



ACHEA

Australian Christian Higher Education Alliance

SUBMISSION TO THE QUEENSLAND
HUMAN RIGHTS COMMISSION ON THE
REVIEW OF THE ANTI-DISCRIMINATION
ACT 1991

28TH FEBRUARY 2022

Introduction

1. The Australian Christian Higher Education Alliance (ACHEA) is pleased to have the opportunity to comment on the Queensland Human Rights Commission (QHRC) on the review of the Anti-Discrimination Act 1991 (the Act). Due to the scope of the review, ACHEA's response will be limited to assisting the Commission with understand the needs of the sector and main points of interaction with the Act with faith-based higher education institutions (FBHEI).
2. ACHEA is a national association of faith-based educational institutions (FBHEI) who are involved in discussions internally and with Government about the developing needs and service requirements of a diverse Higher Education sector.
3. ACHEA's members are all multi-disciplinary Protestant Christian higher education institutions and include Alphacrucis University College, Avondale University College, Christian Heritage College, Eastern College Australia, Excelsia College, Morling Theological College, Sheridan College and Tabor College of Higher Education. Several of these institutions are either based or have campuses in QLD, or have online students from QLD.

Religious freedom is vital for faith-based higher educational institutions

4. Faith-based higher education institutions (FBHEI) make up an important section of the rich diversity across tertiary education in Australia. It is a sector which engages over 56,000 students and 2,000 staff each year, with a rapidly expanding international market.
5. ACHEA members offer unique forms of education within QLD and Australia. Historically, universities were founded as close communities of religious instruction, demonstrating a pattern of life conducive to higher learning of the earthly and the divine. The monastic model of scholarship was particularly influential in the development of such institutions where a devoted heart, virtue-led character and purity of life were developed alongside the expansion of intellect. Likewise, ACHEA institutions are not only places of learning, but are also '**communities of faith seeking understanding**' which educate in the context of nurturing spiritual life and formation. The emphasis upon communal growth, servant leadership, innovative wisdom, holistic teaching, and a continuance of historical tradition - all within a Judeo-Christian framework.

6. ACHEA holds that enabling different beliefs and views to be held and practiced across various educational institutions and that allowing those beliefs to be honestly followed is an important part of what makes Australian education so successful in a multicultural society. For minority and marginalised groups, religion is often intermeshed with ethnic and cultural roots and provides strong cultural diversity that is an asset in liberal democracies. This diversity requires the ability to not only teach from convictions and beliefs, but also to have the freedom to shape community and institutional life according to those beliefs.
7. FBHEI provide significant contributions to the wellbeing and economic resilience of the social fabric in times of crisis. There is considerable evidence of the relationship between faith/religious commitment, philanthropy and charitable organisations that provide support and aid. FBHEI form a central part of this support through equipping students with resilience skills, professional integration of virtue, civic responsibility, and readiness for events that affect the social, psychological, spiritual and economic health of the society. FBHEI's strong communal networks also allow them to assist churches and religious organisations in providing tangible responses to welfare and community needs, being major providers of pastors, chaplains, youth workers, social workers, counsellors, health workers, and teachers.¹
8. There are however unique aspects in the sphere of higher education, many of which are directly impacted by equal opportunities and the degree of religious freedom available. These challenges are a result of characteristics such as:
 - a. a specific underlying religious ethos of FBHEI which define the mission and impacts the teaching focus of all academic disciplines and student engagement;
 - b. a strong emphasis in FBHEI on the formation of positive communal relationships between executives, academics, staff and students;
 - c. a pastoral focus on vocational support and mentoring in FBHEI with greater resources dedicated to the development of character, service and faith;
 - d. an emphasis on community service and learning programs, as well as involvement in strong civic networks (e.g. churches, mosques, temples);
 - e. the voluntary nature of adult education and the freedom for HE students to choose an institution which reflects their values and beliefs;
 - f. the relationships with professional qualification bodies required for student career aspirations which can be affected by religious teaching in FBHEI;

¹ Evidence for these claims can be found in Oslington, P. 2020 [The Economic Benefits of Australian Theological Education](#), and [Building the Economy and the Common Good: The National Impact of Christian Higher Education in the United States](#), CCCU, 2018.

