

Submission to the ALRC consultation on religious educational institutions and discrimination laws

By Mr Neil Francis

24th February 2023

Dear Professor Ahmed and Advisory Committee members,

Thank you for the opportunity to make a submission to the Australian Law Reform Commission's public consultation on religious educational institutions and anti-discrimination law.

Personal capacity

This submission is made in my capacity as an experienced social scientist with particular interest in social law reform. I am a Fellow of the Rationalist Society of Australia and author of the primary research series *Religiosity in Australia*, throughout which I probed multiple high-quality university data sets to examine questions about the extent and nature of Australians' religious identity, beliefs, attitudes and behaviour. This submission is made in a personal capacity and does not necessarily reflect the views of the Rationalist Society of Australia, which has made its own submission.

Empirical evidentiary support

The ALRC's Terms of Reference for this consultation are technical and do not include a purpose of questioning or amending the government's overarching stated reform aims. This submission provides *empirical evidence* to support those aims. This is important because the ALRC will receive a high volume of correspondence making claims regarding Australians' religiosity that are not true or may otherwise be misleading.

Principles and communication

This submission also suggests potential improvements to both clarify principles and the intent of the government (and the legislature), particularly in regard to *communication* with the wider citizenry.

Should this submission raise a desire for further clarification, I would be pleased to answer the ALRC's questions as best I can. Thank you again for the opportunity to participate in this public consultation.

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Neil Francis

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Note: For the sake of simplicity in this report I use the expression “schools” as a general shorthand reference “Educational institutions” including primary, secondary and tertiary institutions, even though some references expressly refer to primary and secondary schools.

Religious ‘sensibilities’ — empirical evidence

Claims are commonly made that the religious beliefs of Australians take a particular form or position, and are firm, widespread and unchanging — especially in the form of “tradition”. For example, on behalf of religious think-tank Freedom for Faith, Associate Professor Neil Foster of the University of Newcastle states that:

“A religious school is set up, and funded, by members of a particular religion¹ in order to provide education for children in accordance with their beliefs ... [of any] religious tradition. Those communities take very seriously the teachings of their faith that sex is only designed by God for a marriage between a man and a woman, and that a person’s biological sex at conception determines whether they are male or female.”
— Foster (2023)

Likewise, Kevin Donnelly of the Australian Catholic University states in respect of the right of religious schools to discriminate:

“Removing or seriously compromising such religious freedom also represents an attack on the right parents have to choose a school where the staff, the school’s curriculum and the way the school is managed mirrors their religious beliefs and values.”
— Donnelly (2023)

Neither Foster nor Connelly provide verifiable empirical evidence to establish the veracity of their claims.

This section aims to address that shortfall.

Religion and religious school enrolments

A key correlate which might support claims about religious drivers of enrolments at non-government (Catholic and Independent) schools — which are almost entirely religious schools — would be a positive correlation between the incidence of religion and religious school enrolments.

¹ Foster ignores or side-steps the fact that public (taxpayer) money is also given to religious schools by governments.

In the five years to 2022, government schools recorded an *increase* in enrolments of 1.9%. Over the same period, Catholic school enrolments *increased* 3.9% and Independent (almost all religious) schools *increased* 12.5% (Australian Bureau of Statistics 2023).

Over a similar period (ABS Census data 2021 vs 2016), the religious affiliation rate of Australians *dropped* by 6.8%. This is a striking rate of social change, continuing an 8.9% drop between the 2011 and 2016 national Censuses. It continues a long-term trend of decreasing religion since at least the 1970s.

Indeed, the religiosity² of Australians since their childhood has mostly *decreased* rather than remained the same or increased across the religiosity spectrum of their parents (Figure 1). Drops have occurred across the spectrum from 71% of those who had Devouts parents and 75% of those with Regulars parents, to 46% of Notionals and 37% of Socialisers.

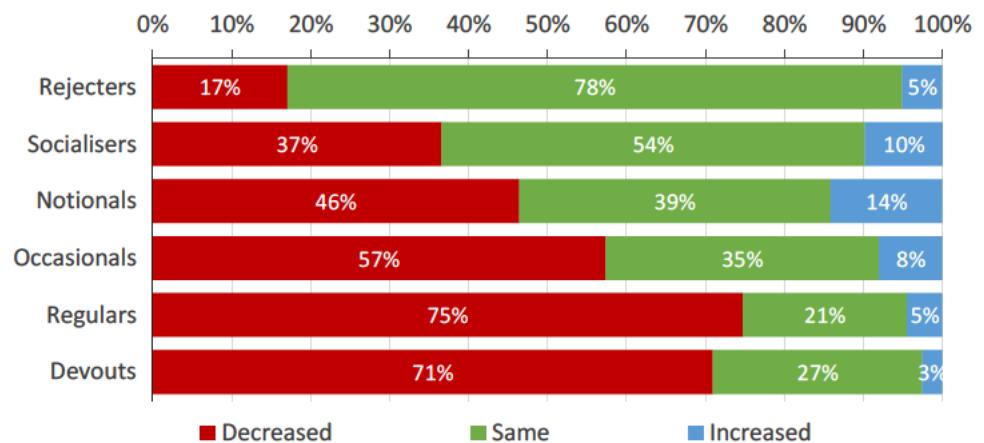


Figure 1: Own change in religiosity since childhood, by parental religiosity
Source: Australian Survey of Social Attitudes 2018 (Evans et al. 2018). Note: Religiosity from lowest (parents were Rejecters) to highest (parents were Devouts).

Thus, there is a correlation between religion and religious school enrolments: but it's *negative*.

