



WATCHING BRIEF 23-2: RELIGIOUS EDUCATION CONSULTATION

As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government, we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.

February 2023

ALRC Paper on Religious Educational Institutions and Anti-Discrimination Laws

Background

The Federal Attorney-General Mark Dreyfus MP asked the Australian Law Reform Commission (ALRC) to review the current legal framework and make proposals for reform that would remove the current exceptions to discrimination for students and staff and at the same time allow religious bodies to honour their ethos. Submission have been invited by 24 February 2023, and a final report is due to go to the Minister by 21 April 2023.

Basic Points from ALRC Consultation Paper:

- Current anti-discrimination and employment laws prohibit discrimination but provide broad exceptions for religious bodies, for both staff and students.
- The ALRC Inquiry will seek a legislative framework consistent with Australia's human rights obligations.
- The following principles are being used – human dignity, fundamental human rights, education in a pluralist society, and welfare of students.
- The relevant legal obligations include international agreements, justification of limitations or exceptions, commonwealth/state/territory law, the Sex Discrimination Act, the Fair Work Act, and special considerations available to religious bodies.

Propositions

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.

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.

C. Preferencing 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 preferencing 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.

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.

Comment

It seems likely that Quakers would welcome these propositions as compatible with our overall approach to religious freedom. The previous submissions made on religious freedom by Quakers have been addressed mainly to minority rights (especially LGBTQI). At the same time, we have stressed the importance of our legal system being consistent with international human rights obligations, and have also pressed for a national Human Rights Act.

For example, the following points were made in several submissions on the previous government's attempts to legislate on religious freedom:

1. The core of our concern arises from the consequences of privileging religious freedom above other freedoms.
2. The revised legislation does not address this sufficiently for us to support it.
3. The broad provisions permitting statements of belief create the potential for serious harm to vulnerable individuals and groups.
4. Statements that foster discrimination on the basis of age, disability, race, gender identity, and sexual orientation should not be protected, and should be subject to existing anti-discrimination legislation.
5. The 'conscientious objection' right given to health practitioners is likely to have a damaging effect on a minority of people, such as those seeking sex re-assignment therapy.
6. Given hard-won standards of behaviour reflected in established human rights legislation and regulations, someone should not be entitled on religious grounds to act in a way that is illegal and harmful.
7. Smaller faith communities, relying on access to facilities run by larger religious organisations, or programs of government, may suffer constraints on their religious freedom. For example, Quakers could be denied charitable status because of our support for marriage equality.
8. The legislation is unnecessary and divisive. Changes to the Racial Discrimination Act could be made to include religious discrimination without the overlay of extra protections for religious freedom.

If we are to make a submission to this Inquiry, we could emphasise those points again while supporting the overall approach of the Consultation Paper.

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