- g. the provision of adult residential arrangements in FBHEI's based on sex and relational status;
 - h. the inherent connection between freedom of speech in universities and student's personal religious beliefs;
 - i. the multiple opportunities for higher education student association through student unions, clubs, religious groups and activist organisations; and
 - j. the necessity for broader freedom of thought and expression in higher education due to the high intellectual nature of courses studied.
9. In light of these characteristics, ACHEA holds that there are four fundamental requirements for the faithful existence of FBHEI. These are:
- a) The freedom to teach doctrine and beliefs around metaphysics, epistemology, human identity, morality, spirituality, sexuality, social structure, and legal and political theory.
 - b) The freedom to employ all staff around a specific religious culture and ethos.
 - c) The freedom to require ongoing commitments from staff and students to uphold community standards of public and private moral conduct around behaviour, character traits, communication, relationships, substance use and religious belief.
 - d) The freedom to resolve moral and ethical decisions which detrimentally affect the community within itself with reference to its sacred teachings and texts.
10. With these characteristics in mind, ACHEA are concerned that changes to the Anti-Discrimination Act 1991 may have the unintended effect of creating undue burdens on FBHEI which could impact the function and the ability of FBHEI to practice their central doctrines, tenets, beliefs, and ethos.
11. ACHEA recognises that there are necessarily limits to the freedom of ethos-based organisations to *protect public safety, order, health or morals or the fundamental rights and freedoms of others*.² However, these 'limitations' that are being considered in the review need to be carefully considered to avoid undermining the integrity of FBHEI in being able to achieve their stated mission and purpose in the sphere of higher education.

² As recognised in Article 18 of the International Covenant on Civil and Political Rights
https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf

Key Definitions in the Anti-Discrimination Act

12. The terms of references of the review requests the QHRC to provide advice and recommendations on enhancing the Act, taking into consideration Australian and international best practices regarding equality and discrimination. A key element of such a review is around definitions, and ACHEA proposes a number of considerations.

13. **RELIGIOUS BELIEF AND ACTIVITY** - There are currently reasonable definitions of religious activity and religious belief in the Act. However, ACHEA recommends slightly expanded versions which reflect clearer definitions of 'lawful', as well as the inclusion of what constitutes a 'genuine belief'.

religious activities includes engaging in religious activity, including an activity motivated by a religious belief, but does not include any activity that would constitute an offence punishable by imprisonment under the law of Queensland or the Commonwealth.

religious beliefs includes the following—

- (a) having a religious conviction, belief, opinion or affiliation,
- (b) not having any religious conviction, belief, opinion or affiliation.

genuinely believes in relation to a person means the person's holding of the religious belief is sincere and is not fictitious, capricious or an artifice.

14. **RELIGIOUS ETHOS ORGANISATION** - There is no reference or definition of a 'religious ethos organisation' in the Act. Considering the unique position in religious discrimination considerations in dealing not only of an individual level (similar to sex, race, disability, age) but also includes a group level (such as FBHEI). We would therefore recommend the inclusion of:

religious ethos organisation means—

- (a) a private educational authority that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion, or
- (b) a charity registered with the Australian Charities and Not-for-profits Commission under the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion, or
- (c) any other body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion.

15. **GENDER IDENTITY AND INTERSEX STATUS** – In regard to the question of gender identity (Discussion question 26), ACHEA would recommend that any definitions of gender identity and intersex (or indeterminate) status are distinct.

Intersex status and 'gender identity' are two very different concepts. 'Gender identity' is a psychological characteristic, compared to the physical and genetic variation of intersex status, and is linked to a contested area of scientific practice. ACHEA wants to highlight that any overly broad or significant expansion of gender identity in the Act may have implications for FBHEI in the areas of student accommodation, student safety, sporting team participation, bathroom facility usage, and doctrinal teaching around male and female.

16. **PERSON** – 'Person' is not defined in the Act, but it is assumed that Person includes corporate entities (which are included as persons in the Acts Interpretation Act - 2C). It is worth providing clarity in this regard as religious discrimination can impact corporate entities like FBHEI who hold institutional religious beliefs.

