

**SUBMISSION:**  
**Review of Queensland's Anti-**  
**Discrimination Act**

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**AUSTRALIAN CHRISTIAN LOBBY**

**About Australian Christian Lobby**

Australian Christian Lobby's vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With more than 160,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

**[acl.org.au](http://acl.org.au)**

**Queensland Human Rights Commission**

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**1 March 2022**

Dear Sir/Madam

On behalf of the Australian Christian Lobby (ACL), thank you for the opportunity to make a submission on the *Review of Queensland's Anti-Discrimination Act: Discussion Paper*.

Please find attached our submission on this important review.

I am available to discuss any issues which may arise from this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'W Francis', is positioned below the 'Yours sincerely,' text.

**Wendy Francis**

National Director / Politics

## **INTRODUCTION**

1. The Australian Christian Lobby (**ACL**) supports the initiative to improve the *Anti-Discrimination Act 1991* (QLD) (**Act**). However, the 'Review of Queensland's Anti-Discrimination Act: Discussion Paper' (**Discussion Paper**) produced by the Queensland Human Rights Commission (**Commission**) is disappointing. The ACL does not support most of the reform proposals made in the Discussion Paper as they either undermine or directly attack the religious freedoms of everyday Australians.

## **EXECUTIVE SUMMARY**

2. Any changes to discrimination laws in Queensland must ensure that the rights of religious Australians are respected and protected. Current provisions protecting religious freedom rights are currently out of step with Australia's international treaty obligations under the *International Covenant on Civil and Political Rights (ICCPR)* and the *Siracusa Principles*.<sup>1</sup>
3. The ACL makes the following submissions addressing specific areas of concern raised by the Discussion Paper:
  - 3.1. **Protecting religious schools and other religious organisations.** Current protections for religious schools and religious organisations set out in the Act are inadequate. Protections for all religious organisations must be strengthened to reflect Australia's treaty commitments to important international instruments like the ICCPR and the very high standard of positive protections that religious freedom rights are given under international law.
  - 3.2. **Positive duties to eradicate discrimination should not be included in the Act.** Positive duties to eradicate discrimination will unfairly prejudice religious organisations and schools. Not-for-profit religious organisations will be taken away from their core mission, have their resources unduly stretched and in some cases may be forced to compromise on their deeply held convictions.
  - 3.3. **The Commission's duties should not be expanded, but reformed.** The Commission does not need extra quasi-judicial powers that undermine the rule of law in Queensland. Such regulatory powers would undermine the objectivity and peace-making functions of the Commission.
  - 3.4. **The Act should not be used as a vehicle for progressive ideology.** The Discussion Paper reveals implicit bias in the discussion of 'systemic discrimination', 'substantive equality' and 'intersectionalism'. Discrimination law is no place for controversial ideologies, entrenching such ideologies in law will only produce bad outcomes for religious communities.

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<sup>1</sup> American Association for the International Commission of Jurists, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (April 1985) <<https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>>, last accessed 17 February 2022.

## **SPECIFIC SUBMISSIONS**

### **Protecting Religious Schools and Other Religious Organisations (Questions 41 & 44)**

#### **Religious Organisations**

4. The ACL strongly supports the freedom of Christian organisations to conduct their affairs fully in accordance with their doctrines, tenets and beliefs.
5. The Discussion paper asks if the scope of the religious bodies' and religious schools' exemptions in the Act should be retained or changed. These exemptions should not just be retained, they should be strengthened. The current protections for religious bodies and religious schools in the Act are inadequate to protect these groups and do not properly reflect international standards of freedom of religious belief and activity.
6. Currently under the Act religious organisations can ensure in a reasonable manner that an employee behaves in accordance with the doctrines, tenets and beliefs of the organisation if it is a genuine occupational requirement of the role,<sup>2</sup> although this is qualified as a protection for religious belief and activity that is subordinate to other rights under the Act, such as age or race.<sup>3</sup>
7. Religious organisations should not have their religious freedom rights treated as second-tier rights by making them subordinate to other rights. Religious organisations should be able to ensure that any employment decision they make is in accordance with the doctrines, tenets and beliefs of the organisation.
8. This restriction on the discretion of religious organisations gives tribunals and courts too much power and oversight of an organisation's religious doctrine and beliefs and will likely lead to courts restricting legitimate religious occupational requirements to religious chaplaincy and teaching roles. Organisations should be able to ensure that all employees act in accordance with the doctrines, tenets and beliefs of the organisation, regardless of the nature of the role. The Act should be amended to ensure that this is the case so that religious organisations can conduct the entirety of their affairs in accordance with their religious ethos.