Other measures confirm the softness of religiosity in Australia. For example (Francis 2022b, p 33) (Figure 2):

- Only 38% of Australians say they “belong” to a religious denomination, and half of those say they are *inactive*
- Around a third (32%) describe themselves as religious
- Only three in ten (30%) “consider myself a Christian”

² Measured by religious affiliation (or none) and frequency of attending religious services other than weddings and funerals (from never to weekly or more often).

- Only three in ten (30%) would or *might* attend a Christmas service if invited by a friend
- Fewer than three in ten (29%) say religion is personally important
- Fewer than a quarter (23%) attend religious services twice a year or more often
- Around one in five (21%) is certain that God exists
- Fewer than one in five (18%) say their religion is spiritual
- Just 15% are regular attenders of religious services (monthly or more often).

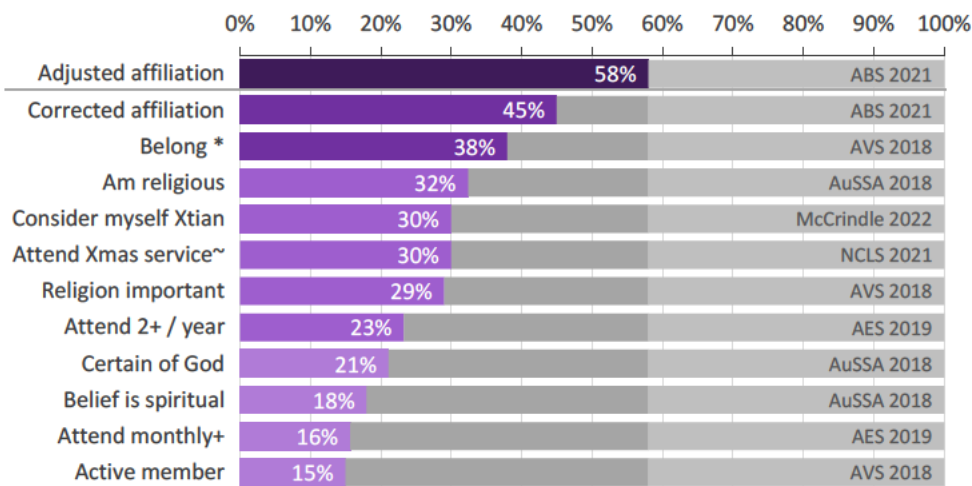


Figure 2: The softness of religiosity in Australia

Sources: ABS = Australian Bureau of Statistics. Notes: Adjusted = corrected for non-respondents. Corrected = empirically corrected for question bias. AVS = Australian Values Study. AuSSA = Australian Survey of Social Attitudes. AES = Australian Election Study. McCrimble = McCrimble, Renton and Authers (2022). NCLS = National Church Life Survey (NCLS Research 2021). * Half of those who say they “belong” to a religious denomination say they are inactive. ~ Would or *might* attend a Christmas service if invited by a friend.

Summary: While religion in Australia is in steep decline and religiosity is weaker than simple headline affiliation figures suggest, enrolments in religious schools is increasing the fastest.

That is, there is a *negative* correlation between Australia’s religious affiliation rates and religious school enrolment rates (affiliation and service attendance down, enrolments up). This doesn’t naturally help explain religionist claims of firm and resolute religious views amongst religious school clients (parents).

Underlying religiosity of the affiliated

Perhaps although the rate of religious affiliation has decreased, the religiosity of those *remaining* affiliated has increased?

But this is not true either.

Of those still affiliated with a religious denomination, large numbers have decreased their religiosity since childhood, while only a small proportion have increased their religiosity or joined a religion (Figure 2).

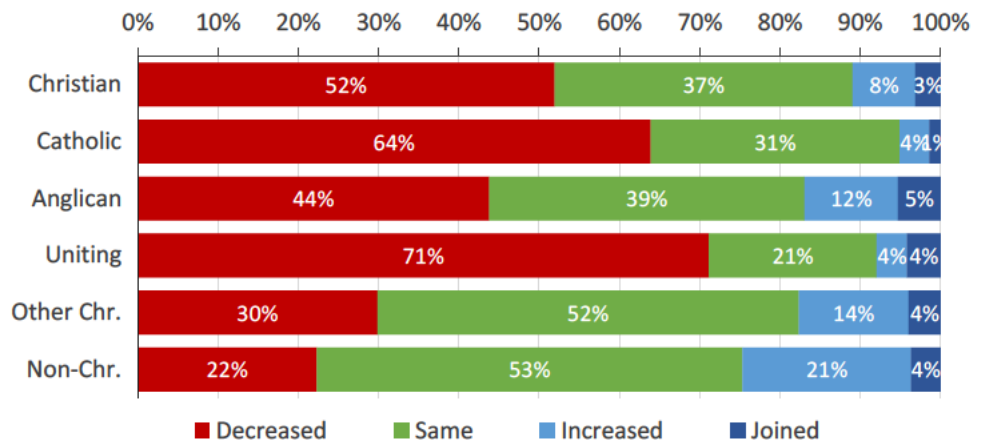


Figure 2: Own change in religiosity since childhood, by current religion
Source: Australian Survey of Social Attitudes 2018 (Evans et al. 2018).

For example, amongst those affiliated with a Christian denomination, more than half (52%) have decreased their religiosity since childhood, while only a small minority (11%) have increased it.

Summary: Amongst those still affiliated with a religion, overall decreases in religiosity far outweigh increases, including 52% of Christians now less religious than in childhood, versus 11% more so. This too doesn't naturally help explain increases in religious school enrolments, or support the argument that religious views are firm, widespread and unchanging.

Significant drivers of school choice

Perceived strong academic standards as well as support and care of students would understandably rate very highly as desirable school characteristics.

