



Anti-Discrimination Laws,
Australian Law Reform Commission
antidiscriminationlaw@alrc.gov.au.

Dear Madam/Sir

Please accept this submission on behalf of the QCCL in relation to the Religious Educational Institutions and Anti-Discrimination Laws Discussion Paper January 2023.

About QCCL

The Queensland Council for Civil Liberties is a voluntary organisation established in 1967 to promote the individual rights and liberties of Queenslanders.

Principles¹

In our submission the following principles are relevant to this inquiry.

Religious worship is essential to most people's lives. This is true for non-believers as well as believers once we recognise that freedom of religious worship includes the freedom not to worship.

Once we accept that proposition the only generally acceptable basis for freedom of worship is equal freedom for everybody. Each person when considering their own claim to be able to worship freely, would reject a proposal that gave them less freedom to do so than another person.

Religious belief is primarily a matter of individual conscience. However, freedom of religion also encompasses the freedom to manifest one's belief in community with others and in public.

This right to express one's views including in public is also of course an aspect of the right to free speech. Religious people are entitled to participate in public life and to frame their arguments in religious terms. Many issues in public life turn on perceptions of the good and there is no basis for insisting that only secular arguments may be included. Though we acknowledge that in a secular society like ours, at the end of the day in order to be effective those who approach issues from a religious perspective may be forced to frame their arguments in secular terms

Another fundamental right that must be considered when discussing the issues raised by this discussion paper is that of freedom of association. It is a fundamental liberal principle that adults of capacity are free to associate together and agree to rules of association which would not be acceptable outside of the association so long as the only reason they are adhering to them is if they wish to remain a member of the community. The corollary of this is the state is not entitled to intervene in such associations to impose liberal principles so long as the participants are adults of sound mind and that they are free to leave whenever they want with the only penalty being exclusion from the community.

This means that for example churches are entitled to enforce rules that only males can hold certain positions in the church hierarchy and perform certain rituals

A further limitation on the right of freedom of association is that individuals who associate together are not free to break laws of general application designed to protect the rights and interests of those outside the group. This principle comes into particular focus when the association provides services or goods to people outside the group. To allow associations operating outside the closed circumstances of their community to claim exemption from laws furthering equality would be to allow that association to impose their faith on others.

¹ The principles advanced here are based on Brian Barry *Culture and Equality* Polity 2001; Brian Barry *Justice as Impartiality* Oxford University Press 1995 and *Drawing the Line* 2015, International Network of Civil Liberties Organizations (INCLO)



Children raise separate issues. A parent should be allowed a good deal of discretion in bringing up their children. It is also important that the raising of children does not become an excuse to reduce adults to the status of children. However, the power of parents in relation to children has to be limited. Children need to be protected against parents who would inflict physical harm even if it is prescribed by the parents' religious beliefs or customs. Furthermore, children need to be given access to an education which allows them if they choose to reject the beliefs and practices of their parents.

Whilst people are entitled to equal opportunity the fact that people use these opportunities in different ways as a result of their different religious and cultural preferences, is not unfair. People are responsible for their choices, not for their opportunities. Not being able to drive a car out of religious conviction is rather different from not being able to do this because you are physically handicapped.

Proposals

We turn now to the application of these principles to the proposals in the discussion paper.

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

- 1. Religious educational institutions should not be allowed to discriminate against students (current or prospective) on the grounds of their sexual orientation, gender identity, marital or relationship status, or pregnancy, or on the grounds that a family member or carer has one of those attributes.**
- 2. Religious educational institutions should be permitted to train religious ministers and members of religious orders, and regulate participation in religious observances or practices, unfettered by sex discrimination laws. Where applicable, religious educational institutions should also continue to benefit from the exception available to charities in relation to the provision of accommodation.**
- 3. Religious educational institutions should be permitted to teach religious doctrines or beliefs on sex or sexual orientation in a way that accords with their duty of care to students and requirements of the curriculum.**

Based on the principles set out above religious educational institutions that offer their services outside their religious group should not be permitted to discriminate against students on the grounds set out in your proposal. However, religious educational institutions should be permitted to regulate the training of religious ministers and the members of religious orders and participation in religious observances unfettered by those laws. Where those organisations provide accommodation exclusively for the use of members in relation to religious activities, they ought to be permitted to discriminate on the grounds listed. Finally, religious education institutions should be permitted to teach their doctrines so long as, they also provide an education which results in a child being able to make their own decision as an adult about participation in the community.

