

23 December 2021

Questions on Notice to the Parliamentary Joint Committee on Human Rights regarding Religious Discrimination Bill 2021 and related bills

The National Catholic Education Commission (NCEC) offers this response to the questions on notice to the Parliamentary Joint Committee on Human Rights public hearing on 21 December 2021 regarding Religious Discrimination Bill 2021 and related bills.

Senator Janet Rice asked the NCEC to: “...have a look at these cases in the *Equality Australia submission* and to take them on notice... Can I just summarise, then, without going to the particular cases, just to clarify? There are a dozen statements here from teachers employed at Catholic schools who have lost their jobs because of their sexuality. My overarching question is whether you feel that that, in certain cases, on a case-by-case basis, is an acceptable outcome and should be accepted under federal legislation.”

Firstly, the [Equality Australia submission](#) does not present a dozen accounts from Catholic school staff nor is the submission “signed by thousands of people with personal stories from the signatories” as indicated by Senator Rice at the hearing. There appears to be only one account from a “former Catholic school teacher” providing a second-hand report of the alleged treatment of a pregnant, unmarried, heterosexual teacher.

The small number of accounts contained in the *Equality Australia* submission are not able to be verified because they are not formal complaints, are anonymous, rely on second-hand claims or are opinion. As NCEC Executive Director Jacinta Collins noted during the hearing, it is impossible to respond to these types of claims in an accurate or meaningful way.

While there is a lack of solid evidence to test the veracity of claims of discrimination on the basis of personal attributes in faith-based schools, unfortunately that does not mean Catholic schools do not have to manage local examples of bigotry or intolerance at times, as would be the case in all schools, not just faith-based schools.

As noted in the NCEC’s submission, the human dignity of each individual lies at the heart of Catholic social teaching which informs our pastoral approach in dealing with local intolerance or any issue that might arise regarding the employment and conduct of staff or the enrolment of students. Catholic schools and staff work hard to eliminate intolerance and to educate and foster inclusive, welcoming and hospitable communities.

As with all human rights legislation, there may be exceptional examples where the protection of rights is not balanced in a fair or reasonable way. This is what case law helps to establish. However, this should not constitute a basis for undermining Australia’s commitment to freedom of religion as outlined in Article 18 of the International Covenant on Civil and Political Rights (ICCPR) which includes:

- a. Possessing/adopting religion or belief
- b. Manifesting religion or belief individually or in community
- c. Manifesting religion or belief in worship, observance, practice and teaching
- d. Establishing seminaries or religious schools
- e. The right of parents to ensure the religious and moral education of their children in conformity with their own convictions.

Please see the NCEC’s submission (p 5) that responds further to this point.

Anecdotal reports of discrimination don’t allow for the veracity of such claims to be tested to identify whether they are a true incidence of discrimination or a matter in breach of a school’s code of conduct. Those matters could be in relation to conduct that is

inconsistent with the mission and ethos of the religious school, but they might also be in relation to the breach of school policies or practices (e.g. curriculum and pedagogy, child safety, work health and safety requirements, etc).

Despite the recent introduction of amendments to the Victoria Equal Opportunity Act that were designed to limit the ability of faith-based schools to continue to operate according to our ethos, Victorian State Attorney General, Jaclyn Symes acknowledged that discrimination by government-funded religious providers is not an issue and that the Victorian amendments are 'symbolic' in nature.

"The government acknowledges that it is not aware of discrimination by religious providers in the provision of government funded goods and services. And, religious service providers generally do not discriminate in how they provide privately funded secular services, such as welfare and housing services. As such, the changes are not expected to have significant impacts for religious service providers. However, the changes have great symbolic importance and ensure government funding cannot be used in a discriminatory manner in the future."

The use of anecdotal reports of discrimination appears to underpin the desire to introduce unreasonable limitations on how faith-based schools may operate in Australia.

In their submission, Equality Australia apply an extremely narrow definition of 'inherent requirement' to assert the importance of restricting the ability of faith-based schools to operate according to their religious beliefs, values and teachings by preferencing the employment of staff who are willing to support the ethos and mission of the school. However, Equality Australia have not provided a cogent argument for why their narrow definition should be preferenced.

The comments of the majority in the identified Australian case law on 'inherent requirements' (*X v Commonwealth* [1999] HCA 63) do not support a narrow and restrictive characterisation for the phrase. Catholic Education remains concerned that the *Equal Opportunity (Religious Exceptions) Act 2021 (Vic)* adopts an unsupported narrow definition and the Victorian description may become a precedent for other Australian jurisdictions. The views of the majority in *X v Commonwealth* indicate that a more detailed examination of the issues is required before such a construction is accepted as the standard for subsequent legislation to follow.

The claim that any staffing decision based on religious beliefs must be justified by demonstrating the 'inherent requirements' of the position, completely misunderstands the wholistic nature of religious belief and activity, the fundamental identity and purposes of religious educational communities, as well as what is reasonable and fair in a free, pluralist society. It also neglects the importance of a 'critical mass' of staff to support the faith formation of students, which is a feature inherent to Catholic Education.

Applying this kind of narrow test to employment matters in faith-based schools creates a potential legal situation whereby a state tribunal or court would be required to determine the 'inherent' religious beliefs and requirements of an educational institution and represents an intrusion by government into the affairs of religious educational bodies.

Catholic Education restates its strong support of the inclusion of Clause 11 in the Bill which overrides certain state and territory laws concerning conduct by religious educational institutions in relation to employment.