But as any parent of an unruly or combative child or adolescent knows, *discipline* is an important part of family and school life. Exposure to religious schools, including rituals such as religious prayer, can help increase practical self-control (Marcus & McCullough 2021).

This curation of self-control at school (“strong discipline”) is the third-top reason — after teaching quality and high student support and care — amongst parents choosing a Christian school for their children (Beamish & Morey 2013) (Figure 3).

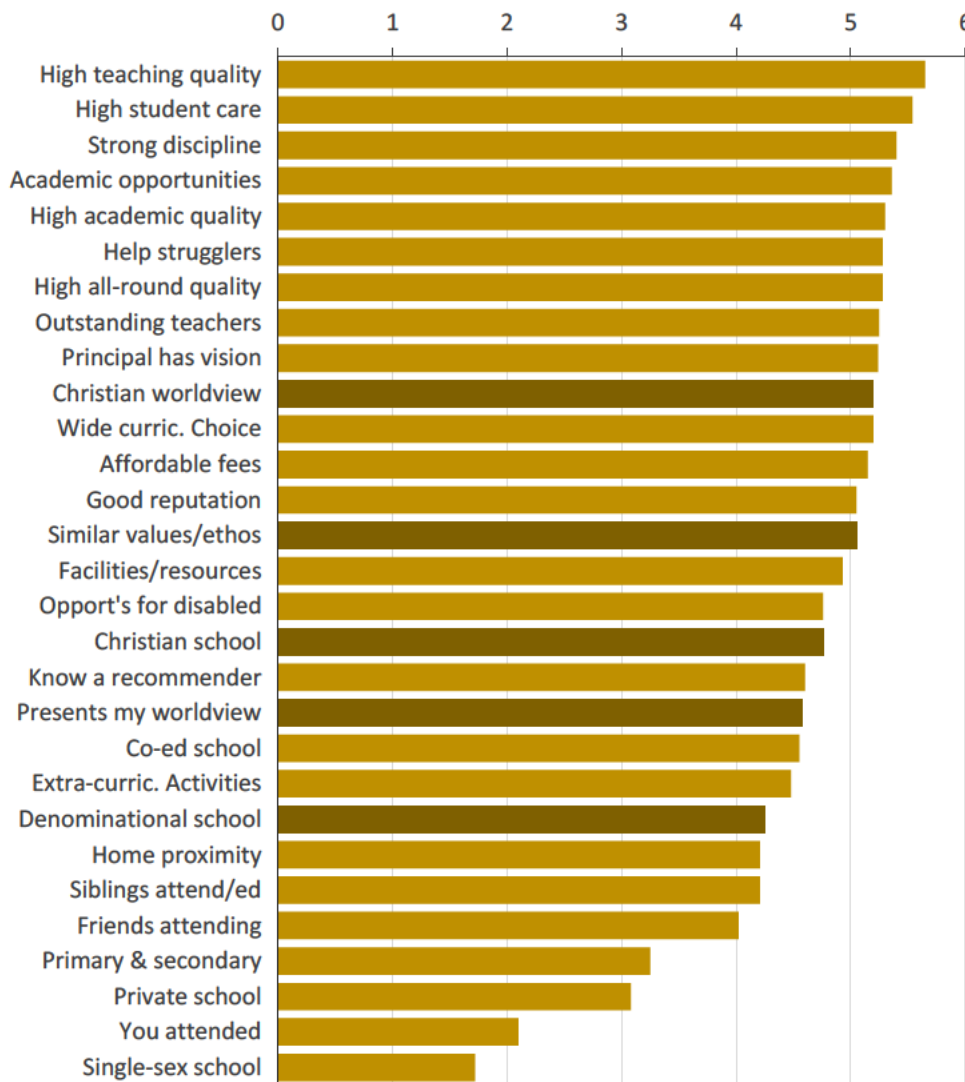


Figure 3: Mean score of parental reasons for choosing a Christian school
 Source: Beamish and Morey (2013), Figure 1. Note: Religion/values reasons shown darker.

Complex range of reasons including discipline

Five of the 39 reasons in this study related to either religion, values or worldviews. The first such reason (Christian worldview) appears at number 10, while concordance with the parent's own worldviews comes in at number 19. Thus, religion and worldviews do weigh on choice of a religious school for many parents, but a complex range of concerns is involved, headed by academic quality, student support and care, and discipline.

Family status ... and discipline

In addition, parental occupational and socio-economic status affects school choice. Parents with higher occupational status, higher socio-economic status, and higher education, are significantly more likely to choose a private school for their child (Beavis 2004).

A third of public-school parents (34%) say they would send their child to a private school if the cost was the same as a government school. The most common reason for such a change is perceived *better discipline* in private schools, followed by perceived higher academic standards and greater student support.

And it is this higher socio-economic status (including the payment of private school fees and additional activity levies) — rather than religiosity itself as claimed by religionists (e.g. Donnelly 2023)— that drives a reported higher rate of “civic-mindedness” amongst graduates of Christian schools.

Mixed importance of religion

Indeed, while some parents expect religion to be actively engaged at the religious school they've selected for their child, others see such schools as merely a “haven” from a perceived underperforming government school sector (Campbell, Proctor & Sherington 2009).

Combining data about the religion of school selectors (mothers of schoolchildren) (Warren 2015) with data about their incidence in the general population (derived from Australia Election Study data), around a third (33%) of students in Catholic schools are not from Catholic families,³ including 11% with no religion (Figure 4).

³ This accords closely with figures given by Catholic Education.

