

10 September 2008

Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on
Legal and Constitutional Affairs
Department of the Senate
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Dear Mr Hallahan

This submission is presented by the Association of Independent Schools of South Australia (AISSA) in response to the recent submission by the Human Rights and Equal Opportunity Commission ('HREOC') to the Senate Legal and Constitutional Affairs Committee for its Inquiry into the effectiveness of the *Commonwealth Sex Discrimination Act 1984* (Cth) ('SDA') in eliminating discrimination and promoting gender equality.

The AISSA recognises that the due date for lodging submissions has passed but the HREOC submission raised matters of such importance to Independent schools and students that AISSA requests that the committee give consideration to AISSA's position on these matters.

The AISSA represents the interests of 96 South Australian Independent schools with an enrolment in excess of 41,000. The AISSA is recognised as the peak body for Independent schools (non-Catholic) by governments, other education and training sectors and key interest groups within the community in South Australia. AISSA is also a transitionally registered association under the *Workplace Relations Act 1996*.

Sexual Harassment and Students

The AISSA is concerned about paragraphs 388 - 393 of the HREOC submission and recommendation 32, where HREOC advocates extending the coverage of the sexual harassment provisions of the SDA to all students regardless of their age.

The AISSA and member schools strongly believe that all students should be free from sexual harassment and that there should be appropriate procedures to address any allegations of sexual harassment. However the proposed changes have received mixed reaction from member schools, primarily because it is not seen as the most expeditious way of effectively handling such issues, the negative impact on young people being involved in a legal process and the administrative complexities (red-tape) that will be generated.

There is a significant concern that the handling of student to student sexual harassment allegations by HREOC may not be in the best interests of either student, particularly when a student is in the early years of secondary school or in primary school. HREOC may not be aware that situations arise that may be regarded as sexual harassment with very young children in their early years of schooling.

In many issues between students there is a broader context which is often very relevant with schools often being in the best position to be aware of the broader context.

To focus on sexual harassment may not address the underlying issues; there may be an on-going issue between the students, one student may have behavioural difficulties associated with a learning difficulty, a student may have family issues or a student may have mental health issues. On occasions, inappropriate sexual behaviour can be an indicator of trauma in the child's life, such as sexual abuse. HREOC staff may not have the expertise to handle such circumstances.

The handling of the situation requires a supportive set of strategies not a heavy-handed approach through a legal and administrative process.

It is usually very important that issues between students or students and teachers are resolved promptly, which may be best undertaken at the school level. Students in the early years of high school are often going through a challenging developmental stage and it needs to be recognised that they can make mistakes. We question how action under the SDA will facilitate resolution of the significant majority of complaints relating to sexual harassment in a timely manner.

In issues between students, it is not always the case that the aggrieved student and the parents will be completely satisfied with the outcome, regardless of the process. Further, if a student or parent believes that they can readily access an external organisation, then they may be less likely to be prepared to resolve the matter at the school level.

To involve young children in formal processes which may include a Court hearing, (which may include examination by a lawyer), could be detrimental to the students and exacerbate the problems. It also may be difficult for the respondent to obtain appropriate representation without cost.

It should also be noted that in some serious cases, the complainant could report the matter to the Police and staff in most States, including South Australia, also have mandatory reporting obligations under child protection legislation.

All Independent schools in South Australia are required to develop and implement policies and procedures that address sexual harassment by the Non-Government Schools Registration Board as a condition of registration. These policies and procedures are evaluated by Review panels of the Board. They include specific policies include reporting procedures to child protection authorities and the police when necessary. Schools also employ a range of other pathways, including psychologists and counsellors.

In addition all schools must comply with the Commonwealth's National Safe Schools Framework. Schools are required to implement this framework as a condition of the receipt of Commonwealth funds. An audit of schools is conducted by the Commonwealth.

The AISSA has developed a resource for schools (*Handling Complaints*) and conducts a wide range of workshops associated with child safety and welfare. Legal advice is also sought on behalf of member schools to ensure they are complying with legislation and duty of care requirements.

