



Inquiry into Australia's Human Rights Framework Submission to the Parliamentary Joint Committee on Human Rights

23 June 2023

Parliamentary Joint Committee on Human Rights
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Dear Committee Secretariat

The Australian Association of Christian Schools (AACS) welcomes the opportunity to provide a submission to the Inquiry into Australia's Human Rights Framework.

About the Australian Association of Christian Schools (AACS)

AACS represents over a hundred independent Christian Schools in every state and territory across Australia. Our schools are characterised as low-fee, non-denominational protestant schools which operate autonomously and are governed by parent associations and school boards. Our schools range from very small to large; urban to regional, rural and remote. The majority of our schools are open-enrolment and serve over 43,000 students enrolled, and their families, who come from a wide variety of socio-economic, cultural and religious backgrounds.

The Nature of Christian Schools

Christian schools were established by parents who wanted their children to be educated in a faith-based teaching and learning environment. Faith shapes all parts of the educational expression and is the foundation upon which the character and ethos of our schools are based. Religion is not simply taught as a stand-alone subject but permeates every aspect of our life and is embedded within all parts of the teaching and learning program. All participants (both teachers and non-teaching staff) strive to work together to provide an authentic 'community of faith' within which learning takes place. Our parents make a deliberate choice, and a financial sacrifice, to enrol their children in a school where staff are committed Christians who are able to not only teach the tenets of the Christian faith but also model a life of faith in their everyday life.



Parental Choice in Education

The right of parents to choose an education for their child in line with their own beliefs and moral convictions is of utmost importance to the Christian school movement. The freedom of parents to associate in the formation and governing of schools with a particular educational philosophy according to their faith is both a natural and democratic right.

It is important to note that parents from various faith backgrounds or non-faith backgrounds choose to send their children to our schools because they see the benefits of a Christian education. To us, our values and beliefs are intertwined. We strive for our schools to be warm and affirming 'communities of faith' where pastoral care is exceptional and accountability in behaviour is a built-in. Christian schools do this by employing staff who believe and live out the faith in their everyday life. For our member schools, it is a genuine occupational requirement for all staff to be able to hold and model genuine Christian character and behaviour.

The International Covenant on Civil and Political Rights (ICCPR)¹ affirms the right of parents and guardians 'to ensure the religious and moral education of their children in conformity with their own religious and moral convictions' in Article 18(4). We also note that government burdens placed on religious practice under Article 18(3) of the ICCPR are only to be subject to limitations that are 'necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.' This places a very narrow test on acceptable limitations. All of this is important in the context of this present Inquiry.

The sustained strength and popularity of faith-based schools with Australian parents is a powerful testimony to the need for continued recognition and protection of the fundamental human right of religious freedom and association in this country. Christian schools provide an important expression of parental school choice within the independent sector.

Religious Freedom

To be a truly multicultural, diverse and inclusive country, all Australians should have the freedom to decide for themselves what they believe and how they will live their life in accordance with their convictions. Respect for religious freedom is fundamental to the Australian way of life within our multicultural and multifaith context. As the Expert Panel on Religious Freedom Review noted, respect for diversity and religious belief is not only fundamental to recognising the inherent dignity of the individual, but also contributes to the democratic life of our community. AACS is concerned that there is no standalone law that gives comprehensive effect throughout to the human right to freedom of religion in Australia.

¹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, Article 18 (4), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights#:~:text=Article%2024-1.,family%2C%20society%20and%20the%20State.>

Response to Inquiry Terms of Reference

To review the scope and effectiveness of Australia's 2010 Human Rights Framework and the National Human Rights Action Plan

As outlined in the Human Rights Framework, Australia has signed up to seven core United Nations human rights treaties and the Government has reaffirmed that Australia should live up to its obligations under each of those treaties:

- the International Covenant on Civil and Political Rights
- the International Covenant on Economic, Social and Cultural Rights
- the Convention on the Elimination of All Forms of Racial Discrimination
- the Convention on the Elimination of All Forms of Discrimination Against Women
- the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
- the Convention on the Rights of the Child
- the Convention on the Rights of Persons with Disabilities

It is clear that international human rights law protects freedom of religion for both adults and children. The *Convention on the Rights of the Child* requires State Parties to “undertake to ensure the child such protection and care as is necessary for his or her wellbeing, taking into account the rights and duties of his or her parents ...”. Article 14 of the Convention outlines the right of the child to “freedom of thought, conscience and religion” and requires States to respect the “rights and duties of parents ... to provide direction to the child in the exercise of his or her right.” This includes the substantive content of education of respect for the child’s parents, and the child’s own cultural identity, language, and values. The right to establish private schools is also protected by international human rights law in Article 13 of the *International Covenant on Economic, Social and Cultural Rights*.