17. **INTERSECTIONALITY** – Although ACHEA recognises that 'intersectional discrimination' can help identify complex combinations of attributes that may factor into direct or indirect discrimination, we would encourage the QHRC to exhibit caution in bringing in related reforms. Although attempts at addressing 'intersectional discrimination' may be well intentioned, this is a relatively untested tool which can increase societal division through creating hierarchical group identity structures. Additionally, measuring the influence of cumulative effects of potential discrimination requires an imprecise form of measurement which risks inaccurate assumptions when compared to dealing with claims of a clear single protected attribute. Intersectionality also appears to have significant ideological roots in 'critical theory', focusing on privilege and oppressors, and claiming primary human identity as being rooted in race and gender - which is not an anthropology most FBHEI share. For these reasons, ACHEA would therefore recommend that intersectional discrimination is not included in the Act, particularly not without further in-depth research on the concept and implications for human right theory.

18. **DISCRIMINATION** – ACHEA is concerned that there is the negative language of 'discrimination' and 'exemption' used in regard to religious beliefs in the Act. ACHEA suggest a more comprehensive definition of discrimination around the need for balancing equal opportunity rights within a comprehensive definition that also enables religious freedom.

(1) Discrimination means any distinction, exclusion, preference, restriction or condition made or proposed to be made which has the purpose of disadvantaging a person with a protected attribute or which has, or is likely to have, the effect of disadvantaging a person with a protected attribute by comparison with a person who does not have the protected attribute, subject to the following subsections.

(2) A distinction, exclusion, preference, restriction or condition does not constitute discrimination if:

- (a) it is reasonably capable of being considered appropriate and adapted to achieve a legitimate objective; or
- (b) it is made because of the inherent requirements of the particular position concerned; or
- (c) it is not unlawful under any anti-discrimination law of any state or territory in the place where it occurs; or
- (d) it is a special measure that is reasonably intended to help achieve substantive equality between a person with a protected attribute and other persons.

(3) The protection, advancement or exercise of another human right protected by the *International Covenant on Civil and Political Rights* is a legitimate objective within the meaning of subsection (2)(a).

(4) Without limiting the generality of subsection (2), a distinction, exclusion, preference, restriction or condition should be considered appropriate and adapted to protect the right of freedom of religion if it is made by a religious body, or by an organisation that either provides, or controls or administers an entity that provides, educational, health, counselling, aged care or other such services, and either:

- (a) it is reasonably necessary in order to comply with religious doctrines, tenets, beliefs or teachings adhered to by the religious body or organisation; or
- (b) it is reasonably necessary to avoid injury to the religious sensitivities of adherents of that religion or creed; or
- (c) in the case of decisions concerning employment, it is reasonable in order to maintain the religious character of the body or organisation, or to fulfil its religious purpose.

(5) Without limiting the generality of subsection (2), a distinction, exclusion, preference, restriction or condition should be considered appropriate and adapted to protect the right of ethnic minorities to enjoy their own culture, or to use their own language in community with the other members of their group, if it is made by an ethnic minority organisation or association intended to fulfil that purpose and has the effect of preferring a person who belongs to that ethnic minority over a person who does not belong to that ethnic minority.

Patrick Parkinson and Nicholas Aroney, Submission to Attorney-General's Department, *Commonwealth Anti-Discrimination Laws*, January 2012.

FBHEI require freedom in their employment decisions

19. ACHEA members are the chief trainers of faith-based teachers, counsellors, youth and community workers, chaplain, health professionals, and pastors across QLD and Australia. The ability to select staff members on the basis of the FBHEI mission is vital to the effective delivery of education, and in necessary support to the religious community's workforce provision.

Communal religious freedom is enshrined under international law

20. It is important that the commission consider Australia's obligations under international law. The State must be careful not introduce legislation that imposes an unreasonable burden on the right to freedom of religion for religious ethos bodies.