#### **Christian Schools**

9. It is a vital part of the freedom of religious belief and activity that parents are able to educate their children in accordance with their own religious convictions and morality.<sup>4</sup>
10. The protections for religious schools in the Act are wholly inadequate and some of the most limited in all of Australia. Religious schools can refuse applications from prospective students that don't share the religion of the school.<sup>5</sup> However, it's not good enough that religious schools are carved out of the general exceptions for religious bodies in section 109(2).

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<sup>2</sup> *Anti-Discrimination Act 1991* (QLD), s 25(2)-(8).

<sup>3</sup> *Anti-Discrimination Act 1991* (QLD), s 25(6).

<sup>4</sup> *International Covenant on Civil and Political Rights*, art 18(4).

<sup>5</sup> *Anti-Discrimination Act 1991* (QLD), s 41(a).

11. This means that religious schools can't make the crucial decisions that they need to be able to make to preserve the religious ethos of the school and honour the wishes of parents who send their children to these kinds of schools to receive the religious education and moral instruction that only they can provide.
12. Protections in line with the standard set by the *Sex Discrimination Act 1984*<sup>6</sup> are necessary for religious schools to be able to continue to provide an education that reflects the religious mission and identity that parents have specifically chosen for their children. This will enable religious schools to honour the ICCPR Article 18(4) rights of parents to educate their children in accordance with their religious convictions:  
**Article 18**
  4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.
13. Section 38 of the *Sex Discrimination Act* ensures that religious schools can make employment decisions<sup>7</sup>, contract worker decisions<sup>8</sup> and student enrolment and discipline decisions<sup>9</sup> that are in line with the doctrines tenets and beliefs of the school free from the possibility of a discrimination claim under the *Sex Discrimination Act*. This rightly recognises that when a religious school exercises its rights to religious freedom it is prima facie not unlawfully discriminating.
14. Amending the Act to provide proper protections will mean Queensland parents must be able to send their children to schools that will provide the religious educational environment and instruction that they want for their children.

### **Positive Duties Should Not Be Introduced (Question 21)**

15. The Discussion Paper outlines potential inclusion of positive duties in the Act that will require organisations to take proactive steps to eradicate discrimination and sexual harassment within their organisations.<sup>10</sup>
16. The Discussion Paper does not suggest what organisations the duty would apply to, but leaves open the possibility that schools, charities and other organisations that operate out of a religious mission could be affected.<sup>11</sup>
17. If a religious school, a religious charity or even a church is required to take positive action to eradicate discriminatory practices, this could force these religious organisations to compromise on their deeply held religious convictions. The suggestion of positive duties also

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<sup>6</sup> *Sex Discrimination Act 1984* (Cth), s 38(3).

<sup>7</sup> *Sex Discrimination Act 1984* (Cth), s 38(1).

<sup>8</sup> *Sex Discrimination Act 1984* (Cth), s 38(2).

<sup>9</sup> *Sex Discrimination Act 1984* (Cth), s 38(3).

<sup>10</sup> Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act: Discussion Paper* (November 2021) 72-77.

<sup>11</sup> *Ibid*, 77.

places an unreasonable burden on religious organisations that would stretch their capacity beyond their resources and mission:

- 17.1. religious charities and welfare organisations have legitimate charitable purposes, such as advancing religion and advancing health that will be frustrated by the duty of eliminating discrimination;
  - 17.2. religious charities are predominantly not-for-profit and do not have the resources to focus on taking extra steps to eliminate discrimination;
18. The Act currently provides limited protection for religious schools to make enrolment decisions in accordance with their religious beliefs.<sup>12</sup> There are also other limited protections for religious organisation in the Act. Any positive duties included in the Act would have to be accompanied by protections for religious bodies so that they are not forced to act contrary to their religious convictions and to the destruction of their ICCPR Article 18 rights.

### **The Regulatory Powers of The Human Rights Commission Should Not Be Expanded (Question 22)**

19. The ACL opposes the introduction of new regulatory powers for the Human Rights Commission. The Commission does not need more powers, but rather needs to have its existing powers brought into line with the recommendations made by the Commonwealth parliamentary Joint Committee on Human Rights in Freedom of Speech in Australia, which had bi-partisan support.<sup>13</sup>
20. Changes that should be implemented are:
- 20.1. Limiting the amount of assistance that the Commission can give (under the *Human Rights ACT* )to a serial complainant;<sup>14</sup>
  - 20.2. Including a section that requires the Commission to give equal assistance to the respondent – just as they already can give assistance to complainants;
  - 20.3. Amending Section 139 to include two new subsections that require the Commissioner to reject a complaint if:
    - (a) the Commissioner is of the reasonable opinion that the complaint has no reasonable prospects of success; and
    - (b) the Commissioner is satisfied that in the circumstances of the case further inquiry is not required.
  - 20.4. The Commission requiring the complainant to pay a complaint lodgement fee that they will lose if it is ultimately decided that the complaint does not have any substance;

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<sup>12</sup> *Anti-Discrimination Act 1991* (QLD), s 41(a).

