

22 February 2023

Our ref: SS:IL

Email: [REDACTED]

Dr James Popple
Chief Executive Officer
Law Council of Australia
19 Torrens Street
BRADDON ACT 2612

By email: [REDACTED]

Dear Dr Popple

Religious Educational Institutions and Anti-discrimination Laws

Thank you for the opportunity to provide feedback on the ALRC Consultation Paper, Religious Educational Institutions and Anti-Discrimination Laws (**Consultation Paper**). The Queensland Law Society (**QLS**) appreciates being consulted on this important paper.

This response has been compiled by the QLS Industrial Law Committee, whose members have substantial expertise in this area.

General comments

We note that there are several Commonwealth Acts that deal with discrimination on the basis of an individual's right or a particular attribute. This is problematic and creates the potential for different rights and attributes to be treated differently under the law, including differences in complaint mechanisms.

We are concerned that by taking a piecemeal legislative approach to anti-discrimination, there is a real risk that the protection of one right or attribute will be promoted above another without appropriate justification or balancing of the other rights and attributes which should also be considered.

We submit there should be a single piece of federal anti-discrimination legislation. Consolidated anti-discrimination legislation would help to ensure equal application of the law. Such legislation would ensure that individual rights and attributes are protected while allowing for a single complaints mechanism to operate and be accessible to everyone.

Support for propositions

QLS supports reforms proposed under Propositions A, B, C and D of the Consultation Paper. QLS does not support privileging manifestation of religious belief over other human rights including freedom from discrimination on the basis of, for example, sex, disability, sexual orientation, race, and age. Allowing such discrimination is unlikely to facilitate an inclusive,

Religious Educational Institutions and Anti-discrimination Laws

tolerant and safe environment in a range of public arenas, and will create an uneven playing field regarding discrimination.

More particularly, it is our view that religious institutions should not be permitted to discriminate against current or prospective students 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. Similarly, religious institutions should not be permitted to discriminate against current or prospective staff on the grounds of sex, sexual orientation, gender identity, marital or relationship status, or pregnancy. This position is generally consistent with Queensland's *Anti-Discrimination Act 1991* (Qld).

Potential for misuse of Proposition C

QLS accepts there may be limited circumstances under which it is reasonable for a religious institution to preference staff based on the staff member's religious belief where the teaching, observance or practice of the religion is a genuine requirement of the role, as outlined in Proposition C. For example, where a staff member is employed to teach religion classes. However, QLS is concerned that Proposition C may be used by religious institutions as a loophole to discriminate against staff in circumstances where their role does not genuinely require teaching, observing or practising the religion. For example, where a teacher is employed to teach subjects that do not relate to the institution's religious doctrine.

In this respect, QLS recommends careful consideration be given to tightly defining the circumstances under which the teaching, observance or practice of religion may be considered a genuine requirement of a role in an educational institution. Any uncertainty in drafting may create loopholes for discrimination and lead to disputes about the interpretation of the exemption.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED].

Yours faithfully

[REDACTED]
Chloe Kopilovic
President