

Response to

Australian Law Reform Commission's

January 2023

CONSULTATION PAPER

RELIGIOUS EDUCATIONAL INSTITUTIONS AND
ANTI-DISCRIMINATION LAWS

From the National Civic Council

Patrick Byrne, National Civic Council



Email: [Redacted]

Tel: [Redacted]

About the National Civic Council

The National Civic Council (the NCC) is a not-for-profit, non-party political organisation which seeks to shape public policy on cultural, family, social, political, economic and international issues of concern to Australia.

Substance of the consultation paper

By recommending the removal of exemptions for faith-based schools from the *Sex Discrimination Act 1984* (SDA), effectively, the ALRC Consultation Paper proposes abolishing the freedom of faith-based schools to employ staff and enrol students who accord with, or don't campaign against, the beliefs of the school.

The Consultation Paper proposes that a religious school should not be able to refuse employment to a teacher on the grounds of their sexual orientation or gender identity, and that activist teachers should have the right to present to students alternative views on sex, marriage and family that conflict with the moral teachings of a religious school. In effect, this contradicts another ALRC proposal that the SDA be amended "to clarify that the content of the [religious school's] curriculum is not subject to the Act".

This contradiction was highlighted by Anglican Bishop of South Sydney Michael Stead. He said in an [interview](#) with ABC Sydney, the idea that religious schools be required to employ "a religious studies teacher who doesn't actually believe [or] practise the things that they're teaching" mandates hypocrisy. "You could have the situation where someone is required to teach the Ten Commandments saying, 'You shall not commit adultery', but then can also say, 'I don't personally believe that and I'm having an affair with the science teacher.'"

Further, the ALRC recommends that the Australian Human Rights Commission (AHRC) be given the power to investigate faith-based schools for what it calls "systemic unlawful discrimination". Such "discrimination" and conflict will be inevitable over these sexual issues. The ALRC's recommendation to grant the AHRC investigative powers to curtail religious freedom is the hallmark of an authoritarian state.

Issues with the consultation paper

The current "freedoms" for religious schools that are protected by the SDA exemptions can hardly offend or cause damage to others, as nobody is forced to enrol or work at a school if their beliefs are in conflict with the school's ethos, any more than a person is forced to join a political party whose policies are opposed to the person's political beliefs.

Hence, it would be hypocritical to recommend to the Government that it continue to support exemptions for political parties from discrimination law, so that parties can discriminate in employment and membership against those who do not hold the political beliefs of the party, while forcing religious schools to employ and enrol people who are opposed to the religious beliefs of the school. Labor Party members would rightly protest at conservative Liberals becoming members of the ALP and campaigning to dump Labor's policies on climate change.

In a pluralist society, the current SDA exemptions respect a diversity of beliefs. Tolerance for all beliefs is true diversity, the foundation stone of a tolerant democracy.

In contrast, the ALRC recommendations will create deep conflicts between this state and the cherished moral beliefs of many religions.

It will effectively eliminate the defining differences between a state school and a religious school. It will abolish diversity.

Last year, when the Northern Territory announced plans to abolish exemptions in Territory law for faith-based schools, leaving them protected only by the exemptions in the federal SDA, Catholic Bishop of Darwin Charles Gauci threatened to shut Catholic schools, [saying](#): "If we cannot have

proper Catholic schools in our school [system] ... if you cannot be authentic, what's the point of having them?"

Given these matters of concern, here are key questions regarding the logical consequence of the ALRC's recommendations for removing the SDA exemptions, particularly if there is mass resistance from religious schools.

Questions to the ALRC

1. When they defy the new law, will religious school principals and teachers be prosecuted under the SDA and state anti-discrimination acts? If they are convicted, will they lose their professional accreditation and employment?

As far back as 2016, the South Australian Education Department issued a policy, *Transgender and intersex student support*, citing federal and state anti-discrimination laws, strongly suggesting that this is possible. It states that the failure by a teacher or principal allow transgender students to wear the uniform of their choice and to access to "appropriate toilet and change facilities ... may breach anti-discrimination legislation".

2. Will religious schools lose their accreditation if they defy the SDA, especially if they refuse to comply with the AHRC rulings on "systemic unlawful discrimination", by manifesting clearly their religious beliefs in not employing activist teachers or letting such teachers instruct students contrary to the faith of the school?
3. Should this resistance happen *en masse*, will religious schools across the country be closed? Then, will the federal and state governments take over enrolling hundreds of thousands of students who could no longer be accommodated in religious schools?
4. If the ALRC is to recommend that exemptions for faith-based schools be removed from the SDA in the cause of eliminating both discrimination and differences, will the ALRC also recommend applying the same principle to political parties, thereby removing the right of a party to discriminative in membership and employment against people who are opposed to the policies and principles of the party?