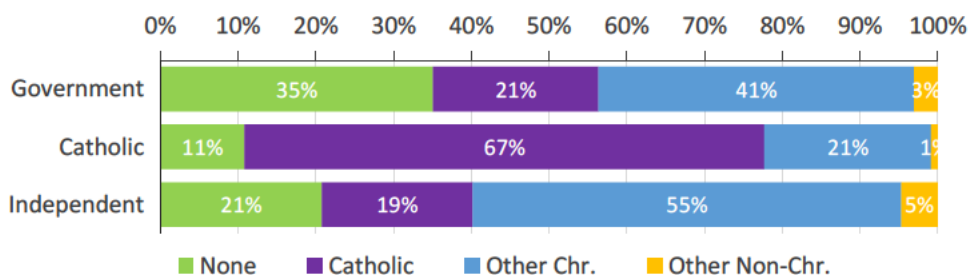


Figure 4: Mother's religion by school sector circa 2009

Sources: Warren (2015) with Australian Election Study incidence data (2007 & 2010). Note: Religious Nones have increased by 16 percentage points across the general population since this data was collected.

Amongst Independent (mostly Protestant) schools, roughly one in five mothers (21%) has no religion, and one in five (19%) is Catholic. That is, significant proportions of students in Catholic and independent schools come from families who are not members of that religious denomination.

Overestimate: These figures are now (in 2023) likely to significantly *understate* the proportion of students from None (no religion) families, because religious affiliation in Australia has dropped by 16 percentage points since then, while religious school enrolments have risen at a faster rate than government schools.

Summary: Australian parents are more likely to report perceived high academic standards, student support, and *discipline* than religious faith as a contributing factor for enrolling their child in a religious school.

At least one in five (21%, now likely more) students at Independent schools are from no-religion families, and at least one in ten (11%, now likely more) students in Catholic schools are from no-religion families too. A third of all students (33%) at Catholic schools are not from Catholic families.

This contradicts religionist claims that all parents will naturally endorse particular religious tenets put forward by a religious school's authorities.

Religious leaders out of touch with their own flocks

Religious leaders can demonstrate a major disconnect from the attitudes and beliefs of their own flocks.

Misreading their own flocks regarding abortion attitudes

For example, in arguing against more permissive legalisation of abortion services, Catholic bishops opine that Catholics are opposed to abortion. But high-quality empirical data clearly shows that 61% of Australia's Catholics believe abortion services should be *readily available*, and a further 28% say it should be available in special circumstances. Just 1% of Australian Catholics say that abortion should not be available in any circumstances (Francis 2022b, pp 70-71).

Summary: Almost no Australian Catholics (1%) are opposed to abortion, despite Catholic bishops vocally opposing its legalisation.

Misreading their own flocks regarding VAD attitudes

On the matter of their congregation's attitudes toward legal voluntary assisted dying (VAD), bishops also seem disconnected from their own flocks. Although nearly three quarters (74%) of Australia's Catholics are in favour of legal VAD (Francis 2022b, p 72), the Catholic Church's spokesman on VAD, Bishop of Townsville Tim Harris, wrote to all Queensland MPs asking them to oppose the then legislation on behalf of the 80,000 Catholics in his diocese.

However, analysis of empirical data shows that close to four in five (79%) of *his own flock* — Catholics in the Queensland electorates comprising his diocese — supported the reform, with just 11% opposed (Francis 2022c).

Similarly, Anglican Archbishop of Sydney, Kanishka Raffel, called on NSW Anglicans to write opposing letters to NSW MPs regarding that state's own VAD legislation. But empirical data shows that 76% of NSW Anglicans support VAD law reform, with just 13% opposed (Francis 2022a).

Summary: Both Catholic and Anglican bishops have wrongly assumed that their flocks are opposed to legal voluntary assisted dying, when large majorities support its legalisation.

Misreading their own flocks regarding marriage equality attitudes

And pursuant to the matter of the current ALRC consultation, religious leaders also show they are out of touch with the diversity of attitudes of their own flocks towards marriage equality.

Back in 2013, in response to the loaded statement⁴ “Same sex marriages should be prohibited by law” (Australian Election Study 2013), more than two thirds (68%) of Nones (no religion) expressly disagreed. So did almost half of Catholics (45%) and Anglicans (47%), as well as 42% of Uniting/Methodists, 32% of minor Christian denominations, and 40% of non-Christian religionists (Figure 5). Overall, a slight majority (51%) disagreed and less than a third (29%) agreed that same-sex marriage should be prohibited.

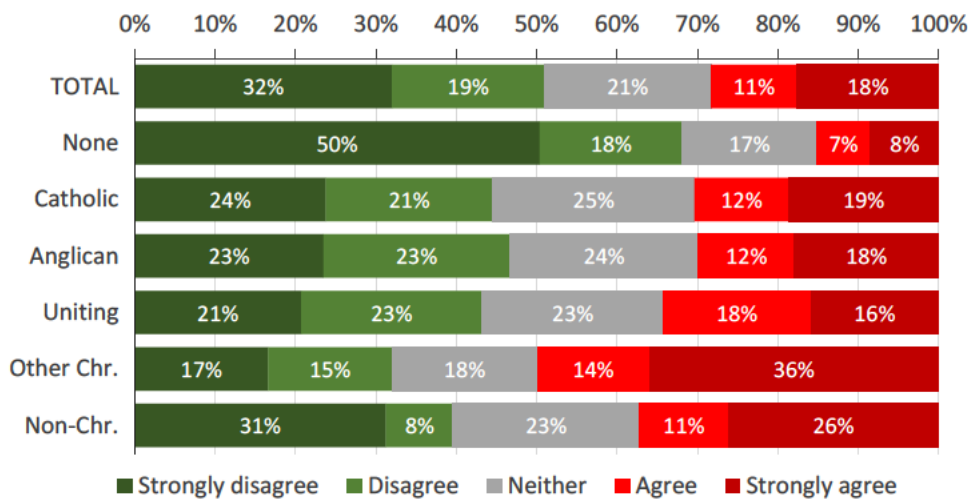


Figure 5: Response to the statement “Same sex marriages should be prohibited by law”, by religion

Source: Australian Election Study 2013. Note: Percentages may not add perfectly due to rounding.