AACS notes that the Yogyakarta Principles, established by representative of a range of non-governmental organisations, are not listed as a binding treaty ratified by Australia, yet the AHRC has committed to giving priority to these principles. This is even though they conflict with rights under the *International Covenant on Civil and Political Rights* (ICCPR) and the Convention on the *Elimination of All Forms of Discrimination against Women*.

AACS believes both the Human Rights Framework and Action Plan have been ineffective in monitoring and implementing Australia’s obligations for protecting the human right of freedom of thought, conscience and religion. State, territory and federal governments have been moving towards removing or restricting the ability of religious schools to choose their staff without threat of legal action. We believe these trends represent an unnecessary and undue interference over freedom of religion and association. AACS is extremely concerned about the accelerating erosion of religious freedom for schools through the undermining of delivery of authentic of religious education through changes to anti-discrimination laws, and now the proposal for a federal Human Rights Act.



To consider whether the Framework should be re-established, as well as the components of the Framework, and any improvements that should be made

One glaring omission of the National Human Rights Action Plan is that it does not include actions to protect freedom of thought, conscience and religion. AACS recommends any future Framework should include 'religious people' and 'parents' as priority groups to ensure that Article 18(4) of the ICCPR which relates to the "respect for the liberty of parents...to ensure the religious and moral education of their children in conformity with their own convictions" is acknowledged as an absolute right. By including these new priority groups within a future Framework the Government would ensure there are a range of strategies and policies for protecting and enhancing the human right protections for these groups of people.

To consider developments since 2010 in Australian human rights laws (both at the Commonwealth and State and Territory levels) and relevant case law

State and Territory laws

We recognise that many of the levers of protection or vulnerability to religious freedom lie foremost in the hands of the states and territory governments. They set anti-discrimination laws, oversee school accreditation, and manage regulations and policies that impact schools. AACS is particularly concerned about the inconsistency in treatment of religious freedom between the various jurisdictions in Australia as it relates to the exceptions for religious educational institutions in discrimination law.

In 2021, the Victorian government passed amendments to its equal opportunity laws through the *Equal Opportunity (Religious Exceptions) Act 2021* which severely narrowed exceptions in relation to the employment of staff in religious schools. The amendments removed the presumption that Christian schools ought to be able to preference staff on the basis of faith in employment matters. Instead, the onus is now on the school to make a case as to why faith is an inherent requirement for each position within the school. AACS believe the Victorian Government's amendments represent an unreasonable infringement upon the right of "parents...to ensure the religious and moral education of their children in conformity with their own convictions" as protected in Article 18(4) of the ICCPR. In her Statement of Compatibility with the *Charter of Human Rights and Responsibilities Act 2006* (VIC) the Attorney General Jaclyn Symes stated that in her opinion the Bill was compatible with human rights and the narrowing of the tests for discrimination on the basis of religious belief or activity were necessary because:



“In employment, the Bill provides that a religious organisation or educational institution can only lawfully discriminate on the basis of religious belief or activity if conformity with the doctrines, beliefs or principles of the religion is an inherent requirement of the particular position, the person cannot meet that inherent requirement because of their religious belief or activity, and the discriminatory action is reasonable and proportionate. This replaces the current blanket exception with an exception that is tailored to the specific position and restricts the discrimination to only those positions where it is necessary.”²

In this instance, the Victorian Charter of Human Rights and Responsibilities did not adequately protect the rights of parents to ensure the religious and moral education of their children. AACS advocated strongly against these amendments on the basis that they reduced the status of religious freedom to a ‘second class’ right as there are no similar ‘inherent requirement’ or ‘reasonable and proportionate’ tests placed upon other exceptions in the Act, even for political parties. These amendments have created a burdensome and an unwarranted intrusion on the autonomy and freedom of Christian schools to preference staff of the same faith in all roles.