21. The International Covenant on Civil and Political Rights ('ICCPR') states:

a) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.³

22. This right of religious freedom for religious bodies is also reflected in Article 6 of the United Nations' Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief in 1981. This includes the right to:

a) To establish and maintain appropriate charitable or humanitarian institutions;
b) To train, appoint, elect and designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

23. Any removal of protections or religious exemptions around employment would endanger the autonomy of FBHEI in upholding their religious culture and ethos, throwing into doubt Australia's international obligations around religious freedom.

FBHEI rely on all staff to uphold their specific religious culture and ethos

24. The fundamental mission of FBHEI require that staff and academics maintain the institution's worldview. Without the ability to select and maintain according to belief in employment, the institution could not exist as a distinctive religious entity.

25. Higher education in faith-based institutions is viewed less as a transactional educational arrangement, and more as a familial or pastoral-based community. A community that functions in this way is reliant on staff that can:

³ *International Covenant on Civil and Political Rights* (1966), Art 4.

- a) teach according to the doctrine and beliefs of the religion across any subject, keeping in mind that for a believer, all spheres of life have religious implications;
- b) engage with integrity in the spiritual life of the religious community;
- c) be an example of how a committed religious adherent lives their life in conformity with the religion to colleagues and students; and
- d) support the ethical and spiritual development of students through the institution's 'religious lens' in informal social gatherings and discussions.

26. The adherence of staff to the religious worldview of an institution can indeed be the primary reason for student interest, the willingness of staff to work for the institution, and the support of the wider religious community who are relying on the institution for academic perspectives on doctrine, research and innovation for their service arms, and the training of faith-based workers and leaders of the denomination.

A narrowing of exemptions around religious bodies or genuine occupational requirements may inhibit the fundamental religious culture and ethos of FBHEI

27. The Commission has noted a particular interest whether the exemption for educational institution exemptions are too broad and should be narrowed according to the nature of employment or position held within the Religious Educational Body. Although AHCEA recognises that this may appear possible and logical from a secular perspective, or even nominal religious institution, it fails to understand the fundamental nature of *'communities of faith seeking understanding'*.

28. Within much of the Christian tradition, and certainly for ACHEA members, there is not a clear vocational separation of faith and work. Therefore, from dishwashing to directing, all tasks within an institution can be viewed as service to God and to community – done in an intentional spirit of worship and dedication. This can be demonstrated by vast swathes of biblical evidence, but 1 Corinthians 10:31 captures the position adequately when stating, *'So whether you eat or drink or whatever you do, do it all for the glory of God'*.

29. Any narrowing of the exemptions of tighter definitions around 'genuine occupational requirements' creates a plethora of unintended consequences. Firstly, it creates a division within staffing bodies where some designated roles would be viewed as more important, holy or spiritual, while others were less so. This potentially undermines the fundamental principal of equality of worth and value that undergirds the Christian approach to employment.

30. Secondly, it would put the government in a position where they would be able to determine the validity of a FBHEI claim that religious compatibility is an inherent requirement of the employment position. This would create significant issues for a court or tribunal unfamiliar with intricate religious doctrine that determine such decisions and would have to rely on external theological experts

interpretations on the vocational genuineness – often who represent only one of a range of theological interpretations.

31. Thirdly, adherence to the moral and ethical frameworks of a religious body is arguably an inherent requirement of a position in itself. Therefore, attempting to demarcate roles apart from the requirement would undermine the religious freedom to adopt a religion or belief 'in community' as the ICCPR indicates.⁴

Protections against discrimination and equality for HE students and academics requires diverse religious ethos organisations

32. For a diverse higher education system that can represent the diverse needs and values of Queensland residents, distinct and differing perspectives are required. The freedom to associate with people who share similar religious values involves the freedom to exclude people who do not share those beliefs.
33. Without this freedom to associate among people of shared beliefs, then all higher education bodies would potentially be restricted to teaching identical moral perspectives, removing the spirit of academic freedom and inquiry that is fundamental to pushing the boundaries of knowledge.
34. It is important to note in these discussions that this is not only for schools where parents have rights as to how their children are educated. In higher education, ACHEA's realm, adults should be free to choose institutions which reflect their beliefs and values, as well as their epistemology. There are numerous examples (see Case studies below)⁵ of students being disciplined or expelled from their public institutions due to their religious beliefs. This creates a chilling effect for people of faith, and diverse society provides the choice of attending (or creating) an institution where people's beliefs can be lived out and explored in a safe environment.

