Submission on the Exposure Draft of the Religious Discrimination Bill

By Anglican Schools Corporation

1. Who are we?

Anglican Schools Corporation (‘the Corporation’) is a ministry of the Anglican Church Diocese of Sydney.

The Corporation was established by an ordinance of the Synod of the Anglican Church Diocese of Sydney in 1947.

The Corporation is a body incorporated under the powers given to the Synod of the Anglican Church Diocese of Sydney by an Act of Parliament of the State of New South Wales and is a legal entity in its own right.

The Corporation now owns and operates schools and campuses at 19 sites across the greater Sydney area, the South Coast and Central West of New South Wales. The Corporation caters for the academic, spiritual and pastoral needs of over 14,000 students in NSW, ranging in age from four to eighteen years. The Corporation provides quality and affordable education to local communities whilst communicating the Gospel of Jesus Christ.

Our families are drawn from the broad community and whilst some might refer to themselves as Christian rather than Anglican, we also have a high proportion of non-Christian families at our schools. These families repeatedly tell us that they select our schools because of the values that the school represents through its actions, policies, staff and community.

2. Executive Summary

Anglican Schools Corporation acknowledges and supports the Anglican Church Diocese of Sydney’s Submission and, together with the Diocese, welcomes the Religious Discrimination Bill. The Corporation has always believed that religious freedom and the protection of people of faith is essential to the future of our country. Freedom of religion is a central issue for faith-based
organisations, including schools, churches and other organisations if they are to maintain their ethos and values.

The Corporation acknowledges the seven issues the Diocese has raised in its submission. For the purposes of the Corporation’s submission, we focus on the detrimental impact of the Bill on schools within the Corporation and faith-based schools more broadly. The Corporation cannot support the passage of the Bill in its current form. There are four fundamental issues that should be addressed:

1. A preference for religious staff, rather than a requirement, may not necessarily be “in accordance with doctrine”.
2. A contradiction between clause 10 and clause 13 could lead to negative and unintended consequences for all faith-based schools.
3. Clause 18 does not safeguard faith-based schools in their enrolment practices and efforts to promote a Christian worldview.
4. Limiting protection to “lawful” religious activity is circular and subverts the purpose of the Bill.

In addition, the Corporation is concerned about the impact on schools as a result of the deferral of the Australian Law Reform Commission (ALRC) process. The Attorney-General has altered the terms of reference and deferred the reporting timetable for the ALRC until the end of 2020. Our understanding is that the Attorney-General has asked the ALRC to propose legislative reforms to “limit or remove altogether (if practicable) religious exemptions to prohibitions on discrimination, while also guaranteeing the right of religious institutions to reasonably conduct their affairs in a way consistent with their religious ethos”.

It is the Corporation’s view that religious institutions should be able to reasonably conduct their affairs in a way that is consistent with their religious ethos and that this is supported by our parents, people of all faiths and the Australian community. This is pivotal to protecting freedom of belief in Australian law. To provide certainty for religious institutions, and guarantee religious freedom in this country, we respectfully ask the Attorney-General to accelerate the ALRC reporting timetable. These recommendations should be considered during the current Parliamentary term.

Our schools are welcoming and inclusive places, and we are simply seeking the freedom to employ and maintain our schools’ operations in a way which reflects the religious values of our faith. The Corporation looks forward to engaging cooperatively with government to ensure faith is not only tolerated in Australia, but also protected.

1. A preference for religious staff, rather than a requirement, may not necessarily be “in accordance with doctrine”.

Anglican Schools Corporation appreciates the Bill’s intention to empower religious bodies to act in accordance with their faith. This is critical to the protection of religious freedom in Australia.

Clause 10(1) provides that “A religious body does not discriminate against a person under this 11 Act by engaging, in good faith, in conduct that may reasonably be 12 regarded as being in accordance with the doctrines, tenets, beliefs 13 or teachings of the religion in relation to which the religious body 14 is conducted.” We note in clause 10(1) that religious bodies, including the Corporation (as an
‘educational institution’ per clause 2(a)), will be permitted to engage in good faith in conduct that is in accordance with our doctrine. This clause goes some way to allay concerns within the Corporation about the curtailing of our religious freedom and the doctrines, tenets, beliefs and teachings which we conduct throughout our 19 schools and campuses.

It is important to note, however, that many faith-based schools do not insist that all staff are adherents of the schools’ faith. Many faith-based schools and religions more broadly do not have a “doctrine” that prescribes a proportion of teachers who must be of that faith. The Corporation supports the Diocese’s view, as expressed in its submission, that clause 10 in its current form does not allow faith-based schools the flexibility to ensure that there is a “critical mass” of teachers of the relevant religion, and require other teachers to support the religious ethos of the school.

The Corporation suggests this inaccuracy could be addressed through the following minor, but important, amendment to clause 10(1):

10(1) A religious body does not discriminate against a person under this Act by engaging, in good faith, in conduct that may reasonably be regarded as being in furtherance of, or in accordance with the doctrines, tenets, beliefs or teachings of the religion in relation to which the religious body is conducted.

Currently, the Explanatory Notes (in paragraph 180) provide an example of Jewish schools being permitted to require that all staff were Jewish. It then follows that the Corporation suggests that the Explanatory Notes should also include an example which clarifies that the preferencing of staff who hold or support the religious belief of the school or the enrolment of students of that faith, is conduct which is in pursuit of the religious purposes of that school.

For greater clarity and certainty, but to achieve a similar result to the inclusion of the example provided above, the Corporation recommends including a new clause:

10(3) Without limiting the generality of sub-section (2), for the avoidance of doubt, a religious body does not discriminate against a person under this Act by giving a preference in its hiring decisions, or (if it is an educational institution), its decisions in relation to enrolment, to persons who support the doctrines, tenets, beliefs and teachings of the religion in relation to which the body is conducted.

