



Australian Law Reform Commission

Consultation Paper: Religious Educational Institutions and Anti- Discrimination Laws

Introduction

1. This submission has been prepared in response to the invitation of the Commission for comment and feedback in relation to four general propositions and 14 technical proposals (Proposals) outlined in its January 2023 Consultation Paper: Religious Educational Institutions and Anti-Discrimination Laws, (the Paper).
2. The opportunity afforded by the Commission to make a submission in relation to the likely implications and consequences of the Proposals is appreciated. It is hoped the contents of it are of assistance in the Commission's wish to understand the implications and impact of the Proposals on faith based schools.
3. In the interests of clarity, nothing in this submission should be interpreted as being in opposition to the objectives of achieving equality and non-discrimination in respect of sex, sexual orientation gender identity, marital or relationship status or pregnancy. Such objectives are supported. This submission therefore offers no comment in respect of Proposition A.
4. In respect of Proposition D the sentiments expressed are supported.
5. However, the effect of Proposals articulated in the extrapolation of Proposition B and Proposition C is to constrain the capacity of the religious educational institution to manage the organisation to such a degree that the intent of Proposition D will unlikely be achieved.
6. It is therefore Propositions C and D which are the subject of this submission.

Submission

7. The working examples provided in the Commissions Paper as to how the Proposals give effect to Propositions B and C threaten the capability of a religious institution to continue to build a community of faith by:
 - suggesting the religious values of the organisation are of little or no relevance to particular roles or class of employee,
 - denying religious based schools, the same protections afforded to secular organisations to select and manage staff in accordance with their vision, mission, and values (and are therefore potentially discriminating against faith based schools).

Discussion

The capability of a religious institution to continue to build a community of faith is threatened by suggesting the religious values of the organisation are of relevance only to specific roles and not employees generally.

8. The third of the Terms of Reference (TOR) provides that an educational institution is entitled to: "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".
9. At paragraphs 57, 58, 60 and 68 the Paper postulates that it is possible to distinguish between those in religious roles and others within a faith based educational institution. To attempt to



differentiate roles in this manner works against the notion of building a community of faith. A community, by definition, is a cohesive organism bound together by (amongst other things) a common culture. An educational institution cannot therefore be a community of faith if there are roles within it that are sanctioned through law to be exempted from adhering to, or worse actively advocate against, the very tenets on which that community is founded.

10. It is common (routinely so in many religious schools) that teaching staff and staff in administration and management have, as a part of their duties, activities associated with observance and worship (Chapel, Devotions etc).
11. While at paragraph 65 of the Paper reference is made to policies requiring an alignment of belief for a potential employee to be eligible for a particular position within the religious institution, the statements at paragraph 57 derogates from this principle. Paragraph 58 recognises there are educational institutions where religion is “infused through all school life”, but then suggests the need for some “objective enquiry” the terms or criteria for which are unspecified. However paragraph 60 all but repudiates the recognition previously referenced by arguing such situations are considered exceptions. The implication that “exceptional circumstances” somehow need to be validated before requiring persons in other than religious roles to affirm alignment with the ethos and vision is to ignore, if not deny, the purpose for which particular “communities of faith” established these schools. It is as if the faith premise is incidental rather than integral and yet it is this very element infused through all school life that maintains “the community” of which the Terms of Reference speaks. Citing laws (existing or under consideration) in other jurisdictions as validating such a position does not mean the position is the appropriate setting for the Federal Government to adopt. By doing so the intent of the principle embodied in point three of the Terms of Reference where selection of staff is not confined to those that perform particular roles in “giving preference in good faith to persons of the same religion as the educational institution” is unfulfilled.
12. Research as to why parents choose a private school education for their children shows there is a wish to have integrated into their children’s education a philosophy that is ethical, moralistic, and principled. Irrespective of the status of their faith personally they see a Christian based College as providing this. They see this as not so much as a “learned” module (such as might be delivered by way of an academic exercise), but rather one that is integrated into the whole educational experience offered by the College.
13. They do not distinguish between teaching staff, non-teaching staff and those involved in the more pastoral activities of the College (chaplains, pastors etc). Rather, for them, it is the living out of the College values they see through each interaction with staff members irrespective of their roles.
14. It is well recognised that when making a purchasing decision clients and customers look to see manifested the core values, they “sign up for”. When these are not experienced by the customer consistently in the many interactions they have with the particular organisation, they will cease purchasing their products or services. In a similar way, 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 very point of interaction with its fee paying parents. Should the parents no longer experience the authentic interactions of the College’s values with their child’s education i.e. what they sign up for, they will withdraw their child from the College threatening the sustainability of the College.



Suggestion

15. It is suggested the arbitrary distinction the Paper seeks to make between religious instruction roles and others be removed. There should be no onus placed on the institution to somehow establish its “genuineness” as a faith institution through some sort of (unspecified) “objective inquiry.” The genuineness of its whole of organisation commitment to its ethos should be self-evident through publicly available documents such as the School’s Strategic Plan, its statement of purpose (mission), its prospectus, marketing collateral and existing position descriptions.
16. At the very least there should be a more unequivocal acknowledgement that coherence in the expression of the ethos and vision upon which the school is founded is a critical element in being able to “continue to build a community of faith”.
17. This approach would more satisfactorily reflect point three of the Terms of Reference while not infringing the other two legs of the Terms. It does not enable selection decisions based on the attributes referenced at Item 1 Proposition B and therefore is not discriminatory. Rather, it seeks only to establish the alignment of potential or current employees with the ethos and vision of the institution which is integral in the performance of whatever role they are being employed.
18. It would allow the institution to offer to its consumers consistency in the educational experience they are purchasing irrespective of the role or the individual attributes of the individual performing the role. If that is not what its “customers” are seeking then the school will go out of business - as opposed to it going out of business because, due to the Proposal, the school is unable to deliver to its customers consistency in the vision and ethos at every point of interaction.