In 2022, the Northern Territory government passed the *Anti-Discrimination Amendment Act 2022* which contains a number of amendments with significant implications for the future operations of Christian schools in relation to teaching, employment and enrolment policies. The Northern Territory is now the only Australian jurisdiction without explicit legal protection for religious educational institutions in employment matters. The legislation could also undermine the ability of religious schools to operate in accordance with their doctrines, tenets and beliefs and leave them vulnerable to claims of systemic discrimination from representative groups for teaching and upholding their religious beliefs in their schools. The changes to the *Anti-Discrimination Act 1992* (NT) included:

- lowering the bar for discrimination claims to ‘offensive behaviour’, including any spoken or written word that offends or insults, which could foreseeably include reading Bible verses in a Christian school (s20A(1)(a));
- removing the exemption allowing religious schools to preference staff of the same religious belief or activity in employment (s37A);
- removing the exemption allowing religious schools to preference families in enrolment (s30(2));
- introducing a representative complaint system where a third party group or representative body may file a complaint of ‘systemic discrimination’ against an organisation, such as a Christian school, without having to name or identify an actual complainant (s62A(2)) .

This trend towards removing exemptions for religious educational bodies in employment and enrolment matters leaves Christian schools vulnerable to losing their distinct identity as communities

²Statement of Compatibility, *Equal Opportunity (Religious Exceptions) Amendment Bill 2021*, 28 October 2021: <https://www.legislation.vic.gov.au/bills/equal-opportunity-religious-exceptions-amendment-bill-2021>



of faith that are free to uphold the doctrines, tenets and beliefs of their schools. The changes in Victoria and the Northern Territory undermine the integrity of religious schooling and ignores the importance of 'mission fit' to associations generally. There is no logical reason to limit the removal of exemptions from religious educational institutions and not from cultural organisations, environmental organisations, trade unions, political parties or any other form of associational engagement. All these associational bodies are defined by their unifying attribute or adherence to a common philosophy, worldview, culture or cause. This trend raises the concern that religious schools are being subject to these detrimental actions based solely on their religious belief, in contravention of the right to equality.

Australian Law Reform Commission (ALRC) Inquiry

The Australian Law Reform Commission's recent Consultation Paper on Religious Educational Institutions and Anti-Discrimination Laws³ included a set of technical proposals which would remove all exceptions in the Commonwealth *Sex Discrimination Act* for religious educational institutions and would result in Christian schools without adequate protection against discrimination claims in the preferencing of staff and enrolment of students of the same faith. The examples given in the Consultation Paper make clear how the proposals would operate in our schools, restricting what beliefs about sexuality and gender religious schools can include in their statements of faith. The ALRC also proposes religious schools would be unable to expect staff to model the school's beliefs in their personal life, gives direction about how religious schools can teach these beliefs, and further restrict the right for parents to ensure their children's moral and religious education.

AACS has called upon the Government to ensure any law reform resulting from the final recommendations of the ALRC Inquiry protects:

- the rights needed for Christian schools to be established and operated, including the rights of parents to choose a school that reflects their deeply held religious values and beliefs, consistent with Article 18(4) of the International Covenant of Civil and Political Rights;
- the right of Christian schools to choose to employ staff who share the school's religious values and beliefs, as outlined in their Statements of Faith, Staff Codes of Conduct and Employment Contracts to maintain an authentic 'community of faith'; and
- the ability of Christian Schools to maintain their distinctive culture and ethos through teaching a Biblical worldview in the curriculum and being able to take action to ensure student behaviour does not undermine the school's Christian ethos as a 'community of faith'.

³ Australian Law Reform Commission, Religious Educational Institutions And Anti-Discrimination Laws: Consultation Paper (2023), p. 29: <https://www.alrc.gov.au/wp-content/uploads/2023/01/ALRC-Anti-discrimination-Laws-CP-2023.pdf>



The ALRC consultation report recommended new restrictions be placed on the right of religious schools to give preference to staff of the same religion across all roles within the school. By removing the ability of schools to control leadership, staff and volunteers, religious schools would be unable to offer students a holistic religious education. If enacted by the Government, the proposed changes would limit religious freedom and breach the right to establish authentic independent schools, protected in human rights law as a fundamental right central to the preservation of pluralistic democracy. The ALRC's proposals would also limit the legitimate expression of the rights of children and their parents to ensure the religious and moral education of their children, along with their right to freedom of association.

More concerning, the ALRC proposed the Government define which core tenets of religious doctrine and belief are acceptable to teach and uphold within Christian schools. The ALRC has recommended that religious schools be unable to require staff to commit to uphold and teach a traditional, orthodox belief about sexuality and sex to students. In the ALRC's view an individual staff member's sexual expression and beliefs should take precedence over, and even contradict, the religious beliefs of the school in anti-discrimination law. This would represent an untenable intrusion by the Government upon the moral teachings of a religious school in violation of the rights of parents.

