Review of Queensland's *Anti-Discrimination Act 1991*

Association Christian Schools Submission

Associated Christian Schools ("ACS") have reviewed the Discussion Paper on Queensland's *Anti-Discrimination Act 1991* ("ADA").

Associated Christian Schools (ACS) is a friendship of Australian Christian educators dedicated to advancing and equipping Christian educational communities in the interest of the common good. We offer an influential voice in education, whilst seeking the growth of Christian educational communities for the common good. We currently have 44 member schools with 166,875 students located throughout Queensland. These schools are located in Cairns, down the coast to the Gold Coast as well as in regional and remotes areas such as Normanton, Goondiwindi, Emerald and Toowoomba. ACS membership include mainstream, SAS, single sex, and majority Indigenous schools.

As a faith-based charity established to advance education from a Christian worldview and support its member schools in their mission to do the same, ACS is passionate about providing educational services free from discrimination. ACS is in support of the Review of the ADA, but likewise considers it vital that the existing exemptions for religious bodies and schools are at least maintained in the current form.

Our comments in response to the Discussion Paper can be found below.

EFFICIENCY AND FLEXIBILITY

ACS welcomes adapting the procedural requirements for parties involved in a dispute. ACS acknowledges the Queensland Human Rights Commission (QHRC) is under-resourced. The current wait time to assess an individual's complaint may take up to six months.[1]

In the context of schools, most discrimination complaints arise in the context of parent/student relationships with the school. These relationships are often ongoing (and indeed, may continue for the remainder of the student's education with the school). Because of this, ACS considers it important to, as far as possible, resolve complaints outside the formal dispute resolution process. Early intervention promotes a swift resolution of complaints, in which relationships would be preserved, and systemic discrimination addressed.

It follows that ACS recommends retaining the timeframes contained in the ADA, as well as the Commission's ability to assess complaints and identify whether there is substance to it. A removal of both these protections may see an increase in frivolous claims, which would be detrimental to both the Commission and respondents to complaints.

RELIGIOUS BODIES AND EDUCATIONAL INSTITUTIONS

ACS submits that faith-based schools, as a minimum, require the maintenance of the existing exemptions for religious bodies and faith-based school.

Parents choose to enrol their children at faith-based schools, because of the alignment between the beliefs and ethos of the school with their personal beliefs and ethos. However, it is trite to say that an entity's beliefs and ethos are directly represented by those persons who voluntarily and willingly choose to be parts of its membership, volunteer base and employee group. It is vital that faith-based

[1] 'Making a Complaint', *Queensland Human Rights Commission* (Web Page, September 2021) <https://www.qhrc.qld.gov.au/complaints/making-a-complaint>.

groups (including faith-based schools) have the freedom to employ and engage those persons who act in a manner consistent with the beliefs and practices of the religion on which the group is based.

Our member schools rely upon the exemptions provided in section 25 of the *Anti-Discrimination Act 1991*, and are opposed to any moves to remove these exemptions. As it is, the 'genuine occupational requirement' has been described as a "novel exception[s] with uncertain scope."[2] Our member schools would prefer greater certainty in this regard, and advocate for provisions consistent with the exemptions in the Commonwealth legislation (for example, by extending section 109(d) of the *Anti-Discrimination Act 1991* to include the work and work-related areas).

With respect to the enrolment of students, some of our member schools also operate wholly or mainly for students of a particular religion. Accordingly, we submit that section 41 of the Act must be retained without amendment.

Otherwise with respect to student enrolment (including the continuation of enrolment), it is important that schools be able to manage student behaviour and participation according to their usual policies and procedures, and to treat all students in a similar and consistent manner (for example, by applying the High Court decision in *Purvis v New South Wales (Department of Education and Training)*[3]). It is important that the existing definitions of Direct Discrimination and Indirect Discrimination be retained. ACS considers that the inclusion of Indirect Discrimination as a cause of action provides sufficient protection for students with an attribute, where a complaint of Direct Discrimination cannot be proved.(noting again that we support the retention of the "reasonableness" test in this definition).

COMPETITVE SPORTING

ACS submits section 111(1) of the ADA should be retained and the definition of *competitive sporting activity* to be expanded to include inter-school and intra-school sport.

ACS acknowledges the difficulty in striking the correct balance between achieving fairness whilst also promoting inclusion in sport and preventing harm to transgender, gender diverse and intersex people. Nevertheless, in the context of sporting competitions, the biology of sex also needs to be recognised and appreciated. ACS acknowledges the difficulty in navigating the discourse surrounding equal opportunities in sporting, but reiterates the biology of sex of an individual is separate to their gender identity.

We thank for the opportunity to provide this submission and any further consultation that the Government allows regarding any proposed amendment to the legislation.

Yours Sincerely

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[2] Moulds, Sarah, "Drawing the Boundaries: The Scope of the Religious Bodies Exemptions in Australian Anti-Discrimination Law and Implications for Reform" (2020) 47(1) *University of Western Australia Law Review* 112, 115.

[3] (2003) 217 CLR 92