

Submission to the Australian Law Reform Commission on the Consultation Paper: Religious Educational Institutions and Anti-Discrimination Laws

Submission by Lutheran Education Australia
supported by the Lutheran Church of Australia
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About Lutheran Education

Since 1839, the Lutheran Church through its schools in Australia has provided a quality education in which the gospel of Jesus Christ informs all learning and teaching, all human relationships, and all activities in the school. Continuing this service to the community requires a critical mass of staff who believe, support and can put into practice our ethos.

Currently there are 78 Lutheran schools operating in all Australian states and territories (except the ACT) serving the Australian community and modern families. More than 42,000 students attend Lutheran schools – 12% come from Lutheran families, 48% from other Christian denominations. The remaining 40% of families have chosen a Lutheran school for the educational quality, values, community and pastoral care it provides for each child. Those values and services are drawn from a world view which has core Lutheran beliefs at its foundation.

Lutherans believe that God has given parents and caregivers the prime responsibility for the education of their children and so a Lutheran school works as a team with parents. Australia, through being a signatory to international human rights covenants, also recognises the rights of parents to choose a religious education for their children. *School Choice: A Research Report 2021*¹ has shown parents of children in Independent schools make the choice to invest in an education which is in line with their values and beliefs and which provides educational excellence. 85% of parents of children in Independent or Catholic schools agree that non-government schools allow parents to choose an education for their children in line with their values.

Lutheran education has arguably suffered the single greatest act of state discrimination in Australia against faith-based schools.

Forty-nine Lutheran schools were forced to close in 1917 by an Act of the South Australian parliament, affecting more than 1600 students and 50 teachers.

Many, but not all, of the Lutheran settlers in Australia in the early 19th century were of German descent while others came from Scandinavia, Switzerland, France, Slavic and other countries. While acknowledging the German connection, by 1916 many of the students and staff in the schools targeted for closure would have been second or third generation Australians, from a range of racial backgrounds. While there was a complex cultural, racial and militaristic context in a time when Australia was at war with Germany, the schedule to the

¹ https://isa.edu.au/wp-content/uploads/2022/03/ISA260721_SCHOOL-CHOICE-REPORT_08.pdf

Act identifying the schools to be closed clearly lists schools as Lutheran. Furthermore, the whole Lutheran school was closed, not the German descendants removed. Only after lobbying were Lutheran schools allowed to reopen in 1925. The 1924 Act repealing the closure refers to 'Lutheran schools closed' and so recognises the religious identity of the schools.

We know from experience the harmful impact of governmental and administrative over-reach and hence the critical importance of freedom of religion expressed through faith-based education for modern, pluralist and socially cohesive Australia.

Welcoming all

The following is a general response to Propositions A and B.

Lutheran schools and early childhood services are communities that recognise that God has intentionally created each person in the image of God and that each person is uniquely gifted to live in relationship with God and others.

In welcoming all to be employed or enrolled in Lutheran school communities, Lutheran education does not and is not seeking to discriminate against any staff or student based on their personal attributes (e.g. race, culture, sexual orientation, gender identity, disability, marital status, parental status, pregnancy etc).

As is the case for other educational institutions across Australia, whether government or nongovernment, Lutheran schools expect students and staff to be sympathetic to and supportive of the mission and ethos of the school, and to comply with a reasonable code of conduct and other such relevant policies. As with other educational institutions, Lutheran schools may need to address conduct which is not in keeping with these policies and does this pastorally and in a way that respects the human dignity of each person.

We 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 ethos of the religious educational institution.

Continuing the freedom to build a community of faith

The ALRC was given three criteria to address in its terms of reference. The consultation paper has attempted to address the first two criteria. Lutheran Education Australia strongly posits that the paper has not adequately addressed the third criterion regarding enabling communities of faith.

This section highlights some of the significant issues with the consultation paper as regards Propositions C and D and associated proposals.

Continuing the freedom for Lutheran schools to be Lutheran schools

Proposition C and associated Proposals 8 and 10 would severely restrict the ability of Lutheran schools to build a community of faith. In discussions with school leaders, the suggested proposals would see the number of Christian staff significantly reduced. Potentially having a minority of staff who are Christian in a Christian school is highly unlikely to result in the critical mass necessary to uphold the ethos of a faith-based educational institution. The

ACN 143 905 373

197 Archer Street
North Adelaide SA 5006
T 61 8 8267 7318
F 61 8 8267 7320
E lea@lutheran.edu.au
www.lutheran.edu.au

likely outcome is faith-based schools becoming indistinguishable from state schools, effectively removing the ability of parents to choose to educate their children in accordance with their beliefs and values.

What is being suggested in the consultation paper is indicative of governmental and administrative over-reach without adequate balancing of rights. As discussed above, Lutheran education in Australia has previously experienced significant harm due government over-reach.