<sup>13</sup> Parliament of Australia, *Freedom of Speech in Australia* (28 February 2017), <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights\\_inquiries/FreedomspeechAustralia/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights_inquiries/FreedomspeechAustralia/Report)> last accessed 28 January 2022.

<sup>14</sup> *Human Rights Act 2019* (QLD), s 67.

- 20.5. Giving QCAT discretion to award costs against the complainant if they persist in pursuing a claim already decided vexatious or lacking in substance by the Commission and confirmed as such by QCAT.
21. The Commission's powers should be accordingly reigned in and not extended. Some of the suggested extra powers of the Commission made by the Discussion Paper are seriously concerning:
- 21.1. the ability to undertake self-initiated/own-motion investigations into suspected breaches of the Act;<sup>15</sup> and
- 21.2. the ability to issue enforceable undertakings and compliance notices.
22. These powers are out of step with the normal operation of the law and fundamentally undermine the Rule of Law by giving the Commission quasi-judicial powers of lawmaking, dispute handling, compulsory conciliation, as well as the quasi-judicial ability to control and enforce those laws.
23. This ability is completely inappropriate to be in the hands of a bureaucratic body and would undermine the ability of the Commission to deal with complaints in an objective and neutral manner.

### **The Anti-Discrimination Act 1991 Should Not Be Used as A Vehicle for Controversial Ideology**

24. The focus of the Discussion Paper on the concept of 'intersectionalism', and the content of the proposed new objects of the Act are deeply concerning as they display a narrow ideological perspective that do not treat all human rights as equal under the law.
25. The Ruddock Religious Freedom Review recommended that any drafting of anti-discrimination legislation should consider the inclusion of objects clauses that recognise the equal status in international law of all human rights, including the freedom of religion.<sup>16</sup>
26. The Discussion Paper does not reflect these recommendations but rather focuses on the contestable and ideological concepts such as:
- 26.1. the concept of 'equality' as a right;
- 26.2. the idea that discrimination is 'systemic' and caused by social and institutional structures;
- 26.3. the idea that discrimination is 'intersectional' and that individuals who have multiple protected attributes are somehow invisible and the recipients of more egregious discrimination because they may hold multiple protected attributes; and
- 26.4. promoting the idea of 'substantive equality'/equality of outcome.

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<sup>15</sup> Queensland Human Rights Commission, *Review of Queensland's Anti-Discrimination Act: Discussion Paper* (November 2021) 83.

<sup>16</sup> Department of Prime Minister and cabinet, *Expert Panel Report: Religious Freedom Review* (May 2018), 1.



27. All these ideas display contested ideological perspectives that have their roots in Critical Theory. Critical Theory is a contested ideological framework that is meant to subvert rationalist Enlightenment thinking and recreate social, philosophical, and cultural structures in line with the subversive aims of the theorist.
28. Discrimination law is no place for such ideology. Any new objects clause in the Act should implement the recommendations put forward by the Ruddock review, and in particular should recognise the equal status at international law of all human rights.
29. An objects clause should also require that the Act be interpreted in line with Australia's signatory commitments under international treaties and covenants, such as the *International Convention on Civil and Political Rights*. This would implement the second recommendation made by the Ruddock Review and bring the Act into line with similar objects clauses in federal anti-discrimination statutes:
  - 29.1. the objects of the *Sex Discrimination Act 1984* (Cth) give effect to certain provisions in the *Convention on the Elimination of All Forms of Discrimination Against Women*, as well as some provisions of the ICCPR;<sup>17</sup> and
  - 29.2. the objects of the *Age Discrimination Act 2004* (Cth) require the adjudicator to bear in mind the international commitments to eliminate age discrimination that are reflected in the Political Declaration adopted in Madrid, Spain on 12 April 2002 by the Second World Assembly of the Ageing.<sup>18</sup>

## **CONCLUSION**

30. The ACL supports the initiative to make positive reforms of the *Anti-Discrimination Act 1991*. We particularly advocate for a refining and strengthening of protections for the attribute of religious belief and activity in the Act, as well as protections for religious schools and other organisations that conduct their affairs in accordance with their doctrines, tenets and beliefs. We welcome an opportunity to present to the Commission about this submission.



**Wendy Francis**

National Director / Politics

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<sup>17</sup> *Sex Discrimination Act 1984* (Cth), s 3(a).

<sup>18</sup> *Age Discrimination Act 2004* (Cth), s 3(e).