

22 March 2024

The Hon. Anthony Albanese, MP
Prime Minister of Australia
CC: The Hon. Mark Dreyfus, MP
Attorney General
Parliament House
CANBERRA ACT 2600

Dear Prime Minister,

**OPEN LETTER FROM FAITH LEADERS IN RESPONSE TO THE AUSTRALIAN LAW REFORM
COMMISSION FINAL REPORT ON RELIGIOUS EDUCATION INSTITUTIONS**

The ALRC recommendations in the Final Report on religious educational institutions and anti-discrimination laws fundamentally misunderstand the nature of religious schools.

As leaders of a number of religious communities and traditions, we are deeply disappointed with the proposed reforms outlined by the Australian Law Reform Commission (ALRC) in their Final Report.

We are particularly concerned that the report has failed to adequately address the terms of reference, especially with regard to the Government's commitment to ensure that a religious educational institution 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. The recommendations made by the report will prevent the overwhelming majority of faith-based schools from preferring persons who share and authentically live out their faith. It will therefore extinguish their distinct and authentic character.

Moreover, if this proposal were implemented, it would subject schools and their staff and volunteers to what is widely recognised in both judicial and academic commentary as the uncertain and unsettled distinction between direct and indirect discrimination. In respect of actions that are not direct discrimination, the proposal would subject all religious teaching and practices within religious schools to the uncertain determination of what a judge considers to be 'reasonable'. In any given case, the onus would be on the school to prove that it satisfied these tests. This would greatly expand the scope for future litigation.

As we maintained in our letter to you in response to the ALRC's Consultation Paper dated 13 February 2023, faith-based schools in Australia do not seek the right to discriminate on the basis of a protected attribute, but simply to be able to employ staff who share or are willing to uphold

the religious beliefs of the school. Schools do this so to create communities of faith by maintaining fidelity to their religious and moral convictions.

As Faith Leaders, we are disheartened that our good-faith engagement with the ALRC in response to the interim Consultation Report seems to have had no effect whatsoever in the Commission's appreciation of the unique nature of religious schools and religious educational institutions. As we previously clarified, the purpose of religious schools is not only to impart intellectual knowledge, but also to instil religious values. In addition to teaching the prescribed curriculum, they provide religious activities that seek to demonstrate to students what a life lived in accordance with the relevant religion looks and feels like in practice. Having teachers and other staff at the school who can participate in these activities as a faith community, whether these staff are engaged in religious teaching or not, helps to realise the school's religious purpose, and to develop an understanding by students that religion is not merely an adjunct to core activities, but an integral part of them. These are among the reasons why many parents choose to send their children to religious schools. The right of parents to do so is enshrined in international law. However, the Report's recommendations concerning students will cause religious schools to be indistinguishable from public schools. The ALRC proposals would place unnecessary and unreasonable restrictions on the freedom of religious schools to give effect to the international human right of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The recommendations in the Final Report, like the proposals put forward by the ALRC in the Consultation Paper, seek to place severe limits on the ability of religious schools to build authentic communities of faith. The ALRC Paper continually cites the restrictive laws in Queensland and Tasmania as a basis for its claim that its proposals would not significantly undermine the ability of religious schools to maintain their religious ethos. As we clarified in our previous letter, this claim is misleading. Religious schools in those States rely upon the current exemptions in section 38 of the *Sex Discrimination Act* and depend upon those exemptions overriding the State laws in order to maintain their religious ethos.

The combined effect of Recommendations 1, 5 & 7 in the Final Report would severely narrow the ability of religious schools to ensure that they can select staff of the same religion as the school by removing the ability of religious schools to ensure that staff not only share the faith of the school in word, but legitimately hold to that faith by living it out in practice.

We note that the former President of the ALRC Justice Derrington released drafting that she indicated was consistent with international law and addressed the above concerns.¹ Her Honour’s drafting responded to terms of reference that were materially the same as the ALRC’s current terms of reference, requesting amendments that would remove discrimination ‘while also guaranteeing the right of religious institutions to conduct their affairs in a way consistent with their religious ethos’. Justice Derrington’s model reconciles these two requests; whereas the ALRC’s report does not.

This ALRC report and its Recommendations are deeply flawed and if implemented would have disastrous consequences for religious schools and religious educational institutions.

We call on the Government to reject the Recommendations made in this ALRC Final Report and to seek a policy outcome that will preserve the rights of religious schools and educational institutions to build and administer faith communities in accordance with their doctrines, tenets and beliefs. We again welcome your commitment to consult widely in an inclusive and constructive manner, in consultation with people of faith and religious organisations, including schools, as well as with all Australians interested in this important work.

Signed,

The Rt Rev Dr Michael Stead
Bishop of South Sydney
Anglican Diocese of Sydney



Bishop Antoine-Charbel Tarabay
Maronite Bishop of Australia,
New Zealand and Oceania



Imam Shadi Alsuleiman
President
Australian National Imams
Council



Robert Gregory
Chief Executive Officer
Australian Jewish Association



Hussein Faraj
President
United Shia Islamic Foundation



Rev David Burke
Moderator General
Presbyterian Church of Australia



¹ Sarah Derrington, ‘Of Shields and Swords – Let the Jousting Begin!’ Speech, Freedom19 Conference, 4 September 2019, <https://www.fedcourt.gov.au/digital-law-library/judgesspeeches/justice-s-derrington/s-derrington-j-20190904>.

Alistair Macpherson

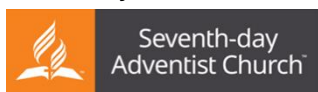
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