faith	Online
32	Christopher Brohier, Australian Christian Lobby	Brisbane
33	Wendy Francis, Australian Christian Lobby	Brisbane
34	Rob Norman, Australian Christian Lobby	Brisbane
35	Ann Rebgetz, Catholic Secondary Principals Australia	Brisbane
36	Helen Clapham-Burns	Brisbane
37	Emma Leitch	Brisbane
38	Sally Sievers, Northern Territory Anti-Discrimination Commission	Darwin
39	Traci Keys, Northern Territory Anti-Discrimination Commission	Darwin
40	Dr Karen Pack	Sydney
41	Bronte Scott	Sydney
42	Steph Lentz	Sydney

	Name	Consultee location
43	Rodney Croome AM, Just.Equal Australia	Hobart
44	Sally Goldner AM, Just.Equal Australia	Melbourne
45	Brian Greig OAM, Just.Equal Australia	Perth
46	Dr John Byrne, Equal Opportunity Commission (WA)	Perth
47	Reverend Dr Jo Inkpin, Equal Voices	Sydney
48	Benjamin Oh, Equal Voices and Rainbow Catholics for InterAgency for Ministry	Sydney
49	Sean Costello, Queensland Human Rights Commission	Brisbane
50	Heather Corkhill, Queensland Human Rights Commission	Brisbane
51	Matilda Alexander, Queensland Law Society and Rainbow Families Queensland	Brisbane
52	Bridget Burton, Queensland Law Society	Brisbane
53	Emma Phillips, Queensland Law Society	Brisbane
54	Jacinta Lewin, Law Council of Australia	Melbourne
55	Farzana Choudhury, ACT Law Society	Canberra
56	Gabrielle Sullivan, ACT Law Society	Canberra
57	Rebecca Davern, Victorian Bar	Melbourne
58	Mitchell Coidan, Law Society of New South Wales	Sydney
59	Simeon Beckett SC, New South Wales Bar Association	Sydney
60	Kate Barrett, New South Wales Bar Association	Sydney
61	Richard Easton, Law Council of Australia	Canberra
62	Alanna Condon, New South Wales Bar Association (Secretariat)	Sydney
63	Mark Spencer, Christian Schools Australia	Sydney
64	Anna Brown OAM, Equality Australia	Sydney
65	Ghassan Kassisieh, Equality Australia	Sydney
66	Oliver Ray, Equality Australia	Sydney
67	Beth Blackwood, Association of Heads of Independent Schools of Australia	Canberra
68	Gawaine Powell Davies, Federation of Australian Buddhist Councils	Sydney

	Name	Consultee location
69	Peter Wertheim AM, Executive Council of Australian Jewry	Sydney
70	Elizabeth Stone, National Council of Churches in Australia	Sydney
71	Awa Momtazian, Australian Baha'i Community	Sydney
72	Dr Lynne Doneley, Associated Christian Schools	Brisbane
73	Alistair Macpherson, Associated Christian Schools	Brisbane
74	Andrew Long, National Catholic Education Commission	Canberra
75	Sally Egan, National Catholic Education Commission	Sydney
76	Luke Foley, National Catholic Education Commission	Sydney
77	Annette Loughlin-Smith, National Catholic Education Commission	Sydney
78	Professor Carolyn Evans, Griffith University	Brisbane
79	Confidential	Hobart
80	Ro Allen, Victorian Human Rights and Equal Opportunity Commission	Melbourne
81	Aimee Cooper, Victorian Human Rights and Equal Opportunity Commission	Melbourne
82	Emily Yates, Victorian Human Rights and Equal Opportunity Commission	Melbourne
83	Graeme Edgerton, Australian Human Rights Commission	Sydney
84	John Greatorex	Melbourne
85	Reverend Angus McLeay	Melbourne
86	Helen McKenzie, Anti-Discrimination NSW	Sydney
87	Mia Zahra, Anti-Discrimination NSW	Sydney
88	Jackie Lyne, Anti-Discrimination NSW	Sydney
89	Dr Christopher Duncan, Association of Heads of Independent Schools Australia	Canberra
90	Reverend Peter Laurence OAM, Anglican Schools Australia	Perth
91	Aila Dann, Anglican Schools Commission	Perth
92	Confidential	Launceston

	Name	Consultee location
93	Confidential	Hobart
94	Confidential	Hobart
95	Professor Lucy Vickers, Oxford Brookes University	Oxford, United Kingdom
96	Professor Benjamin Berger, York University	Toronto, Canada
97	Professor Heiner Bielefeldt, University of Erlangen-Nürnberg	Nürnberg, Germany
98	Abdullah Khan OAM, Islamic Schools Association of Australia	Perth
99	Archbishop Peter Comensoli, Australian Catholic Bishops Conference	Melbourne
100	Dr Nigel Zimmermann, Australian Catholic Bishops Conference	Melbourne
101	Jeremy Stuparich, Australian Catholic Bishops Conference	Canberra
102	Stephanie Wood	Adelaide
103	Simon Herd, Hunter Christian College	Newcastle
104	Rita Jabri Markwell, Australian Muslim Advocacy Network	Brisbane
105	Reverend David Baker, Queensland Churches Together	Brisbane
106	Gavin Byrnes, Roman Catholic Archdiocese of Brisbane	Brisbane
107	Cathy Uechtritz, Roman Catholic Archdiocese of Brisbane	Brisbane
108	Matthew Harman, Roman Catholic Archdiocese of Brisbane	Brisbane
109	Michelle Pearce, Australian Christian Lobby	Sydney
110	Professor Simon Rice OAM, The University of Sydney and Australian Discrimination Law Experts Group	Sydney
111	Dan Watson, Department of Employment and Workplace Relations	Melbourne
112	Peter Krizmanits, Department of Employment and Workplace Relations	Melbourne
113	Hea Hyun (Ariel) Chong, Department of Employment and Workplace Relations	Melbourne
114	Kathryn Wilkin, Department of Employment and Workplace Relations	Melbourne

	Name	Consultee location
115	Zoe Brightling, Department of Employment and Workplace Relations	Melbourne
116	Daniel Kirby, Department of Employment and Workplace Relations	Melbourne
117	Claudia Opie, Department of Employment and Workplace Relations	Melbourne
118	Toni Gascoigne, Department of Employment and Workplace Relations	Melbourne
119	The Hon Justice Elizabeth Raper, Federal Court of Australia	Sydney
120	Andrea Obeyesekere, Catholic School Parents Australia	Cairns
121	Siobhan Allen, Catholic School Parents Australia	Perth
122	Carmel Nash, Catholic School Parents Australia	Brisbane
123	Sarah Rose, Catholic School Parents Australia	Canberra
124	Jack Hensley, Rainbow Families	Sydney
125	Kate Eastman AM SC	Melbourne
126	Professor James Dalziel, Australian College of Theology	Sydney
127	Associate Professor Alex Deagon, Queensland University of Technology	Brisbane
128	Professor Claudia Geiringer, Te Aka Matua o te Ture (New Zealand) Law Commission	Wellington, New Zealand
129	Jenny Ryan, Te Aka Matua o te Ture (New Zealand) Law Commission	Wellington, New Zealand
130	Associate Professor Cristy Clark, University of Canberra and Australian Discrimination Law Experts Group	Canberra
131	Adjunct Professor Mark Fowler, University of New England and University of Notre Dame	Sydney