Discussion

Proposals C and D in combination deny religious based schools the same protections afforded to secular organisations to select and manage staff in accordance with their vision, mission, and values (and are therefore potentially discriminating against faith based schools).

19. The notion as expressed in the Paper in the sixth dot point at page 21 and again in the final dot point at page 24 that an employee can be free to provide “alternative viewpoints” to the values of the organisation which employs them is unreasonable, would promote dysfunction and potentially affect the financial viability of the school.
20. The ability of the organisation to survive in a competitive marketplace is dependent on their staff consistently upholding the values by which it represents itself. This is a well understood principle in every successful company. In organisations of substance every position description has a statement of how the role contributes to the vision and mission of the enterprise and the values which are integral to their fulfilment. Employees must not only acknowledge their importance in terms of the business “brand” but (for that very reason) adhere to them as part of Terms and Conditions of Employment.
21. Requiring an independent faith based school to allow an employee to “objectively” discuss an alternative view to the value base upon which it relies in representing itself to purchasers is antithetical to every principle of contemporary organisational practice. There is a wealth of organisational research which demonstrate organisations become dysfunctional when employees’ ethics and values do not align with those of the organisation. A workplace where such inconsistency exists quickly leads to a break down in corporate culture which in turn is manifested by high staff turnover and increasing high management costs.
22. Indeed the Proposals might be seen as an infringement of the rights of others in the institution who, when seeking employment with the school, expect the values and ethos of the School will



- be upheld in accordance with the Terms and Conditions forming the basis of their employment contract.
23. Parents who have selected a school specifically because of what it stands for expect the values and ethos that define and (in their eyes) distinguish that school from others, to be constantly in evidence in every facet of the school community. They are certainly not going to pay fees to have an alternative view expounded.
 24. The alternative viewpoints to which the Paper refers are well known and frequently articulated in and across society as a whole. Parents have access to them and have made their school choice in full knowledge of these alternative viewpoints. Students have access to such information through open source media and have the opportunity to pursue such enquiries with those they trust, professionals in the field or with advocacy agencies.
 25. The suggestion such views would need to comprise objective information but offering no authoritative source is also problematic.
 26. There is a fundamental difference between an organisation not discriminating against a person in relation to sexual orientation, and expecting an organisation provide a platform for that person to advocate their particular (personal) viewpoint.
 27. There is surely not a single secular organisation that would tolerate an employee espousing alternative viewpoints in contrast to the core values for which the organisation which employed them stood.
 28. As an example, would a renewable energy company be expected to allow an employee to advocate to a customer using fossil fuels based on objective information about the cost, contrary to the “clean environment” values which formed the founding ethos of that company? There is a wealth of information freely available which the customer will have evaluated before approaching the renewable energy company. Parents of private school students are no different. They research in considerable detail options and know exactly what they are signing up for when they enrol their child. They want it delivered – not something different.

Suggestion

29. That those proposals that place a positive obligation on a faith community to provide opportunities to a particular category of persons to promote their “alternative” viewpoint be not further pursued

Conclusion

30. The Terms of Reference call for a balance to be achieved among three (3) principles.
31. It is recognised there may be some tension if absolutism is the prism through which each is viewed and it is an appropriate balance of rights and obligations that enable religious schools to operate in accordance with the ethos and values while providing individuals a work place free of discrimination.
32. For the most part the Propositions and Proposals provide this balance.
33. However the principles espoused in Proposition D are unreasonably subjugated by certain proposals expressed in Propositions B and C. Offering an exemption to particular individuals to operate outside the known value system of the institution in which they seek employment compromises the ability of that institution to fulfill its purpose.
34. Those rights the Paper would see as being an entitlement of particular individuals to assert independence from the ethos of the faith community that established and administers the

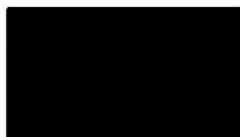


institution are not available to other employees. In exercising such individual entitlements, the rights of staff and those who make up the school community may be infringed.

35. Furthermore, those rights would likely have implications for the ability of the institution to operate as a cohesive organisation causing both workplace dysfunction and consumer dissatisfaction. Financial viability might be threatened should these result in staff resigning their employment the school and parents withdrawing their children from the school.
36. The suggestions to address this imbalance are that:
- a) the arbitrary distinction the paper seeks to make between religious instruction roles and others be removed. There should be no onus placed on the institution to somehow establish its “genuineness” as a faith institution through some sort of (unspecified) “objective inquiry.” The genuineness of its whole of organisation commitment to its ethos should be self-evident through publicly available documents such as the School’s Strategic Plan, its statement of purpose (mission), its prospectus, marketing collateral and existing position descriptions, and
 - b) those proposals that place a positive obligation on a faith community to provide opportunities to a particular category of persons to promote their “alternative” viewpoint be not further pursued.
37. These two suggestions do not represent acts of discrimination. They simply recognise that it is reasonable (and common practice in secular organisations) that employees and intending employees,
- understand the nature of the “business”, its vision and mission and how the role they seek contributes to the fulfilment of its purpose and
 - perform their duties in accordance with applicable Terms and Conditions of Employment.
38. Religious institutions for their part should make it clear (through statements of policy) that appointments and management approaches are governed by such commitments and an assessment of qualifications, experience, and competencies and not by personal attributes such as age, sexual orientation, gender identity, marital or relationship status or pregnancy or family circumstances.



Cheryllynne Gostelow
Principal and CEO
Calvary Christian College



Kevin Gordon
Chair – College Council
Calvary Christian College



Rev Adam Low
Lead Pastor
Real Life Christian Church