That is, even with a strong provocation to acquiesce to the current legal position, very significant proportions of both non-religious and religious Australians *opposed* prohibiting marriage equality in 2013.

Fast forward to 2022, the Australian Election Study confirms that Australians have rapidly changed their attitudes (Figure 6). Favouring legal same-sex

⁴ The “question” is heavily biased in favour of *acquiescence* because (a) it was posed as a statement, and (b) it failed to contain a balanced proposition, and (c) at the time it was entirely normative because that was the position of the law.

marriage has jumped from 51% (in 2013) to 74%, including 90% of Nones, 60% of Christians and 68% of non-Christian religionists.

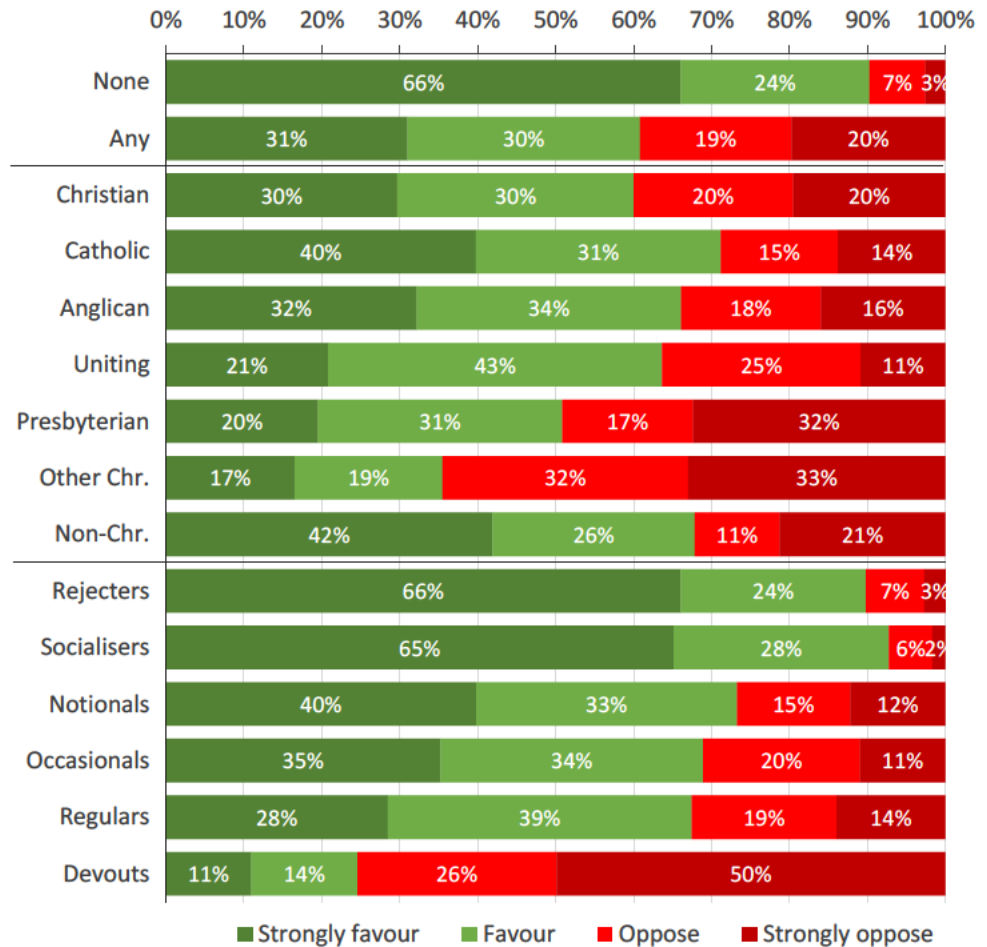


Figure 6: Same rights for same-sex couples to marry, by religion and religiosity

Source: Australian Election Study 2022

Amongst the denominations, same-sex marriage legality is favoured by 71% of Catholics, 66% of Anglicans, 64% of Uniting/Methodists and 51% of Presbyterians. Only amongst the smaller Christian denominations is support in the minority, but still greater than a third (35%).

By religiosity, very large majorities of Rejecters (90%), Socialisers (93%), Notionals (73%), Occasionals (69%) and Regulars (67%) favour legal same-sex marriage. Only amongst Australia’s most religious, Devouts, does a *minority* (a non-trivial 25%) favour it.

Summary: In 2022, most Australians (74%) support marriage equality law. Opposed opinion is only in the majority amongst small Christian denominations, and the most religious, Devouts. (The highest proportions of Devouts occur amongst the small Christian denominations in any case.) This is consistent with the proportions of Australians who oppose religious schools having the right to discriminate against LGBTI students and staff (up next).

Public opinion regarding school anti-LGBTI discrimination

Several polls of the general public show that a majority of Australians are opposed to religious schools having the right to discriminate against LGBTI+ staff and students.

For example, a YouGov Galaxy poll in 2018 found that 4 in 5 Australians oppose legalised discrimination against LGBTI staff and students at religious schools, with just 19% in support (Hinton-Teoh 2021). Almost the same proportion said that teachers should not be sacked even if they marry a same-sex partner, *and* that those schools that do discriminate should not receive public funding.

Another YouGov Galaxy poll in 2022 found more than three-quarters (77%) of Australians oppose religious school “statements of belief” that would humiliate, intimidate, insult or ridicule people based on protected attributes — which includes gender and sexual orientation (Karp 2022).