CASE STUDY #1 – [REDACTED] was a university student in [REDACTED] who was forced to undertake compulsory training and counselling after praying with a fellow student who was struggling with anxiety. Even though the student gave permission to pray, she subsequently complained to the university that [REDACTED] made her feel unsafe. The university disciplined and suspended [REDACTED], instructing him that he could only return to university if he undertook training and received counselling once every two weeks. [REDACTED] was reinstated after obtaining legal assistance.

⁴ *International Covenant on Civil and Political Rights* (1966), Art 4.

⁵ <https://www.bbc.com/news/uk-england-south-yorkshire-48857032>

CASE STUDY #2 - Felix Ngole was expelled in 2016 from his social work course at the University of Sheffield after quoting Bible verses on Facebook that were deemed critical of homosexuality. In 2019, the UK Court of Appeal overturned a UK High Court decision to uphold Felix's expulsion from Sheffield, reinforcing that people of faith have the legal right to express Biblical views in public without fear for their professional careers. [Ngole v University of Sheffield (2019)]

35. In academia, there are often fundamental differences in understandings of how the human mind can know anything at all. For FBHEI, it is often the case that concepts of the divine are established as a starting point for all reason and knowledge (Credo ut intelligam - I believe in order to understand). This perspective means there are potentially dramatically different conclusions to a secular, public university – an important feature for true diversity.
36. There are numerous more examples of the challenges of individuals and groups holding religious beliefs in secular Australian Universities.⁶ FBHEI make up perhaps less than 10% of higher education in Queensland, which means that there is ample opportunity for staff and students to study or work at institutions which provide a secular perspective. However, for diversity to exist the Government must allow room for FBHEI to employ staff and teach students within the religious culture and ethos in which they choose to live.

FBHEI require unique protections from discrimination

37. Any changes to the Anti-Discrimination Act must also take into consideration how it protects the religious freedom and equal opportunity of FBHEI as a religious body that may face discrimination. Around the world (and in Australia) there have been cases where FBHEI and other religious groups have had accreditation, facility usage, or Government funding stripped due to their religious beliefs.⁷ As there is still not protection against religious discrimination at a Federal level, it falls to the State to ensure this protection.

⁶ For a key one around student unions, see <https://www.dailytelegraph.com.au/newslocal/city-east/sydney-university-backflips-on-threat-to-deregister-evangelical-christian-group-over-faith-declaration-requirement/news-story/ad5ec528e545a3fe0ec9baa274d4d1a0>

⁷ <https://lawandreligionaustralia.blog/2018/06/18/trinity-western-university-loses-before-supreme-court-of-canada/>

CASE STUDY #4 - Trinity Western College is an Evangelical tertiary institution in British Columbia, Canada, which required staff and students to agree to a Community Covenant Agreement. This covenant undertakes (among other things) that students will not engage while studying at TWU in “sexual intimacy that violates the sacredness of marriage between a man and a woman”.

Two Canadian Provincial Law societies decided not to authorise graduates of the recognised and accredited legal degrees as able to practice in the provinces due to the College’s requirements , claiming that they imposed ‘harm’ on LGBTI+ students.

The Supreme court sided with the Law Societies in a 7-2 decision (despite TWU winning a similar challenge 8-1 on the accreditation of their teachers in 2001). Dissenting judges noted that they believed there was a serious impairment of the religious freedom of TWU.

38. Cases such as that involving Trinity Western are an ever-present concern to ACHEA members, many of which might hold similar Community Covenant Agreements. Similarly, there are concerns that FBHEI may face discrimination in the allocation of grant funding (with the Ozarks v Biden case currently before the Supreme Court)⁸, and the use of publicly funded facilities.⁹
39. Removal of religious educational institution protections in the Act may also open ACHEA members up to litigation from individuals who can no longer, through speech or conduct, uphold the religious ethos of the institution but still intend to maintain their employment. Despite sympathy for the individual, the FBHEI must have the religious freedom to maintain staff commitment or cease to fulfil their purpose and mission (see above).

