



Anglican Church of Australia

Public Affairs Commission

Submission of the Public Affairs Commission of the Anglican Church of Australia on the Consultation Paper on Religious Educational Institutions and Anti-Discrimination Laws

23/02/2023

1. This submission is made by the Public Affairs Commission (PAC) of the Anglican Church of Australia (ACA) in response to the four propositions raised in the Australian Law Reform Commission's (ALRC) Consultation Paper released on the 27th January 2023.
2. The PAC is a body set up, amongst other matters, to respond to aspects of public affairs as referred by the Primate, Standing Committee or General Synod of the ACA or initiated by the PAC. The views expressed in this submission are only the views of the PAC and should not be taken to reflect the opinion of the ACA, the Primate, the Standing Committee or any of the Dioceses. Due to the shortness of the submission period, the PAC has not been able to consult with any Anglican Schools in the preparation of this response.
3. The PAC has made several submissions ("previous submissions") to the Commonwealth Government in relation to matters of religious educational institutions and anti-discrimination laws, specifically:
 - PAC Submission Religious Discrimination 1 October 2019 ¹
 - PAC Submission Religious Discrimination 29 January 2020 ²
4. Consistent with our previous submissions on these matters:
 - 4.1. The PAC supports Proposition A, because it protects students from unlawful discrimination under the *Sex Discrimination Act* 1984 (Cth). However, the PAC does not believe that Technical Proposal 7 ("Amend the Sex Discrimination Act 1984 (Cth) to clarify that the content of the curriculum is not subject to the Act") goes far enough. This should be replaced with an amendment that makes that "teaching the doctrines, tenets and beliefs of a religion is not subject to the Act". The APC also recommends a further clarification that states that "a religious educational institution acting in good faith to maintain the religious ethos of the institution is not subject to the Act". In the absence of such a clarification schools may be required to permit student behaviour that actively seeks to undermine their religious ethos (for example by campaigns for schools to eschew their religious beliefs).
 - 4.2. While the PAC is supportive of the intent of Proposition B (which is that teachers and other staff cannot be discriminated against on the basis of a protected attribute), we do not support Proposition B in its present form. Proposition B would prevent a school requiring its Christian Studies teacher to believe the Christian faith, should those beliefs be in tension with a protected attribute under the *Sex Discrimination Act* 1984 (Cth). Proposition B would arguably leave Australia in breach of its international obligations pursuant to Article 18 of the International Covenant on Civil and Political Rights.

¹ <https://anglican.org.au/wp-content/uploads/2019/10/191001-PAC-Religious-Discrimination-submission.pdf>

² <https://anglican.org.au/wp-content/uploads/2020/01/200129-PAC-submission-on-second-exposure-draft-Religious-Discrimination-bills-final.pdf>

- 4.3. For the same reason, the PAC rejects Proposition C it also severely limits the ability of religious bodies to give preference to people of their own religion. In respect of both Propositions B and C, we draw attention to the following paragraphs from our previous submissions:

We support exemptions or exceptions which enable religious bodies to give preferences to people of their own religion in employment, school enrolments or scholarships and the like. Organisations set up for religious purposes need to be able to manifest their religious beliefs and not be forced to carry out acts which their faith prohibits. They should be free to encourage an ethos in the organisation where people are working towards the same mission and to employ people to further that mission. (PAC Submission Religious Discrimination 1 October 2019, paragraph 25)

Defining religious exemptions by whether the body is conducted “*in accordance with*” or “*conforming to*” doctrines, tenets, beliefs and teachings of a particular religion can, however, also be too narrow in that the doctrines of a religion do not usually require employing only co-religionists. Having co-religionists in leadership positions or as the majority of the workforce may, however, be necessary in order to preserve the religious ethos and mission of the organisation. It may also be that it is important for co-religionists to find places at schools or aged-care homes or hospitals where their religious beliefs and ability to worship will be catered for and nurtured. If places are limited, it would make sense for preferences to be able to be given to those co-religionists, even if the doctrines do not require that only people of that religion be enrolled or admitted. There should then be a provision that bodies established for religious purposes do not discriminate under the Act or breach the provisions of the Act by giving *preferences* to people who ascribe to the doctrines, tenets, beliefs and teachings of the body. (PAC Submission Religious Discrimination 1 October 2019, paragraph 35)

We are pleased that the giving of *preferences* to people of one’s own religion has been included in ss11(2) and (4) and s32 and s33 [of the Religious Discrimination Bill], even where there may not be a specific doctrine requiring preferences or employment of co-religionists. The key reason why we sought in our previous submission to retain some religious body exceptions was to enable preferences to be given to people sharing the same religion so as to maintain the ethos and mission of the religion or to facilitate ministry to people of the same faith, rather than out of any desire to discriminate *against* others.

We do not believe distinctions should be drawn between people at a senior management level in a religious body and those at more junior levels. Some religious bodies will see the whole enterprise and all work within it as mission and ministry engaged in by the whole staff who are all representatives of that religion and key parts of that mission...

As set out above, we believe that religious bodies established for religious purposes should usually be able to give preferences to people of their own religion.

(PAC Submission Religious Discrimination 29 January 2020, paragraphs 31, 32, and 39)

- 4.4. As a general proposition, the PAC supports Proposition D, to the extent that it holds that religious educational institutions should be able to require all staff to respect the religious ethos of the educational institution. This support, however, is not to be read to be an endorsement of Propositions B and C.

5. We are deeply disappointed by the flawed proposals in relation to Propositions B and C which substantially limit the ability of religious bodies to give preferences to people of their own religion. This is inconsistent with the third limb of the Terms of Reference which required the ALRC to ensure that religious educational institutions “can continue to build a community of faith by giving preference, in good faith, to persons of the same religion as the educational institution in the selection of staff.”
6. The PAC therefore urges the ALRC to reconsider and revise the proposals in the Consultation Paper to ensure the ability of religious bodies, including religious educational institutions, to give preferences to people of their own religion.

Yours faithfully,

Bishop Matt Brain

Chairperson of the Public Affairs Commission