A peer-reviewed study published in 2022 found that nearly three-quarters (73%) of Australians disagreed that conservative religious schools should be allowed to refuse to employ a teacher because they are LGBTI+, with just 19% agreeing (Ezzy et al. 2022).

Summary: According to multiple robust polls, most Australians (73%–80%) are opposed to religious schools having the right to discriminate against LGBTI students and staff. *Most also say that those that do should not receive public funding.*

Poor quality, biased Christian poll

Religionists will no doubt point to a 2021 study commissioned by the Association of Christian Schools, Christian Schools Australia, and Associated Christian Schools, to say that 75% of Australians support the right of religious schools to discriminate: with headline “Polling supports discrimination protections”⁵ (Christian Schools Australia 2022).

⁵ This might be something of a “tell”: the headline *doesn't* say “Australians support ...”, it says the “polling supports”.

The poll was conducted by Compass Polling, whose bare bones website mentions no principals or staff, credentials, address or contact details. Its research quality has previously been called into question (Wilson 2021).

The Christian Schools poll raises further questions about the quality of polling. Despite conclusions firmly announcing that most Australians believe religious schools should be allowed to discriminate, not one of the published questions of the poll contains the word “discriminate”, nor identifies any particular kind of party or person against whom religious schools would so discriminate.

The questions are worded passively and generally in the positive, such as “*the right to hold and practice religious beliefs*” and “*protect religious rights*”. But much of that would be true of religious beliefs in *government* schools too.

No wonder large majorities of Australians gave their approval. Christian schools having the right to teach that Christ is the saviour? Of course. But the right to expel a *Christian* (or any) student or sack a staff member because they’re LGBTI? That’s an entirely different matter, and unbiased, robust polls are clear: most Australians oppose such a right to discriminate.

The Christian poll report also claims that it “*shows growing support for religious freedom laws in Australia*”, but provides no longitudinal data (i.e. any *trends*) to support this contention, when there is plenty of robust and verifiable evidence to the contrary.

It also “*calls for the Albanese government to re-introduce religious anti-discrimination legislation to Parliament*”, by which is meant legislation that *entrenches religious rights to discriminate*, a right it euphemistically refers to as “preferencing”.

Summary: A 2021 poll commissioned by Christians schools that purports to show that a majority of Australians support the right of religious schools to discriminate in fact showed no such thing. Unlike proper, professional polls, its biased question design failed to directly raise the matter of discrimination or who would be discriminated against and why. Rather, it employed vague statements against which hardly anyone could object.

Most religious mums aren't anti-LGBTI

Clearly, overall public opinion no longer supports special privileges of religious schools to discriminate against people of whom they disapprove regarding otherwise protected attributes. But what are the attitudes of those who are most often the primary decision makers for selecting their child's school — mothers?

The Australia Values Survey 2018 asked respondents for their attitude towards the morality of homosexuality, a useful proxy measure of a potential desire to discriminate against LGBTI+ people. Filtering responses to females 25-54 years with children under 18 years living in the household furnishes targeted insights (Figure 7).

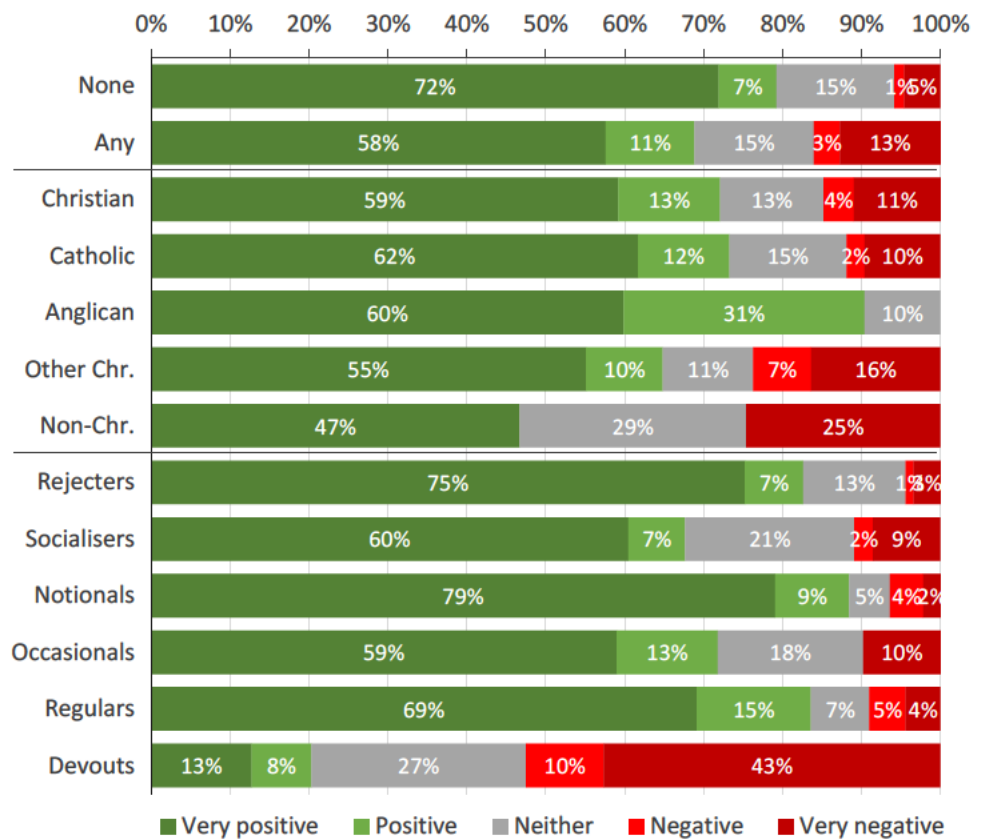


Figure 7: Attitudes toward the morality of homosexuality amongst mothers of school-aged children, by ASI6 social identity

Source: Australian Values Survey 2018. Note: Chr. = Christian. Base: Females, aged 25-54 years, one or more children under 18 in the household.