Educational institutions established for religious purposes

The AISSA is also concerned about HREOC's comments in paragraphs 483 to 504 regarding the exemption for educational institutions established for religious purposes (s.38) and particularly the recommendation for the exemption to be subject to a three (3) year sunset clause with a further review of whether s.38 should be removed, retained or replaced with a more narrowly tailored exemption on strictly human rights grounds.

Over 98% of students in the Independent school sector in South Australia attend schools which are underpinned by a religious ethos. Enrolment growth in schools, which are underpinned by a religious ethos, has significantly increased since 1994. People are clearly indicating, through this enrolment growth, that they support the faith based values of these schools.

In some cases parents choose particular schools because they have a commitment to 'traditional' family values, including a commitment to monogamous heterosexual relationships. In some religions same-sex relationships are inconsistent with the beliefs of the religion. Hence, in the case of schools founded on the tenets and beliefs of these religions, some relationships are inconsistent with the ethos of the school.

The AISSA considers it appropriate for parents to expect that if they choose an Independent school based on the school's adherence to a particular religious ethos, then the school will operate within and according to that ethos. Parents are, and should be, the primary definers of the value and belief systems of their children.

The particular ethos and philosophy presented by a school, is one parents choose to adopt by sending their children to that particular school, and accept through the contract they enter into on enrolment of their children at an Independent school for the education of their children. In general, current legislation does not inhibit this.

The importance of the values element of schooling has been recognised by State/Territory and Commonwealth Ministers of Education, through the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA). The Council's *Declaration on National Goals for Schooling in the Twenty-First Century* states, for example, that,

'...Schooling provides a foundation for young Australians' intellectual, physical, social, **moral, spiritual** and aesthetic development.' (emphasis added)

Independent schools educate children and young people within a curriculum underpinned by a particular set of values or ethos. Religion in religious Independent schools is not an 'accessory' or an 'add-on'. It is embedded in the very essence of the school including, school policies and practices, pedagogy, the curriculum and the co-curricular activities of the school. The AISSA has listed below the aims and goals of three Independent schools, to indicate the ways in which faith and spirituality are deeply embedded in schools underpinned by a religious ethos.

Example 1

' _____ was formed by Christian parents who desired a high academic standard of education for their children in a caring and disciplined environment where Christian values and principles were actively supported.

Our Vision:

"To be a Christian community that fosters innovation and excellence in its programmes for the academic, vocational and physical development of its students; nurtures spiritual and emotional growth and prepares students to move into life beyond the School, confident and competent in their chosen field".

Our Mission:

"To identify, encourage and develop the potential in each child through:

- *Effective selection, training and retention of staff to develop a balanced, best-practice programme of learning which is integrated throughout the student's time at the school.*
- *Building a community based on relationship with God and each other where the character of Jesus Christ is valued, developed and displayed'.*

Example 2

Mission Statement

_____ aims to...

Encourage and train children in all aspects of life in such a way that God is seen to be at the centre of everything.

Be an extension of the God given mandate for parents to bring their children up in the wisdom and knowledge of God.

Encourage a high standard of education, social behaviour and community responsibility.

In co-operation with parents the school aims to develop the educational and personal potential of each student within a caring _____ community.

Example 3

AIMS

About God

To foster in every student a desire to serve God and other people and in doing so, to develop a respect for truth and a lasting set of values emanating from the truth.

About the Child

To develop the spiritual, social, academic and physical potential of each student in a caring, yet disciplined environment; to assist each student toward a mastery of basic academic skills, and to foster creativity and excellence.

About the Family

To develop and maintain a cooperative relationship with the families of students that will demonstrate the _____ faith to both students and family members.

About the Community

To foster a cooperative relationship between all members of the _____ family and to extend this cooperative relationship to the wider community.

About the Curriculum

To provide a balanced school programme in which the _____ faith is integrated throughout the curriculum.