⁸ <https://adfllegal.org/case/college-ozarks-v-biden>

⁹ <https://www.etrinitynews.com.au/australia/cancelled-acl-gets-banned-from-wa-venues/>

CASE STUDY #5 – In April, educator [REDACTED] went to the media to accuse [REDACTED], a Baptist higher education provider in [REDACTED], of sacking her due to her sexuality. She had been a lecturer in Chaplaincy and Spiritual care at the College and had recently entered into a same-sex marriage. The story received wide coverage, including on the ABC 7:30 report, with [REDACTED] experiencing significant aggression from members of the public around the story.

[REDACTED] disputed the claim, indicating they provided significant support to [REDACTED] and that the mutual departure was based upon her decision to ‘no longer adhere to a key [REDACTED] value about the nature of marriage’ as spoken by Jesus in Matthew 19:4-5, rather than her personal sexuality. They indicated that any staff member, of any sexuality, would still have to uphold this central doctrine of the College.

40. The case study above demonstrates that removing exemptions for FBHEI within the Act will undoubtedly lead to litigation and potentially increased public discrimination against such institutions that hold such beliefs. It is worth noting a similar relevant case submitted to the US Supreme Court, *DeWeese-Boyd v Gordon College*, that involves a denial of application over religious beliefs and examines the notion of faculty members as having ‘ministerial’ responsibilities.¹⁰
41. The provision of goods and services by FBHEI is relevant chiefly in regard to the hiring of facilities for the purpose of holding what are seen as events or sacramental ceremonies which go directly against the ethos of the religious body. The main example of this would be a request to use the University chapel for a wedding which did not meet the doctrinal requirements of the institution. Any exemptions in the Act should ensure that the hiring of private FBHEI facilities are able to ensure the religious sensitivities of their central doctrines, tenets, beliefs, and ethos.
42. More broadly, it is worth being aware of reports of increasing religious discrimination across Western secular democracies. A recently released work by Professor Jonathan Fox of Bar-Ilan University, *Thou Shalt Have No Other Gods Before Me: Why Governments Discriminate against Minorities*, provides the most thorough and comprehensive data set on the topic of religious discrimination ever compiled. He indicates growing religious discrimination worldwide, particularly among the governments of Western

¹⁰ <https://fedsoc.org/commentary/publications/state-court-docket-watch-deweese-boyd-v-gordon-college>

democracies, and singles out Australia as a clear example of the recent rise of ‘socially-based’ discrimination against religious minorities in Western democracies.¹¹

Further considerations

43. **Religious Discrimination Bill** – As there are currently no protections at a federal level against religious discrimination, it is vital that States ensure that religious individuals and communities have robust protections. Any reforms of the Act that remove current protections could well undermine internationally recognised religious freedoms.

44. **Effect on bodies operating nationally** - Many of our ACHEA members operate across State borders. Restrictive changes to the Act may apply to persons resident in and employed by the FBHEI in other State or Territories but who may spend some part of their work hours online or with Queensland residents or sometimes travel to Queensland for work. Any changes should be clear as to how these national bodies are impacted, and the Constitutional legality of such impact.

¹¹ Fox, Jonathan 2020 *Thou Shalt Have No Other Gods Before Me: Why Governments Discriminate against Minorities*, Cambridge University Press 74-75. Also see Australian Professor Nicholas Aroney’s review - <https://www.abc.net.au/religion/australias-religious-discrimination-problem-nicholas-aroney/12542800>

Responses to Discussion paper questions

45. For the reasons outlined above, ACHEA would summarise the answers to the relevant questions contained in the Commission's discussion paper, based on the above arguments, as follows:

7. Is there a need to protect people from discrimination because of the effect of a combination of attributes? If so, how should this be framed in the Act?

ACHEA would recommend that intersectional discrimination is not included in the Act without further consultation on the broader implications of the theory for anti-discrimination law.

19. What should be the overarching purposes of the Anti-Discrimination Act? Should an objects clause be introduced? If so, what are the key aspects that it should contain?

