Religious Discrimination Bill – Exposure Draft

Your Submission

The Association of Independent Schools of South Australia (AISSA) represents the interests of 103 SA Independent schools with an enrolment in excess of 48,700. 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. The sector educates students within a curriculum underpinned by a diverse range of religious beliefs (Anglican, Baptist, Christian, Christadelphian, Greek Orthodox, Islamic, Lutheran, Seventh-day Adventist, Uniting) and educational philosophies (Montessori, Waldorf Steiner). The sector also includes a number of secular schools, special assistance schools and a special school which educates students with severe disabilities.

Independent schools have an excellent reputation for creating learning communities that encourage the emotional, physical, mental, social and spiritual development of young people. Parents choose individual Independent schools because they meet the education needs of their children and have values and an ethos consistent with the belief systems of their family. Commitment to the school’s ethos is an important component in the success of Independent schools including in areas such as volunteers, and membership of school governing bodies.

The AISSA welcomes the intent of the Australian Government to develop a legislative framework which aims to protect against discrimination on the basis of religious belief or activity and its willingness to consult on the proposed legislation. This is a key area of concern for a significant number of the AISSA’s member schools. The majority of SA Independent schools are faith based with enrolments in faith-based schools representing 96.2% of the South Australian Independent school sector.

Feedback from a number of faith based member schools has indicated significant concern that the legislation as currently drafted not only does not achieve the Government’s aims but will also not protect the rights of Independent schools to operate in accordance with the precepts on which they are founded. In addition, there was a general consensus that the lack of clarity in parts of the Bill/s will in effect lead to greater uncertainty in regard to the rights of religious bodies particularly around employment of staff.

Particular issues were identified by member schools in relation to clause 10 of the Religious Discrimination Bill 2019. The clause as proposed will require, when tested, a subjective determination to be made by a third party as to whether a religious body has engaged in “good faith in conduct that may be reasonably regarded as being in accordance the doctrines, tenets and beliefs or teachings of the religion in relation to which the religious body is conducted”. The reliance on the concept of ‘reasonableness’ means that it is likely that the interpretation of this clause will only be determined in the long term by case law leading to significant uncertainty for Independent schools, in particular, in relation to their employment practices.
It is a central tenet of Independent schools that staff across all occupations, 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 engage staff and volunteers across all occupations who share the religious values of the school. 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.

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. 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. For some 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 religious principles that is expected in these schools.

Member schools also expressed concern with regard to lack of clarity regarding the intended intersection between the proposed Federal legislation and the State based and other Commonwealth anti-discrimination legislation, for example the Sex Discrimination Act 1984. The South Australian Equal Opportunity Act 1984, currently contains an exemption which recognises the significance of sexuality and chosen gender for schools and enables Independent schools to operate according to the ‘precepts’ of their religion, upon which the school has been founded and is administered. While the South Australian exemption is not considered by a number of member schools to be ideal, it has proved to be a workable compromise. It is necessary to emphasise that exemptions are only applicable in cases where there is a genuine commitment by the institution to religious tenets and beliefs and that the actions are in accordance with those beliefs. The AISSA would strongly oppose the Federal legislation overriding State based protections for member schools.

It is acknowledged that a number of the concerns held by member schools may be addressed by the outcomes of the Australian Law Reform Commission (ALRC) Review into the Framework of Religious Exemptions in Anti-discrimination Legislation, and the subsequent Australian Government response. However, the extension of the timeline for the ALRC to report and the likelihood that the religious freedom bills will go before parliament prior to the report outcomes being known means that unless the legislation is amended to address the concerns of faith based member schools rather than the religious freedom legislative framework providing certainty for schools it will instead create greater uncertainty.