Operating Principles

To be open (so far as its resources shall permit) to the whole of the local community regardless of the parents' economics status, and regardless of the parents' religious affiliations, provided that the parents support the Aims of the _____.'

It is a central tenet of Independent schools that staff, and the wider school community, will be committed to the underlying philosophies (educational and/or religious) and principles of the school. For the majority of Independent schools in South Australia, it is critical that they have the ability to employ staff across all occupations who share the religious values of the school. The values and ethos of the school provide the context for all aspects of school life including the educational programs.

In many religious Independent schools it is a necessity that staff be committed to the religion of the school and model their lives on the religion's values and beliefs. This applies to the employment of all persons, including non-teaching staff. In regard to a number of schools in the Independent school sector staff perform what is, in essence, a ministerial role as the schools have been formed as extensions of ministries.

There is an expectation that staff in these schools embody the values of the school both within and outside of school life. This necessitates that school employees conduct themselves in a manner consistent with the principles of the school both within school hours and outside of school hours. Schools are community based organisations and consequently substantial interaction often occurs within the school community outside, as well as inside, of school hours. Moreover, beliefs are embodied in every part of a person's being. Simply put, a person's faith affects the whole of

their life and actions. It is not confined to the words that they say or repeat within particular situations or times.

In a number of religious schools a commitment to the beliefs and principles of the school, requires that all staff be committed to monogamous heterosexual relationships. However, it needs to be noted that this forms only one part of a commitment to principles that is expected in these schools.

If employees do not meet these requirements, then they act contrary to the very essence of the school and, hence, may threaten the religious susceptibilities of the school. Significantly, they may not be able to adequately fulfill their responsibilities to students, as expected by parents and the school community. Children and young people respect teachers when they see commitment in action. Young people are perceptive and can identify whether or not there is a genuine commitment to the ethos of the school. If the commitment is hollow then children and young people are naturally skeptical and less likely to be respectful, compromising the learning environment of the school. The viability of the school may also be threatened through a potential loss of student enrolments.

The requirement that an employee is committed to the principles of the relevant organisation can be seen in other employment areas e.g. trade unions.

In some schools it is a necessary requirement of enrolment that the student and his or her family have a particular faith and/or live their lives according to certain standards based on that religious faith.

The right to freedom of religion is one of the fundamental freedoms in Australia. It is enshrined in section 116 of Australia's *Constitution*. In *Church of the New Faith v Commissioner of Payroll Tax (Vic)* (1983) 154 CLR 120, the High Court stated that "...freedom of religion, the paradigm freedom, is of the essence of a free society". The right to freedom of religion was reinforced in 1980 by Australia's ratification of the *International Covenant on Civil and Political Rights (ICCPR)*.

The ICCPR (Article 18) states that:

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his (sic) choice, and freedom, either individually or in community with others and in public or private, to manifest his (sic) religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion which shall impair his (sic) freedom to have or adopt a religion of his (sic) belief or choice.*
3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

The ICCPR article 18 not only protects the freedom to believe but also the freedom to manifest that belief. To deny a school the right to conduct its operation in accordance with its religious beliefs is fundamentally discriminatory and is prohibited under article 2.1 of the ICCPR.

The ICCPR makes it clear that parents are entitled to ensure the religious and moral education of their children in conformity with their own convictions.

It is clear that there is significant legislative precedence across Australia for recognising the right of religious bodies and institutions to operate in accordance with the (religious) principles and beliefs that the institution is founded on.

It is essential, if Australia is to remain a multi-faith and multi-cultural society, that the religious and cultural belief systems of Australians relating to sexuality and marriage, continue to be respected in any legislative reforms.

The AISSA calls on the committee to recognise the importance of religion and religious beliefs and that exemptions which protect the right of faith based schools to operate in accordance with the religious tenets and beliefs upon which they have been founded remain protected.

If you wish to discuss any matters in this submission, please contact me on 8179 1400.

Yours sincerely

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