2. A contradiction between clause 10 and clause 13 could lead to negative and unintended consequences for all faith-based schools.

It is the Corporation’s view that clause 13 – Employment defies religious freedom protection for faith-based schools. We are also deeply concerned that clause 10 is contradicted by clause 13. Our view is that this contradiction could create negative unintended consequences for all faith-based schools, not just Anglican schools. This inconsistency could provide grounds for costly litigation against faith-based schools, as is already occurring in Australia. This contradiction also impedes the right of parents to choose schools for children that are aligned with their own religious beliefs, as faith-based schools will lose their ability to employ teachers and staff whose views accord with those of the school. We respectfully ask that this Bill provides protection for faith-based schools to continue to employ staff who share their mission.
To be clear, or priority has always been to fulfil our Anglican mission and ethos in our schools and to nurture our students, teachers and staff in a welcoming and inclusive learning environment, enabling them to thrive regardless of their personal attributes – including their faith. This will not change. We do not seek employment powers that exceed those granted to employers in other sectors. However, we respectfully ask the government to remain cognisant that it is important to the ethos of our schools that our schools can employ staff who share our values and beliefs. Parents select our schools, and other faith-based schools, because of our faith and they rightfully expect the behaviours of teachers and staff to be consistent with the values and ethos of our schools. The Bill must protect this and provide certainty for faith-based schools.

Clause 13 states:

13(1) It is unlawful for an employer to discriminate against another person on the ground of the other person’s religious belief or activity: (a) in the arrangements made for the purpose of determining who should be offered employment; or (b) in determining who should be offered employment; or (c) in the terms or conditions on which employment is offered.

The Corporation is gravely concerned that this clause overrides the protection, albeit with some limitations, granted in clause 10. Our 19 schools and campuses are visibly faith-based schools and it is essential that our daily activities and individuals act in accordance with our beliefs. Equally, the Corporation and our schools will never terminate or discriminate against a staff member based on their religious affiliation. The Corporation, and faith-based schools generally, are simply seeking a positive right to express faith and religion, and this is imperative to our hiring practices. What matters to our schools when hiring teachers and staff is an individual’s commitment to Anglican values and beliefs, and how this is demonstrated in their behaviour and conduct in fulfilling their role. It is essential that this commitment is reflected in the terms and conditions on which employment is offered. Clause 13(1)(c) and clause 13(2) in its entirety inhibit faith-based schools from seeking this essential commitment from prospective employees and we recommend they are removed.

3. Clause 18 does not safeguard faith-based schools in their enrolment practices and efforts to promote a Christian worldview.

Schools within the Corporation have not and will not expel or take any adverse action against a student based on any of their attributes – including faith. The Corporation recognises the importance of clause 18 – Education. However, the Corporation’s view is that clause 18(b) and reference to a student’s “activity” in 18(2) are vague and do not provide certainty or protection for schools in their enrolment practices. In addition, the Bill only discusses a “student’s religious belief or activity”. It is possible, for example, in gender identity cases, that a religious student’s behaviours and preferences could come into conflict with the ethos of faith-based schools. In situations such as this, faith-based schools are afforded no protection by the Bill to care for the welfare of the whole student community.

Anglican schools have a commitment to the Bible’s teaching on the created binary distinctions of male and female, and also have a commitment to offer care and compassion to those suffering gender dysphoria. However, such commitment to the individual student must not outweigh the commitment to care for the welfare of the whole student community. As one example, faith-based single sex-schools do not cater for students of the opposite sex and there is no opportunity to provide the care
and compassion that would be needed for current students experiencing gender dysphoria should they desire to transition. The ambiguity of clause 18 does not provide sufficient protection for faith-based schools in their efforts to care for the welfare of both enrolled individual students and their entire student communities.

4. Limiting protection to “lawful” religious activity is circular and subverts the purpose of the Bill.

Anglican Schools Corporation supports the Diocese in its submission, in relation to the limitation by Section 5 of the definition of religious activity to “engaging in lawful religious activity. Essentially, if certain conduct was “unlawful” religious discrimination for the purposes of state or territory legislation, then it would not be a “religious activity” for the purposes of this Bill. Subsequently, the protection of clause 41 would not apply. As the Diocese identifies, there is an unhelpful circularity of definition that could undermine the protection of religious belief that the Bill purports to protect.

The Corporation therefore endorses the Diocese’s amendments to section 5:

Religious belief or activity means:
(a) holding a religious belief; or
(b) engaging in lawful religious activity that is not a criminal offence under the laws of the Commonwealth or any State or Territory; or...

The Australian Law Reform Commission (ALRC) Referral

Anglican Schools Corporation shares the Diocese’s concern that this Bill is being considered in isolation from the matters referred to the ALRC by the Attorney-General. Our understanding is that the Attorney-General has asked the ALRC to propose legislative reforms to “limit or remove altogether (if practicable) religious exemptions to prohibitions on discrimination, while also guaranteeing the right of religious institutions to reasonably conduct their affairs in a way consistent with their religious ethos”.

The Attorney-General has altered the terms of reference and deferred the reporting timetable for the ALRC until the end of 2020. The Corporation’s view is that this deferral delays the necessary next step towards protecting freedom of religion in Australian law. Religious institutions and organisations require certainty around their rights and obligations and so we respectfully stress that this matter needs to be resolved as a matter of priority and urgency. Our view and request are that the recommendations from the ALRC are considered during the current Parliamentary term.