



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

Bishops Commission for Life, Family and Public Engagement

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Dr Sean Turner
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Senate Legal and Constitutional Affairs Committee
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Dear Dr Turner

Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff

This submission from the Australian Catholic Bishops Conference (ACBC), as prepared by the Bishops Commission for Life, Family and Public Engagement (BCLFPE), is made in support of allowing religious schools to continue to pursue their mission as providers of an education informed by, and imbued with, Catholic faith traditions.

The ACBC is a permanent institution of the Catholic Church in Australia and the vehicle used by the Australian Catholic Bishops to address issues of national significance.

The BCLFPE is one of a number of commissions established by the ACBC to address important issues both within the Church and in the broader Australian community. The BCLFPE has responsibility for public engagement and religious freedom.

The Catholic community is the largest religious denomination in Australia with more than one in five Australians identifying as Catholic. There are more than 1,740 Catholic schools with more than 94,000 staff providing education to more than 765,000 Australian students.

The ACBC seeks to participate in public debate by making reasoned arguments that can be respectfully considered by all people of goodwill.

The ACBC appreciates the opportunity to make a submission on this important issue. This submission focuses on Catholic schools, but we would like all religious schools to continue to receive support for pursuing their faith-based mission.

That said, the ACBC does not believe this brief and hurried inquiry can properly consider such a complex issue in the absence of the full report of the Religious Freedom Review (Ruddock Report) and specific proposals for broader reforms to religious freedom law. Indeed, the ACBC reluctantly and respectfully questions both the motivation behind the creation of this inquiry and the value of any findings it may make to respectful debate given that it is only informed by leaked recommendations of the Ruddock Review. Nor in our view is there any particular urgency to try to resolve an issue of this nature in the invariably fractious atmosphere of the last two sitting weeks of the parliamentary year.

Introduction

Catholic schools treat all their students and staff with the greatest respect because they see every human person as made in the image and likeness of God. Every person has an absolute inherent dignity, and no person can be reduced to some aspect of their makeup, whether by race, gender or in any other way. Schools employ staff or enrol students from a broad variety of circumstances, identities and lifestyles, including those who identify in a variety of ways, but who support the religious identity and mission of the school.

It is understood from the terms of reference of the inquiry that the exemptions provided under section 38 of the *Sex Discrimination Act 1984* (SDA) are under consideration. As such, this submission is predominantly focused on issues raised by section 38. However, it is noted that there are protections for religious bodies under the SDA which are set out in section 37 and which are also considered to be important and which in our view should be maintained, including to the extent that they apply incidentally to educational institutions encompassed by the terms of this section.

We are not aware of any decided cases that have considered either section 37 or section 38 of the SDA to help illuminate their scope. We are aware of similar exemptions for religious educational institutions in state and territory anti-discrimination legislation except for Tasmania and Queensland.

There are two central questions to this inquiry:

1. Should religious education institutions have the legal right to educate students in the beliefs of their faith and maintain a faith-based culture within their institutions?
2. Is there any evidence that religious education institutions are abusing the freedom currently enjoyed that would necessitate changes to current legislative provisions?

This submission will set out in broad outline:

1. the nature of religious freedom;

2. the difficulty of recognising the fundamental and very positive nature of religious freedom by way of exemptions;
3. the value of parental choice for a Catholic education;
4. the essential role school staff play in achieving the mission of the school;
5. the importance of being able to continue to educate students about Catholic beliefs
6. the risk to faith-based education of removing the exemptions; and,
7. the vital need to affirm the rights of religious schools associated with religious freedom in Australian law.

Religious Freedom

Religious beliefs are fundamental to a person's identity and their decisions about how they wish to live their lives. Freedom to hold, express and act on one's religious beliefs as a citizen is fundamental to civilised democratic societies. This is part of the freedom of thought, conscience and belief as recognised in the foundational international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Freedom to act on one's religious beliefs is not confined to private worship, important as that is, for religious belief guides one's actions and participation in the community – which is why people of faith build places of worship, undertake charitable works, publicly express their beliefs and provide social and health services for the good of others.

Australia is a pluralist society. Inherent in a pluralist society are different views and beliefs and the challenge of how to accommodate those different perspectives. Excluding, discouraging or restricting the views of people who have a religious faith is unjust and risks impoverishing public policy debate. Australia needs to be able to balance rights that are sometimes at odds with each other, rather than permitting one right to override another.

Governments must recognise that when talking about people of faith, they are talking about their own citizens, whether from a Christian, Jewish, Muslim or other faith tradition. More than 60 per cent of Australians profess a faith, and more than one in five Australians are Catholic.

Exemptions from anti-discrimination law

Anti-discrimination laws rightly protect people from being treated unjustly simply on the basis of personal characteristics.

When these laws were introduced in Australia, exemptions were provided for a wide variety of organisations including voluntary bodies, insurance companies, superannuation funds and sporting organisations. In the case of educational institutions established for religious purposes exemptions were provided to ensure the

laws did not have the perverse effect of curtailing religious freedom. For example, while it would be unjust in most contexts to exclude a person on the basis of their religious or ethical beliefs, it would be equally unjust to insist that a religious organisation employ a person who was opposed to its religious and ethical beliefs.

The provisions described as exemptions have a positive purpose of allowing religious groups to operate in conformity with their beliefs. Yet this system of exemptions gives the wrong impression that religious freedom is a negative, lesser right, rather than a positive, fundamental right. Describing these provisions as exemptions can thus obscure the positive contribution that religious belief and religious groups make to the Australian community.

