

31 January 2020

Human Rights Unit
Integrity Law Branch
Integrity and Security Division
3-5 National Circuit
BARTON ACT 2600
By email: FoRConsultation@ag.gov.au

Dear Sir/Madam,

**Consultation regarding legislative reforms on religious freedom
Comments on the Second Exposure Drafts**

Thank you for the opportunity to provide feedback regarding the second exposure drafts of the legislation on religious freedom. The National Catholic Education Commission (NCEC) is the representative body of Australia's Catholic schools. Working closely with the state and territory Catholic education commissions, the NCEC advocates for and influences policy at the national level on behalf of Australia's Catholic schools.

The NCEC acknowledges and welcomes the work of the Government in seeking to honour its long-standing commitment to introduce legislation to protect religious freedom. We are appreciative of the consultation opportunities provided and thank you and the Government for the open and collaborative approach. It is particularly reassuring to Catholic education that some of the points made in submissions about the first exposure draft, including the NCEC's submission dated 2 October 2019 (the October submission) (and other faith-based organisations) have been reflected in the second exposure draft.

The NCEC's specific comments about the second exposure draft are included below. Our comments are confined to the clauses which relate solely to schools. The Australian Catholic Bishops Conference (ACBC) has also provided comments about the second exposure draft and the NCEC supports and endorses the ACBC submission. We reserve the right to provide further comments about the draft as may be necessary.

In respect of the second exposure draft, the NCEC:

1. Supports the exclusion of local by-laws from the definition of *lawful religious activity*. While the NCEC is still concerned that this definition leaves open the possibility that a State or Territory government may outlaw (through legislation or pursuant to terms and conditions in, for example, funding arrangements) religious activities (a point made in the October submission), the exclusion of by-laws is an improvement on the first exposure draft.
2. Considers the amendments to clause 11 (formerly clause 10) an improvement on the first exposure draft. We appreciate the attempt at clarification of clause 11 by the inclusion of:
 - a. A test which assesses conduct by reference to ***a person of the same religion as the religious body could reasonably consider....*** (see 11(1)).

- b. An endorsement that conduct covered by clause 11(1) includes but is not limited to ***giving preference to persons of the same religion as the religious body*** (see 11(2)).
- c. A reference to conduct to avoid injury to the religious susceptibilities of adherents (see 11(3)).

However, the NCEC believes that clause 11 could be further improved and asks that consideration be given to:

- d. The inclusion in clause 11(1) of the words ***or in furtherance of*** after the words *in accordance*. The proposed clause 11 (1) would then read:

*A religious body does not discriminate against a person under this Act by engaging, in good faith, in conduct that a person of the same religion as the religious body could reasonably consider to be in accordance with, **or in furtherance of**, the doctrines, tenets, beliefs, or teachings of that religion.*

While acknowledging the work of the Government in amending clause 11, the NCEC remains concerned about interpretations that may be imposed by secular authorities on the meaning of this clause, particularly given the wide range of views held within religions about religious requirements. Narrow interpretations of clause 11(1) may have the unintended consequence of defeating the objective of the legislation. The NCEC believes the inclusion of the words *or in furtherance of* will ensure a broader understanding of the clause thereby avoiding such unintended consequences.

- e. The possible interpretations of clauses 11(2) and (4).

It is noted that clauses 11(2) and (4) refer to conduct which permits preferencing those of the same religion. While on its face this is welcome, we are concerned that in practice it may be overly restrictive. This is because we believe same religion may be interpreted narrowly to mean that Catholic schools can only preference Catholics.

The NCEC asks that further consideration be given to this issue. Catholic schools seek to continue to offer education to all who seek a religious education and accept the religious ethos of the schools.

The NCEC looks forward to working constructively with all to achieve this important reform. Please contact us should you require further information or clarification of this letter.

Your faithfully,



Jacinta Collins
Executive Director
National Catholic Education Commission