Any objects clause should include a recognition of the Act the need not simply to exempt, but to protect the right of freedom of religion if it is made by a religious body to comply with religious doctrines, tenets, beliefs or teachings adhered to by the religious body or organisation (see section 18 above).

23. What other issues relating to the functions, processes, power and outcomes of the Tribunals should be considered by the review?

Our key recommendation would be the consideration of clarifying how a tribunal might determine genuine religious belief and varying beliefs between strands and denominations. For example, if there is disagreement between whether a student holds to a particular religion or not then the tribunal would be beyond their expertise in determining the theological nuances of the religious body. This could be avoided through the expanded definitions recommended above (section 13-14).

26. Should there be a new definition of gender identity, and if so, what definition should be included in the Act?

Any definition of 'gender identity' should avoid conflation with 'intersex status' and should be clearly linked to exemptions for religious ethos organisations and individuals who hold traditional beliefs around the inherent link between genetics and gender.

27. Should there be a new definition of sexuality, and if so, what definition should be included in the Act?

Any definition of 'sexuality' should also acknowledge traditional beliefs around marriage and sexual morality held in the community, and be linked to exemptions for religious ethos organisations to be able to continue to teach and uphold their religious beliefs, tenets, and doctrines.

29. For attributes that have a legislative definition in the Act, do those definitions need to change? For attributes that do not have a legislative definition, should a definition be introduced?

The attribute of religion, and associated definitions, need expansion to more adequately address the needs of individuals and religious institutions. ACHEA suggests improved definitions for:

Religious activities - includes engaging in religious activity, including an activity motivated by a religious belief, but does not include any activity that would constitute an offence punishable by imprisonment under the law of Queensland or the Commonwealth.

Religious beliefs includes the following—

- (a) having a religious conviction, belief, opinion or affiliation,
- (b) not having any religious conviction, belief, opinion or affiliation.

Genuinely held belief - in relation to a person means the person's holding of the religious belief is sincere and is not fictitious, capricious or an artifice.

Religious ethos organisation means—

- (a) a private educational authority that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion, or
- (b) a charity registered with the Australian Charities and Not-for-profits Commission under the Australian Charities and Not-for-profits Commission Act 2012 of the Commonwealth that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion, or
- (c) any other body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion.

41. Should the scope of the religious bodies' exemption be retained or changed? In what areas should exemptions for religious bodies apply, and in relation to which attributes?

The current exemptions for religious bodies should be retained and expanded to incorporate educational institutions more directly (rather than simply as a subsection of section 25 - Exemptions for discrimination in work and work-related areas). ACHEA would also recommend the committee extend employment protections for faith-based institutions to go beyond simply the ordination of religious leaders, to all staff who are required to uphold the publicly expressed beliefs of the institution.

42. Should religious bodies be permitted to discriminate when providing services on behalf of the state such as aged care, child and adoption services, social services, accommodation and health services?

It is worth noting that the South Australian bill (based on a limited South Australian Law Reform institute report) emphasised in the discussion paper was dropped. There are clear unintended

consequences of removing the ability for faith-based organisations to uphold their religious ethos in regard to how they deliver services. This is not ‘discrimination’ as suggested in the question, but rather the outworking of the recognised international right in the ICCPR which states that the right to freedom of thought, conscience and religion includes a manifestation of religious belief both individually and communally.

44. Should the religious educational institutions and other bodies exemption be retained, changed, or repealed? If retained, how should the exemption be framed, and should further attributes be removed from the scope (currently it does not apply to age, race, or impairment)?

The current exemptions for religious bodies should be retained and expanded to incorporate educational institutions more directly (rather than simply as a subsection of section 25 - Exemptions for discrimination in work and work-related areas). ACHEA would maintain that the current attributes of age, race and impairment are not required in the scope, but that not further attributes should be removed due to the significant impact they would have on the ability to uphold central religious doctrines around sexual morality, gender and relationship status.

46. Thank you for your time and consideration. We would be pleased, if requested, to have the opportunity to provide further assistance to the Commission as it proceeds.



Dr Jeannie Trudel
Chair of ACHEA/
President of Christian Heritage College



Nick Jensen
Political Liaison for ACHEA and
Alphacrucis College