Religious Discrimination Bill

AACS has long been calling for a bipartisan approach to legislating religious freedom protections in Australia. The failure of the previous Parliament to pass the *Religious Discrimination Bill 2021* was extremely disappointing as we believe the passage of this Bill would have been a positive step towards achieving our main priority: ensuring that parents retain the ability to educate their children at schools that accord with their faith. The Bill provided protections for faith-based educational institutions to preference staff, contractors, volunteers and students of the same faith, as well as apply policies and practices consistent with advancing the operating mission and ethos of their school.

The Bill made clear that it is *not discrimination* where a religious educational institution, such as a Christian school, engages in good faith in conduct that is in accordance with the beliefs and teachings of their religion. Such conduct includes maintaining staff and student codes of conduct to uphold the school's religious beliefs and ethos, which is a major driver for parents choosing to send their children to a Christian school.

To consider any other relevant matters: response to proposed Human Rights Act

The Australian Human Rights Commission (AHRC) proposal for a new Human Rights Act is a commendable goal, however the current proposed "list of rights for inclusion" presents significant



concerns regarding the rights which we would like to see addressed. The proposed list of rights has been redefined and constricted the right to freedom of thought, conscience and religion, from those protected under Article 18 of the ICCPR. This is concerning, especially in light of similar gaps in protections for religious freedom and parents' rights to choose the appropriate moral and religious education for their children in the charters of human rights in Victoria, Queensland and the ACT.

In particular, the current wording of the list of rights does not provide adequate protection for right of parents to choose a religious education for their children consistent with Article 18(4) of the ICCPR that recognises "the liberty of parents...to ensure the religious and moral education of their children in conformity with their own convictions." Instead of being about parents being able to "ensure the religious and moral education" of their children it is about a choice in schooling: "A child's parents...may choose schooling for the child to ensure the religious and moral education of the child in conformity with their convictions, provided the schooling conforms to the minimum education standards required by law."⁴ Ensuring the religious and moral education of a child is far broader than a mere choice in schooling and includes the freedom to remove a child from a class or program in a state school that is inconsistent with the parent's religious convictions. It also includes the freedom to choose an authentic faith-based school. AACS is concerned the religious components of education currently offered by Christian schools would be unreasonably dictated by the "education standards required by law" under future curriculum requirements.

AACS is also concerned that "freedom from discrimination" has been elevated above religious freedom by giving "discrimination" the meaning that it has in existing federal discrimination laws. Unlike other rights within the proposed Human Rights Act, "discrimination" does not have its meaning derived from the ICCPR which would have allowed for all the rights needed for Christian schools to be established and operated. This is because the ICCPR standard does not view differentiation as discrimination if the criteria for differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate aim under the ICCPR, such as promoting freedom of religion, in this case the manifestation of religion by religious schooling, protected by article 18(1), and the liberty of parents in article 18(4). Given the trends at state, territory and federal level to remove exemptions for religious schools in discrimination acts, this further elevation of "freedom from discrimination" in all contexts would continue to infringe upon the religious freedom of Christian schools seeking to maintain their ethos through preferencing people of the same faith in employment and enrolment matters.

AACS is also greatly concerned at the implications for Christian schools of extending ICCPR's prohibition against torture, currently worded as "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" to a much broader and ill-defined prohibition against

⁴ Australian Human Rights Commission, 2022, Position Paper: A Human Rights Act for Australia, 111, <https://humanrights.gov.au/human-rights-act-for-australia>,



“treating” someone in a “degrading way”. This would be an absolute right consistent with international law. Where certain aspects of Christian teaching could be wrongly caricatured as harmful and inherently discriminatory, as in the ALRC consultation report on religious exemptions, there are legitimate concerns that they may also be claimed to be degrading and prohibited by these provisions. AACS recommends the exact text of the ICCPR prohibition against torture be adopted in any Human Rights Act without any restatement in the list of rights such as to give them a meaning that is completely different from that under the ICCPR.

Conclusion

AACS believes Australia needs better protections for the fundamental human rights of freedom of thought, conscience, religion or belief which are clearly recognised in international law but not sufficiently protected in Australian law. It is disappointing that the clearly articulated rights for religious freedom within the ICCPR have not been translated into the proposed Human Rights Act drafted by the AHRC. On Article 18(4) specifically, AACS recommends the exact wording of the ICCPR be explicitly included in the Human Rights Act to cement the place of parental rights in matters of religious freedom and the education of their children.

AACS thanks the Committee for the opportunity to offer our submission to this Inquiry and would be pleased to expand upon our concerns in a public hearing.

Yours faithfully

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Australian Association of Christian Schools