



Australasian-Middle East Christian Apostolic Churches (AMEC)

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600
Via email: legcon.sen@aph.gov.au

Dear Committee Secretary,

Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018

The Australasian - Middle East Christian Apostolic Churches (AMEC) wish to submit their position in relation to the proposed amendment to the *Sex Discrimination Act 1984* (Cth), [the *Act*]. The AMEC is an alliance between the Australian Apostolic Churches that have common Middle Eastern background. This submission will argue against the need for the proposed amendments to the *Act* on the grounds that the spiritual education is a primary aspect of the educational services provided by the religious educational institutions. Further, the protection of the religious institutions outlined in sections 37 and 38 of the *Act* is directly linked to the right of freedom of religion protected by the Australian Constitution. Finally, it discriminates against the institutions' teachings and faith and their current students who elected to join them with their current functions.

1. The religious educational institutions

The Melbourne Declaration on Educational Goals for Young Australians¹, made by all Australian Education Ministers, asserts in its preamble that schools play a vital role in promoting the intellectual, physical, social, emotional, moral, spiritual and aesthetic development and wellbeing of young Australians. Hence, the moral and spiritual aspects are amongst the primary goals in the educational system in Australia. The Declaration also highlights that in promoting world-class curriculum, the curriculum should enable students to develop knowledge '*to understand the spiritual, moral and aesthetic dimensions of life.*'²

¹ Melbourne Declaration on Educational Goals for Young Australians, December 2008, 4,
<http://www.curriculum.edu.au/verve/resources/National_Declaration_on_the_Educational_Goals_for_Young_Australians.pdf>

² Ibid, 13.

The religious educational institutions are predominantly concerned with the religious education of students in addition to the other disciplines of education. The current functions and practice of the religious schools, and the orthodox methods of their teachings, have promoted their educational services to the extent that a large number of students' parents entrusted them with educating their children. The proposed amendments, should they be implemented, would have a severe impact on the institutions' practice. The amendment would restraint their right to reject an application from a candidate, either employee or a student, to receive or deliver their services should his or her sexual orientation or gender identity did not align with the institutions' faith. This would ultimately result in impacting on the provision of the educational services, and changing the foundation upon which the Christian educational institutions were built upon, i.e. the Christian faith. Additionally, the proposed amendment would greatly impact the parents who wish that their children join the current system of religious schools to gain and be enriched by an additional specific spiritual education that is dear to their hearts.

2. The constitutional protection

The Australian Constitution precludes the Commonwealth of Australia, the Australian Parliament, from restricting the freedom of religion in Australia. Section 116 of the Constitution provides; *'The Commonwealth shall not make any law for prohibiting the free exercise of any religion.'* The *Act* empowers the religious bodies and the religious educational institutions with the right not to accept an application for ordination or appointment of members of religious order, or for a student to join or continue receiving education services on the grounds of the applicant's sex, sexual orientation, gender identity, marital or relationship status or pregnancy in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed, without considering such a conduct unlawful. The exercise of such a right is directly associated with the right of free exercise of religion. Restricting such a right would result in restricting the free exercise of the religion of these institutions which may constitute a breach of section 116 of the *Constitution* and ultimately render the proposed amendment unconstitutional.

3. The proposed amendments of sections 37 and 38 of the *Act*

The proposal to abolish both sections 37 and 38 of the *Act* would have a severe impact on the religious bodies, including the religious educational institutions. Although section 37 provides the religious bodies with the power to reject applications related to the ordination or appointment of priests, ministers of religion or members of a religious order, such power is merely a protection of the faith and cannot be considered discrimination against applicants. It cannot be accepted that a person with certain sexual orientation or gender identity be appointed as a member of a religious order to perform duties or functions of religious practice which originally oppose his or her identity. Section 37 of the *Act* does not enable religious institutions to discriminate against students, and hence should not be abolished for it maintains and preserves the process of the appointment and ordination of the religious members, without any possible application of Divisions 1 and 2.

In relation section 38 of the *Act*, subsections 1 and 2 provides that the religious institutions are at liberty to select their employees and contractors to provide or assist in the provision of their services on the grounds of '*the other person's sex, sexual orientation, gender identity, marital or relationship status.*' Such power is to enable the institutions to perform their functions and provide their services in a way that aligns with their faith. These subsections render the discrimination lawful if the institutions discriminate in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed. This can be understandable for religious institutions to refrain from appointing employees or contractors based on sexual orientation as they may affect the religious teachings of these educational institutions and influence their core beliefs. Also, similar to the protection conferred by section 37, the institutions would find difficulties in providing spiritual educational services that contradict with the belief of the prospect employees or contractors.

Section 38(3) provides that any discriminatory conduct against any person in connection with the provision of education or training, which may include students, is lawful. The discrimination against a person on the ground of sexual orientation, gender identity, marital or relationship status or pregnancy in connection with the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, must be in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed. As a result, section 38(3) confers protection on the religious institutions, their faith, and the other students whom may be influenced by the sexual orientation, gender identity, marital or relationship status. Abolishing such protection would turn a blind eye to those who still wish to adhere to the faith, and joined the current institutions accordingly. Further, such a power to discriminate is not widely and irresponsibly used by the religious bodies, rather it is used in limited circumstances to protect the faith.

Finally, refusing the proposed amendment would result in balancing the conflicted interests of students. The students who elected to join the religious educational institutions will enjoy the right of receiving the spiritual educational services in its current form, without the risk of being exposed to or influenced by undesired conflicts. On the other hand, the students who claim being discriminated against will always be welcomed in other educational institutions to receive adequate educational services without the risk of being discriminated against on the same grounds.

In conclusion, implementing the proposed amendment can have a severe impact on the religious bodies and the religious educational institutions. The protection that the amendment proposes to abolish would truly discriminate against the current employees, members, and the Australian parents and students of these institutions. This would ultimately impact on their faith and their freedom to practice the religion which is protected by section 116 of the Australian Constitution.

We thank the Committee members for offering us the chance to submit our opinion.

We also pray that our Lord Jesus Christ give the wisdom and the strength to the Committee members to come up with the appropriate recommendations that will go on protecting the freedom of religion within the public sphere, mainly within the sphere of the religious institutions. Hence, the Australian society will remain stronger thanks to this diversity that the current *Sex Discrimination Act 1984* offers and protects.

Yours faithfully,

✠ Robert Rabbat, DD

President
Australasian-Middle East Christian Apostolic Churches (AMEC)

On behalf of AMEC members:

Melkite Catholic Church
Chaldean Catholic Church
Maronite Catholic Church
Antiochian Orthodox Church
Syriac Orthodox Church
Ancient Church of the East
Coptic Orthodox Church, VIC
Coptic Orthodox Church, NSW
Armenian Apostolic Church
Armenian Catholic Church
Syrian Catholic Church
Coptic Catholic Church