



6 January 2022

Dr Anne Webster MP  
Chair  
Parliamentary Joint Committee on Human Rights  
via email: [religionbills@aph.gov.au](mailto:religionbills@aph.gov.au)

Dear Dr Webster

**RE: Inquiry into Religious Discrimination Bill 2021 and related legislation**

Following our submission to this inquiry we appeared to give evidence to the Committee on Tuesday 21 December 2021. We have responded below to the questions taken on notice during that appearance.

**1. Question from Senator Pratt**

**Senator PRATT:** *And I understand that. The question is that, if someone has an attribute and they have protection for that attribute but they don't have protection for their belief about that attribute in a way that someone who holds a religious belief about that attribute does, surely that brings these issues into play in the context of this legislation.*

**Mr Sneddon:** *Not necessarily, because there's not an identity or congruence between all people who have a particular sexuality, sexual orientation, and their religious beliefs. As you would know, some people who have a sexual orientation of same-sex orientation have a religious belief; some do not. Some with a religious belief reconcile that by saying that their religious belief accommodates their sexual orientation. Others say, 'It does not, so I need to live celibate and find intimacy in nonsexual relations.'*

**Senator PRATT:** *That's right.*

**Mr Sneddon:** *There are a range. So there's not a congruence to simply say that somebody who is same-sex attracted must have a belief and therefore falls foul of this bill. They're just conceptually different categories. And I come back to the point again that nothing in this bill is going to change the law as it currently is or as it may be after the ALRC's review of the Sex Discrimination Act. It's better to let the ALRC do that work, on what are admittedly complex issues in relation to Sex Discrimination Act attributes under that act, after this bill is passed.*

**Senator PRATT:** *Have these issues been successfully resolved in other jurisdictions? Is there a way of resolving them, or are you ultimately going to argue for the status quo?*

**Mr Sneddon:** *Are you talking about the Sex Discrimination Act?*

**Senator PRATT:** *Yes.*

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**Mr Sneddon:** *I have not written a submission to the ALRC yet. I'm not denying that the issues are very complex. I'm just making a submission about this bill. But I'll stop talking and let Mark, Vanessa and Nick have a go.*

**Mr Spencer:** *I'm conscious of time. We were told we couldn't have opening statements because time was short. This seems to be, through you, Chair, a little bit of a divergence from what we're about today. I'm happy to take it on notice if you want more comprehensive answers.*

**Senator PRATT:** *That would be great, thank you.*

*(PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS, Proof Committee Hansard page 39)*

The question appears to be seeking a response regarding 'balancing' human rights in the context of a person who is same- sex attracted, presumed to fall within the protected attribute of sexual orientation within the *Sex Discrimination Act 1984* (Cth), and the beliefs they hold about that attribute.

Without pre-empting the consideration of possible changes to the Sex Discrimination Act by the Australian Law Reform Commission, the issue of 'the intersections between the enjoyment of the freedom of religion and other human rights' was a key component of the terms of reference of the 2018 independent expert panel review.<sup>1</sup> After considering more than 15,000 submissions and consulting with 180 organisations in face-to-face meetings in every State and Territory the Panel recommended, inter alia, regarding 'balancing' rights that:

- *'Commonwealth, State and Territory governments should have regard to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights when drafting laws that would limit the right to freedom of religion' – Recommendation 2*
- *'Commonwealth, State and Territory governments should consider the use of objects, purposes or other interpretive clauses in anti-discrimination legislation to reflect the equal status in international law of all human rights, including freedom of religion' – Recommendation 3*

Specifically on the point in question relating to employment as it relates to schools, **Recommendation 5** indicated:

*'The Commonwealth should amend the Sex Discrimination Act 1984 to provide that religious schools can discriminate in relation to the employment of staff, and the engagement of contractors, on the basis of sexual orientation, gender identity or relationship status provided that:*

- (a) the discrimination is founded in the precepts of the religion*
- (b) the school has a publicly available policy outlining its position in relation to the matter and explaining how the policy will be enforced, and*
- (c) the school provides a copy of the policy in writing to employees and contractors and prospective employees and contractors.'*

In the absence of further consideration of this issue by the Australian Law Reform Commission, we support this recommendation of the independent expert panel as the most authoritative approach proposed to date.

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<sup>1</sup> Religious Freedom Review: Report of the Expert Panel (May 2018) ('Expert Panel Review')

## 2. Question from Senator Rice

**Senator RICE:** *I know we're running out of time. I want to take you to another case that was linked in the submission from Christian Schools and Adventist Schools. I was interested in the case. It is a case of discrimination where Max, a Christian teacher in, it seems, a public school, was sacked for refusing to use a transgender boy's pronouns, but he later won a court case. Is this also the type of action that you would like to have protected?*

**Mr PERRETT:** *In a state school?*

**Mr Spencer:** *Are you asking me?*

**Senator RICE:** *In a state school, yes. In the online link it did not say that he was in a Christian school. He was a Christian teacher. He was sacked, it appears, from a public school because he refused to use a transgender boy's pronouns.*

**Mr Spencer:** *I don't know the specific details of the example. Are you talking about one of the examples on the Australia watch website we link to?*

**Senator RICE:** *Yes.*

**Mr Spencer:** *We link to that site as contemporary examples of religious discrimination. We're not familiar with all of the cases. I'm certainly happy to take that on notice and get back to you, having looked at the case and gotten some more details of it.*

**Senator RICE:** *Thank you.*

*(PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS, Proof Committee Hansard page 41)*

In the joint submission provided to the Committee as part of the evidence for the need of the legislation we provided by way of footnote providing 'some contemporary examples and case studies' a link to the Australia Watch website, <https://australiawatch.com.au/>. The specific example referred to by Senator Rice is detailed here, <https://australiawatch.com.au/max/>. We do not know any more about this case example beyond what is provided on that page and thus are not in a position to comment in detail, although we note that the matter seems to have been settled favourably for the person concerned.

The critical actions to be protected for Christian and other faith-based schools are the ability to:

- Teach in accordance with the doctrines, tenets, beliefs or teachings of the school,
- Employ staff who share, and can thus authentically model, the doctrines, tenets, beliefs or teachings of the school, and
- Conduct the school in a manner that supports the doctrines, tenets, beliefs or teachings of the school.

Protecting the ability of Christian and other faith-based schools to act in these ways, through the provisions in the proposed section 7, goes to the heart of protecting the rights of parents established by Article 18(4) of the International Covenant on Civil and Political Rights.

### 3. Question from Ms Hammond

During the testimony at the hearing on 21 December the following exchange took place:

**CHAIR:** Ms Hammond, are you done?

**Ms HAMMOND:** I've got further questions, but I'll put them on notice.

*(PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS, Proof Committee Hansard page 40)*

We note that we are not aware of any such questions being included in the Proof Committee Hansard or elsewhere.

We are more than happy to answer further questions from Ms Hammond or any other member of the Committee if it will assist the Inquiry.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Spencer', written in a cursive style.

Mark Spencer  
Director of Public Policy