

LETTER FROM FAITH LEADERS RE ALRC CONSULTATION PAPER ON RELIGIOUS EDUCATIONAL INSTITUTIONS AND ANTI-DISCRIMINATION LAW

13 February 2023

The Hon Mark Dreyfus MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

RE: ALRC Religious Educational Institutions and Anti-Discrimination Laws: Consultation Paper

As leaders of or advisors to a number of religious communities and traditions, we write to convey to you our deep disappointment with the proposed reforms outlined by the Australian Law Reform Commission (ALRC) in their Consultation Paper on religious educational institutions and anti-discrimination laws.

In a letter to you on 8 June last year, we welcomed Labor's commitment to recommence the ALRC's Inquiry into the Framework of Religious Exemptions in Anti-Discrimination Legislation. This was in no small measure because of the assurances that you had given us of the Government's commitment to "*protect teachers from discrimination at work, while maintaining the right of religious schools to preference people of their faith in the selection of staff.*"¹ We were pleased to see that commitment reflected in the third limb of the [terms of reference](#), which asked the ALRC to balance the right of students and teachers not to be discriminated against on the basis of sexual orientation, gender identity, marital or relationship status or pregnancy with the freedom of religious schools "*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.*"

The proposals in the ALRC Consultation Paper seek to place severe limits on the application of this principle. These limits are neither expressly nor impliedly called for in the terms of reference themselves.

The Paper proposes that the right of religious schools to preference people of their faith in the selection of staff be strictly limited only to those teaching roles where the "*teaching, observance, or practice of the religion is a genuine requirement of the role, having regard to the nature and ethos of the institution*". For every other teaching role, it would be become unlawful for the school to give preference to employing teachers who share or are willing to commit to supporting the religious beliefs of the school.

If this proposal was implemented, it would introduce a new test into employment law, whose application and meaning are far from certain. In any given case, the onus would be on the school to prove that it satisfied the test. This would greatly expand the scope for future litigation, and would thus have a deterrent effect on any religious school contemplating engaging a candidate for employment who professes the same religion as the school, in preference to other candidates.

¹ Your letter to Bishop Stead, dated 21 April 2022.

Faith-based schools in Australia have long been free to give preference to employing staff who share or who are willing to support the faith and beliefs according to which the school is conducted. They do not seek the right to discriminate on the basis of a protected attribute, but simply to be able to employ staff who share or are willing to uphold the religious beliefs of the school. The ALRC is proposing to greatly restrict this freedom by requiring religious schools to employ teachers who may not share or support the religious beliefs of the organisation, and whose employment can only be terminated where they “actively undermine” the religious ethos of the school.

Having carefully considered the proposals in the Consultation Paper we are doubtful that the ALRC process can reach any balanced outcomes, as contemplated by the terms of reference, by starting with these proposals. We agree with the comments from the National Catholic Education Commission that the proposed reforms fail to provide real protections for religious schools to effectively operate and teach according to their religious beliefs and ethos, and that if the proposed reforms were adopted it would be a major blow to authentic faith-based education in Australia.

The purpose of religious schools is not only to impart intellectual knowledge, but also to instil religious values. In addition to teaching the prescribed curriculum, they provide religious activities that seek to demonstrate to students what a life lived in accordance with the relevant religion looks and feels like in practice. Having teachers and other staff at the school who can participate in these activities as a faith community, whether these staff are engaged in religious teaching or not, helps to realise the school’s religious purpose, and to develop an understanding by students that religion is not merely an adjunct to core activities, but an integral part of them. These are among the reasons why many parents choose to send their children to religious schools. The right of parents to do so is enshrined in international law. Despite paying lip service to the importance of all human rights, and rejecting any notion of a hierarchy of rights, the ALRC proposals would place unnecessary and unreasonable restrictions on the freedom of religious schools to give effect to the international human right of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The Consultation Paper continually cites the restrictive laws in Queensland and Tasmania as a basis for its claim that these laws “*indicate ... that such reforms would not significantly undermine the ability of religious schools to maintain their religious ethos.*” However, this is misleading. Religious schools in those States rely upon the current exemptions in section 38 of the Sex Discrimination Act and depend upon those exemptions overriding the State laws in order to maintain their religious ethos.

We call on the government to ensure the ALRC properly addresses the Terms of Reference, particularly the third limb, through a genuine consultation with input from religious leaders and religious education experts, parents as well as secular experts.

Signed

A handwritten signature in black ink, appearing to read "Michael Stead". The signature is fluid and cursive, with the first name "Michael" being larger and more prominent than the last name "Stead".

Rt Rev'd Dr Michael Stead
Anglican Bishop of South Sydney

On behalf of:

Most Rev Anthony Fisher OP
Archbishop of Sydney
Chair, Bishops Commission for Catholic Education
Australian Catholic Bishops Conference



Most Rev Kanishka Raffel
Archbishop
Anglican Diocese of Sydney



Archbishop Makarios
Greek Orthodox Church
in Australia



Imam Shadi Alsuleiman
President
Australian National Imams Council



Peter Wertheim AM
co-Chief Executive Officer
Executive Council of
Australian Jewry



Most Rev Peter A Comensoli
Archbishop of Melbourne
Chair, Bishops Commission for Life, Family and Public Engagement
Australian Catholic Bishops Conference



Adel Salman
President
Islamic Council of Victoria



Pastor Terry Johnson
President
Seventh-day Adventist Church in Australia



Abdullah Khan
Chairperson
Islamic Schools Association of Australia



The Rev Dr Peter Barnes
Moderator-General Presbyterian
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Dr Jean Carter
National Director
Adventist Education



Christopher Duke
Convener
Church and Nation Committee
Presbyterian Church of Victoria



Phil Dooley
Global Senior Pastor
Hillsong



The Rev Mark Wilson
National Ministries Director
Australian Baptist Ministries
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Wayne Alcorn
National President



Mike Southon
Executive Director
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John Steenhof
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Rev Jong O Yu
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His Beatitude Mar Meelis Zaia
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The Rev David Tse
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Bishop Daniel
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