A teacher is so much more than subject-specific content

The proposals in the consultation paper and relevant state legislation such as in Victoria narrowly define staff in educational institutions by the content they deliver. For example, they aim to restrict selective preferencing of staff of a faith to roles such as religious education teacher while removing other subject areas such as humanities and sciences from consideration. This misrepresents the complete role of a teacher and does not align with the wide-ranging role of staff articulated in Principle 5.

The Alice Springs (Mparntwe) Education Declaration², which was made by all Australian Education Ministers, emphasises that the teachers, educators and leaders who support student learning have a vital role to “transform the lives of young people and inspire and nurture their personal and academic development.”

In Lutheran schools excellence in teaching and learning is focused on improving student outcomes which includes spiritual, intellectual, physical, emotional, cultural and social dimensions. The role of the teacher and other staff in Lutheran schools is to nurture the whole child and therefore, for example, the mathematics teacher’s role is much broader than the impersonal function of imparting subject-specific content and knowledge.

In keeping with the vision of the Alice Springs (Mparntwe) Education Declaration, Lutheran schools encourage and support teachers and other staff to undertake a broader role which extends to the other dimensions in order to help students develop “their emotional, mental, cultural, spiritual and physical wellbeing”.

The proposals do not fully consider the totality of the role of a teacher and student learning outcomes beyond content knowledge, the importance of holistic education of the individual child supported by all staff, and the role of the entire school community in establishing and upholding an ethos. This places at significant risk the ability of Lutheran schools to function as authentically Lutheran schools consistently living out their ethos.

In educational institutions, everyone is a leader

It has been long known that the single biggest impact on student performance is teachers who participate and lead in processes to meet the needs and interests of all of their students. Teachers also serve as mentors, advisors, and advocates for their students, providing guidance and support as they navigate the challenges and opportunities of their education. This has been recognised by the Australian Institute of Teaching and School Leadership who

² <https://www.education.gov.au/alice-springs-mparntwe-education-declaration>

use the word 'lead' no less than 21 times throughout the Australian Professional Standards for Teachers³.

In Lutheran schools, every teacher has the opportunity to be a leader in their own unique way. Whether it's through their teaching practices, their interactions with students, or their involvement in the broader education community, teachers play a vital role in leading the ethos and shaping the future.

Faith-based communities recognise that all staff (not only teachers) have a leadership role to play in sharing and upholding the ethos. In contrast, the consultation paper seems to have a narrow view of leadership as solely the purview of those with executive titles such as Principal.

Restricting the ability of faith-based schools to selectively preference people of that faith only for leadership roles with executive titles rather than all roles would severely impact on the ability of Lutheran schools to have the leadership in place to be Lutheran schools.

Principle 3: preserving rights to the maximum degree possible

Principle 3 is not upheld by the proposals.

The consultation paper aspires to the international standard of balancing rights when they are brought into tension. For some faiths there is a potential interaction between these rights while for other faiths there is not. Therefore, one test of preserving rights to the maximum degree possible could be that if the rights in consideration are not in tension, then each right should not be limited.

Consider the scenario of a faith-based educational institution that does not discriminate on any of the personal attributes listed in the terms of reference. In such a scenario, there is no tension between the rights under consideration, therefore no grounds for the limitation of religious freedom, and therefore the school should have the full benefit without limitation to preference for staff of that faith.

However, this is not what the consultation paper proposes. The proposal is that the school's ability to preference would be severely curtailed even when there was no contest with the other rights listed. This illustrates that the proposal does not balance rights, but rather severely limits one right regardless of context. It is not clear how this fulfils the principle of preserving rights to the maximum degree possible.

In summary, the proposal is to remove the rights of faith-based schools to selectively preference for staff of that faith in any role regardless of whether or not that right is in contest with other rights under consideration. The paper could benefit from exploring alternate models that might better maximise preserving rights.

Conclusion

We commend the five principles identified. Unfortunately, those principles have not carried through to the propositions and proposals.

³ <https://www.aitsl.edu.au/tools-resources/resource/australian-professional-standards-for-teachers>

We 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 ethos of the religious educational institution.

Propositions C and D have not fully demonstrated a sufficient understanding of the educational context, the role of a teacher, the nature of leadership in educational settings and what is required to build a community of faith.

Furthermore, the proposals are frequently inconsistent with the principles articulated in the consultation paper. Other models with less restrictive ways to achieve the same aim have not been considered. Therefore, the suggested technical proposals may have flawed assumptions underpinning them and hence are unlikely to deliver the outcomes required by the terms of reference.

The deficiencies of the approach taken by the paper are acknowledged by Proposal 14 which explicitly concedes that the proposed changes would add to existing complexity, inconsistency and incoherence. Increased complexity, inconsistency and incoherence is not in the best interest of anyone, especially the students and staff at the centre of this inquiry (Principle 5).

Thank you for the opportunity to provide a response to the consultation paper. Should you have any further queries in relation to this submission, please contact me via phone on 08 8267 7318 or email LEAdirector@lutheran.edu.au.

Yours faithfully,



Assoc Prof Lisa Schmidt
Executive Director
Lutheran Education Australia