It is now vital that religious freedom is expressly acknowledged in legislation in an affirmative way, as an important right that needs to be balanced with other important rights.

Australian law must recognise religious freedom in a positive way as a fundamental, internationally-protected human right.

Parental choice

The right of parents to send their children to the school of their choice and to be taught in accordance with their religious convictions must be respected and protected.

Article 18(4) of the *International Covenant on Civil and Political Rights* specifies that “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.”

Parents and carers choose Catholic schools for their children because they expect that this education will be provided by school staff in a manner consistent with the Gospel of Jesus Christ and the teachings of the Church. This goes to the very heart of the identity and mission of the Catholic school.

School staff

The freedom of Catholic schools to employ staff who embrace the Catholic faith inside and outside employment is essential to ensure our schools are educational communities that express and operate within our faith tradition. Staff in Catholic schools have a professional obligation to be supportive of the teachings of the Catholic Church, to act as role models to students and to do nothing that would undermine the transmission of those teachings.

The obligation to be supportive of Church teachings is recognised as being particularly important in Catholic schools, compared to other works of the Church, because schools are involved in the education and formation of children and there is a critical

link in education between proclaiming the Word of God and showing authenticity by living that Word.

Catholic schools are a choice, for parents and carers, and for staff members who seek employment and who have other options available to them if they do not wish to accept or commit to the ethos and mission of a Catholic school. People applying for any position within a Catholic school are explicitly advised of the ethos and mission of the school and the expectation that all staff will be supportive of this mission and ethos. Acceptance of an employment position at a Catholic school is made with this understanding.

We are indeed fortunate that over many years Catholic staff and staff from other religious backgrounds have accepted the invitation to work in our Catholic schools and make an invaluable contribution to the vibrant faith community within our schools. It is not unreasonable for faith-based schools and the families who choose them to continue to expect that staff will support and not undermine their school's ethos and mission.

Workplace relations issues arise from time to time in our schools, as they do in any workplace. Those issues may be related to important religious beliefs, which is why faith-based exemptions are indispensable. School principals work to resolve such issues pastorally and this approach is generally successful. But sometimes there is a breakdown in the relationship and the protections of existing law are needed to allow schools to protect their ethos and respect for Church teachings.

Disputes might, for example, be over contentious issues around how staff have conducted themselves publicly in ways which conflict with the identity and mission of the school. Where the school forms a view that the particular behaviour undermines its religious ethos, it must be able to rely on its pre-existing right to require a staff member to change his or her behaviour to align with the doctrines, tenets, beliefs or teachings of the religion, or, if that is not possible, then leave the school.

School students

Schools also put a high value on having a positive relationship with their students. Where there is a discipline issue or disagreement between the school and student or the school and parents or carers, principals or other members of senior staff will work to resolve the issue pastorally.

Concern has been raised in the media that some religious schools might expel a student just because of their sexual orientation. That would not happen in a Catholic school.

These legal protections have been important to giving religious schools confidence they are not at legal risk for pursuing their religious mission.

Because the value of the school ethos is widely understood and because Catholic schools endeavour to resolve issues pastorally, Catholic schools rarely have to rely on the religious liberty protections available to them, but it is nonetheless vital that these faith-based exemptions be maintained.

Faith-based education

A particular concern is that Catholic schools want to maintain the capacity to teach a Christian understanding of sexual ethics and marriage according to our faith tradition. While the current law allows our schools to continue to teach Catholic beliefs, this right is threatened by proposals to repeal existing faith-based exemptions for religious schools and institutions.

This teaching would form part of a broad education in the Catholic faith which includes the Gospels, the tradition of the Catholic Church and consideration of a moral life including concern for the poor and respect for the environment as God's creation.

Catholic schools want to continue to be able to teach the Catholic faith. This faith-based education is a vital part of the identity and mission of Catholic schools.

A positive recognition of religious freedom

The ACBC argued in its submission to the Ruddock Religious Freedom Review for a general limitations clause, which would:

- amend discrimination legislation to allow religious groups to act in a way which can be reasonably seen to be exercising religious belief;
- recognise that protection, advancement or exercise of another human right (in this case, religious freedom) is a legitimate objective and not inherently discriminatory; and,
- operate in addition to the existing express exceptions and exemptions in anti-discrimination laws, which have the benefit of established acceptance and meaning.

Conclusion

This submission argues that Catholic schools do not discriminate unjustly against staff or students, particularly on the basis of sexual orientation and gender identity. The ACBC has not seen evidence demonstrating that Catholic schools discriminate unjustly.

It is essential to the mission of Catholic schools and the parents and carers of the students they entrust to our schools that we continue to be able to educate students in the beliefs of their faith and maintain our faith-based culture. Catholic schools' mission is not just to educate students in all the elements of the Australian Curriculum, as important as that is, but also to help educate our students in how to live Christian lives.

The provisions in section 38 of the SDA are necessary because some people may claim that our Catholic beliefs are unjustly discriminatory and we need to have assurance we can pursue our religious mission without legal risk.

Given the difficulty of relying on exemptions alone, it is vital that we have a new positive, principles-based approach to amendments that would allow religious schools to continue to operate according to their religious faith.

We propose that the law recognise religious freedom in a positive way to allow religious groups to continue to run their schools according to their religious faith, but retain the exemptions because they have the benefit of established acceptance and meaning in law.

I would be happy to answer any further questions the Committee may have. I can be contacted via Mr Jeremy Stuparich, Public Policy Director at the ACBC on [redacted] or at [redacted]

Yours sincerely

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Chair, Bishops Commission for Life, Family and Public Engagement