Across the religious spectrum, with the exception of Devouts, small to tiny minorities (6%–25%) of Australia's schoolchild mothers hold negative attitudes toward the morality of homosexuality, and large minorities (47% non-Christian) to large majorities (88% Notionals) hold positive attitudes. **Overall, just 10% of these mothers hold a negative attitude.**

Even amongst the most religious mothers, Devouts, only a slight majority (53%) hold negative attitudes, while one in five (21%) hold positive attitudes. Therefore, even amongst this demographic, attitudes toward the morality of homosexuality span the spectrum from very positive to very negative.

If we multiply the negative percent of each major religious denomination by its population proportion amongst schoolchild mothers and then add them up, the *total* negative attitude toward homosexuality is just 12.4%.

Given that some 35.6% of schoolchildren attend religious schools (Australian Bureau of Statistics 2023), that represents just over a third (35%) of students at religious schools whose family may actively wish to discriminate against LGBTI students and staff.

Therefore, when religious leaders state or imply that all their school's students and their families would like the school to discriminate against LGBTI students and staff, it's clear they have failed in practice to *ask* what students and their families think.

A practical example — Citipointe Christian College

This lack of understanding and consultation was highlighted in 2022 when Brisbane's Citipointe Christian College demanded parents sign an enrolment contract that slammed "sinful" homosexuality and entrenched binary gender ideology (Courty & Rendall 2022). In the resulting furore, some parents removed their children from the school, the school was forced to tear up the contract and the principal stepped aside (Kwan 2022).

Summary: Across the religious spectrum of school-selection decision makers — mothers — mostly a small minority (6%–25%) hold negative attitudes toward the morality of homosexuality. Only amongst Devouts (7% of mothers) was there a slight majority (53%), with one in five (21%) holding favourable attitudes.

Even if *all* the religious mothers with negative attitudes sent their children to religious schools, it would represent just over a third of student families (35%) who would be likely to actively endorse discrimination against LGBTI students and staff.

This small proportion was highlighted in practice when a discriminatory contract of a Christian school "blew up", resulting in some students being withdrawn and the principal stepping aside.

The religious conscience is not special

One of the questions that arises in discussion of the right of religious citizens to discriminate against others is whether religious consciences are fundamentally different from non-religious consciences, thus providing at least some evidence for different rights in law.

While religious consciences do lay claim to unverifiable supernatural ideas in order to back their moral and world views, neurobiological studies show that in fundamental ways, there is no difference in conscience.

Theist beliefs are *egocentric* beliefs

In a classic neurobiological experiment, Epley et al. (2009) studied brain activation patterns when people were asked to think about a particular belief, compared with when they were asked to think about what *another* known person would believe.

Their study found two distinct activation patterns: one for self-thinking, and another for when thinking about other minds.

They also monitored brain activation patterns when they asked people what *God* believes. These patterns were entirely consistent with the *self-referential* pattern, not the other-referential one.

That is, when theists are asked to reflect on what God believes, they refer to their own beliefs and not those of anyone else. This helps account for why people can hold polar opposite views about God's beliefs on a particular matter — such as in favour of or opposed to discrimination against people because of their LGBTI+, marital, or pregnancy status.

Summary: When theistic religionists are asked to consider what *God* believes about a particular matter, they employ exactly the same *self-referential*, egocentric mental processing as a person asked to consider what they themselves believe. That is, claiming that God's position on a certain matter is 'X' is precisely the same as claiming one's own position is 'X'.

Religious rituals make moral norms seem objective

In a multi-national study, Chvaja et al. (2022) found that participation in religious rituals is positively associated with the belief that the group's moral norms are objective.

Across distinctly different cultures, perceived invariance of ritual, and its more frequent performance, were strongly and stably associated with anchoring morality in religious belief, and the belief that moral values and norms exist independently of humankind.⁶

Or, put another way, religious ritual “explains a unique variation in moral absolutism/universalism in people who share the same religious traditions.”

Ritual participation also correlates positively with belief that one's God or gods are *moralising*.

Ultimately, greater participation in religious ritual helps explain moral absolutism and the view that others *ought* to — either naturally or by persuasion or coercion — support and observe the in-group's moral norms.

Summary: More frequent participation in religious rituals is associated with believing one's moral rules are objective, invariant and universal, leading to the belief that others do, or ought to, subscribe to and observe the same moral norms.

This along with the theistic attitude that reflecting on God's beliefs is also objective rather than egocentric as has now been shown, is a recipe for attempting to impose one's own personal moral beliefs upon others, and to demand that religious consciences receive more respect and legal protection than non-religious consciences.

Religion per se is a poor reason to justify special exceptions to anti-discrimination laws.

⁶ This also helps explain why religious moral rules are often described by their proponents as “natural law”.

Principles and clarity

I argue that more attention to principles and to clarity of communication would be beneficial to the inquiry and its outcomes.

The ALRC consultation paper is appropriately and necessarily instrumental — that is, referring to numerous binding, persuasive and informative legal instruments. This detailed coverage for informing advice to government is good, but establishing a more comprehensive and relevant set of principles, as well as less technical communication with lay audiences especially including the public (who are after all being consulted and will be affected by legislative reform), would be beneficial.

Principles, not positions

While much of the public dialogue supporting religious rights to discriminate boil down to anecdotes and positions regarding one or other specific example, greater attention is needed to principles. The ALRC consultation paper articulates five:

1. Human dignity is central to the expression and protection of all human rights.
2. All human rights engaged by this inquiry are fundamentally important.
3. Human rights should be considered holistically.
4. Education performs a key role in maintaining a pluralist and socially cohesive society.
5. Students are at the centre of this inquiry.