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

- 1. Religious educational institutions should not be allowed to discriminate against any staff (current or prospective) on the grounds of sex, sexual orientation, gender identity, marital or relationship status, or pregnancy.**
- 2. Religious educational institutions should be able to select staff involved in the training of religious ministers and members of religious orders, and regulate participation in religious observances or practices, unfettered by sex discrimination laws. Where applicable, religious educational institutions should also continue to benefit from the exception available to charities in relation to the provision of accommodation.**
- 3. Religious educational institutions should be able to require staff involved in the teaching of religious doctrine or belief to teach religious doctrine or belief on sex or sexuality as set out by that institution and in accordance with their duty of care to students and staff, and requirements of the curriculum.**

For the reason set out above, exemptions from anti-discrimination law which allow religious schools to refuse to employ people on the basis of the grounds listed should be removed. Schools of course should be entitled to insist that those who teach religion and engage in religious observance should be believers.

As leaders of the institution the school should be entitled to insist that the Principal and Deputy are adherents. But beyond those categories² there is no justification for granting religious schools' exemptions from general laws.

The starting point must be that you don't need to be a believer to teach mathematics

² And it is possible a case might be made for others having similar roles to be excluded that we have not thought of. But these give a clear indication of the types of position we have in mind, which we expect to be small in number

C) Preferring staff involved in the teaching, observance, or practice of religion on religious grounds

- 1. In relation to selection, appointment, and promotion, religious educational institutions should be able to preference staff based on the staff member's religious belief or activity, where this is justified because:**
 - participation of the person in the teaching, observance, or practice of the religion is a genuine requirement of the role;
 - the differential treatment is proportionate to the objective of upholding the religious ethos of the institution; and
 - the criteria for preferring in relation to religion or belief would not amount to discrimination on another prohibited ground (such as sex, sexual orientation, gender identity, marital or relationship status, or pregnancy), if applied to a person with the relevant attribute.
- 2. The nature and religious ethos of the educational institution should be taken into account in determining whether participation of the person in the teaching, observance, or practice of the religion is a genuine requirement of the role.**

It follows from the principles set out above where your religion has requirements in relation to the type of person who is entitled to participate or lead or teach religious observance for example the sex of that person, they should be entitled to enforce those rules in relation to those positions.

This right of preference should not be limited to the fact that the person has the relevant religious beliefs. We submit there is no difference between the practice of a religious organisation that only men can be priests or the equivalent thereof and that only observant people can be teachers of the faith. As noted above, this principle is limited to the setting of religious observance and the teaching of religious principles. It does not extend to any other form of teaching in the school.


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

- 1. Religious educational institutions should be able to expect all staff to respect their institutional ethos. A religious educational institution should be able to take action to prevent any staff member from actively undermining the institutional ethos of their employer.**
- 2. Religious educational institutions should be able to impose reasonable and proportionate codes of staff conduct and behaviour relating to respect for the institution's ethos, subject to ordinary principles of employment law and prohibitions of discrimination on other grounds.**
- 3. Respect for an educational institution's ethos and codes of conduct or behaviour should not require employees to hide their own sex, sexual orientation, gender identity, marital or relationship status, or pregnancy in connection with work or in private life, or to refrain from supporting another person with these attributes.**

We agree that those who run religious schools are entitled to prevent proselytizing by staff, against the views of the world they hold. This follows from the employee having accepted a position in a school that holds to and seeks to inculcate certain worldviews. Equally this does not mean that staff cannot be prevented from discussing the fact there are individuals, including themselves, and other religions within society that hold beliefs or principles different from those of the school's operator. Religious schools should be entitled to discipline staff who actively campaign against the views and beliefs of the religion of the school in which they are teaching. In our view, subsections 25(2) and (3) of the Queensland *Anti-Discrimination Act* deal appropriately with this topic.

We trust this is of assistance to you in your deliberations.

Yours Faithfully


Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
20 February 2023