Principle 5's foundations in need of further clarification

Principle 5 is curious given that the mooted reforms cover discrimination against staff as well as students, and almost to the same degree.

If Principle 5 is indeed held, it is incumbent on the ALRC to articulate the underlying rationale as to at what age, if discrimination is harmful to children, it believes the same discrimination is *not* harmful to adults.

Or, if the ALRC is of the view that matters differ because staff are *employee-suppliers* while children are *customers* of the educational institution, why one deserves central attention and the other doesn't.

If, as the ALRC consultation paper articulates regarding Principle 5, that students are owed a *duty of care* by the educational institution, it must compare and contrast that with a *duty of care* the institution also owes to its employees, which is mentioned almost as an afterthought only as employees who “deserve safe workplaces and fair work conditions”.

Summary: Principle 5 is in need for further articulation as to why staff are less deserving of anti-discrimination attention than are students, if that is really the ALRC’s view.

Missing principle — Why exceptions only for “religious” conscience?

The ALRC consultation paper rightly articulates that restrictions to personal freedoms require acute justification and must interfere with those freedoms to the minimum extent possible.

However, an equal principle not so articulated, is *why* a certain class of persons is afforded *more* rights to discriminate than are persons of other classes.

That is, *why* (as a principle, not as extant instruments of law) are the religious afforded more rights to discriminate against others regarding otherwise protected attributes?

If a collective of atheists who in good conscience believe that, for example, homosexuality is wrong and they wish to establish a school for their collective and would intend to discriminate against LGBTI students and staff, this would be unlawful.

So why is it lawful for religious collectives? It can’t be on the basis that religious morality is materially “special”: **research discussed in this submission strikes out that claim.**

It’s equally unprincipled to simply take the word of religious commentators in arguing their own case, no matter how often they stake their claim. For example:

“The right to balance freedoms and sometimes discriminate is especially true for religious schools.”
— Donnelly (2023)

That's special pleading, not only because an exception to ordinary laws applicable to all Australians is being argued only for one group, but also because it's arguing only for a particular kind of exception.

If religious Australians are deserving of an exception to anti-discrimination laws (but non-religious Australian's aren't) regarding LGBTI+ status, why is it also not deserving of exceptions to laws that prohibit slavery, polygamy, cruel killing of animals, stoning adulterers to death, or not paying taxes?

The answer, of course, is that there is no *principled* reason.

Summary: Granting one group special exemptions from ordinary laws that otherwise apply to all Australians, but not from other laws that might equally “offend” their religious beliefs, is never *principled*. It's special pleading and gives effect to *religious privilege*.

Missing principle: worship versus service provision

Article 18 of the Universal Declaration of Human Rights defends human faculties:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

— Article 18, Universal Declaration of Human Rights

The core purpose of the Universal Declaration is to heighten protection of *human* rights, not *institutional rights*. This is evident throughout the declaration and is indeed its central tenet: to ensure humans are protected against hostile collectives and institutions.

Even the reference in Article 18 to “in community with others” (i.e. collectives or institutions) refers to rights of the individual *natural* person: “his”, gender specifics aside. At no point does the Declaration seek to grant rights to the collectives themselves (legal or confected “persons”).

Two observations may be made about this.

Firstly, Article 18 articulates *three* faculties deserving of protection:

1. Thought; and
2. Conscience; and
3. Religion.

Many religionists arguing for exceptions in law refer only to the third and fail to mention the first two. But the three are presented as equals (and religion is last, not first, if there were to be argument regarding precedence).

On what principle, then, should the religious be granted exemption from ordinary laws when non-religious consciences (e.g. of the same view such as a belief that discrimination is appropriate) are *not* given the same exemptions? That is, the freedom of one class of Australians to discriminate is accepted, but the freedom of another class of Australians to discriminate in precisely the same manner for reasons of conscience is rejected.

Secondly, schools are collectives of natural persons (humans) who have consciences. Collectives and institutions do *not* have consciences: they have rules and codes of conduct (Francis 2021, p 127). Those rules and codes of conduct not infrequently have the effect of *suppressing* the real consciences of members.

Institutions do not have “consciences”. They have rules and codes of conduct. Those rules and codes can suppress the real consciences of the natural persons who constitute the membership, thereby limiting human freedom.

A principled compromise

Given that thought, conscience and religion are to be protected but can come into contest, a principled approach to balancing rights would be helpful.

An approach that creates fairness and equity could be this:

1. When individuals gather together for the *exclusive* purpose of *worship*, they *individually* are afforded maximum freedoms in law, of thought, conscience and religion.
2. When individuals gather together for the *provision of services or goods* — even if that includes elements of worship, and regardless of whether services are performed only for “members” or for the wider public — exceptions to ordinary laws are not granted.

Adopting such a principled approach not only helps ensure greater fairness for all Australians, but it also has the positive effect of simplifying the rationale for the proposed legislative changes — compared to technical legal argument or endless anecdotes and culture wars — to a wider audience, including the general public.

Summary: When religion is given special exemptions in law, but (non-religious) thought and conscience are not, this offends the equity principles of Article 18 of the Universal Declaration of Human Rights.

Institutions, including educational ones, do *not* have “consciences”: they have rules and codes of conduct. Those can have the effect of suppressing the freedom of thought, conscience and religion of institutional members.

A principled approach to conflicts in human rights might be to grant maximum protection for thought, conscience and religion when collectives are engaged *only* in religious *worship*, but not to grant exceptions to ordinary laws when services or goods are being provided.

Principled approaches help simplify communication of legislative rationales to the general public.

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