

8 November 2019

Emeritus Professor Rosalind Croucher AM
President
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001
Lodged online

Dear Professor Croucher,

Comments to the Human Rights Commission – An Australian conversation on human rights

The National Catholic Education Commission (NCEC) is pleased to provide input into this work by the Human Rights Commission (HRC). The NCEC is the national representative body of Australia's Catholic schools. Working closely with the state and territory Catholic Education Commissions, the NCEC's advocates for and develops policy at the national level for Australia's Catholic schools. The NCEC was established in 1974 by the Australian Catholic Bishops Conference (ACBC) through the Bishops Commission for Catholic Education (BCCE).

The mission of Australia's Catholic schools

Australia's Catholic schools are a vital part of Australia's education landscape. From humble beginnings almost 200 years ago, Catholic schools have grown to become the nation's largest provider of education outside government making Catholic education a key partner in the delivery of quality schooling with the government and independent sectors.

The mission of Australia's Catholic schools is similar but distinct from other Australian schools. Australia's Catholic schools are inspired by an educational philosophy built on a Catholic understanding of the human person.

*The person of each individual human being... is at the heart of Christ's teaching: this is why the promotion of the human person is the goal of the Catholic school.*¹

Catholic schools seek to be providers of education and advancers of human flourishing including truth, goodness, love, work, leisure and faith. Through their culture, ethos, mission and commitment to educational programs, Catholic schools represent the harmonisation between learning and living a Christian life.² Religious education is taught at Catholic schools as part of the general curriculum and the work and life of the Catholic school is imbued with Catholic values.

¹ Congregation for Catholic Education (1997) *The Catholic School on the Threshold of the Third Millennium*. Available at: http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_27041998_school2000_en.html.

² For more information about the NCEC and Australian Catholic schools see <https://www.ncec.catholic.edu.au/>

Today Australia's 1,748 Catholic schools enrol over 764,000 students, equating to about one in five students. Over 96,000 teaching and non-teaching staff are employed in our schools. Australia's Catholic schools are universal in their reach, offering an education to all students, including students

from disadvantaged backgrounds, growing proportions of Aboriginal and Torres Strait Islander students and students with disabilities. Catholic schools are situated across Australia with almost 40% outside major metropolitan areas. In some remote communities, a Catholic school is the only school available.

Preliminary comments

The NCEC notes that the work of the HRC is occurring concurrently with the Attorney General's consultation about possible legislative reforms on religious freedom. The NCEC and other Catholic organisations, including the ACBC, are participating in that consultation. A copy of the NCEC's submission dated 1 October 2019 is attached for your information.

The HRC would also be aware that the Australian Law Reform Commission (ALRC) is also undertaking an inquiry into the framework of religious exemptions in the federal anti-discrimination legislation. Given the release of the *Religious Discrimination Bill 2019* (RDB) (and accompanying draft legislation), the ALRC has been directed to confine its inquiry to issues not resolved by the RDB.

Given this, the NCEC suggests that the aspect of the HRC's work that relates to religious freedom protections and the operation of exemptions on anti-discrimination law, should be delayed pending finalisation of the work by the government and the ALRC. The NCEC is hopeful that these issues will be resolved at the federal level following the passage of the RDB, with any outstanding issues more appropriately dealt with as part of the ALRC inquiry.

Comments about the Discussion Paper: Priorities for federal discrimination law reform

Notwithstanding our suggestion above, the NCEC provides the following comments about the issues raised in the discussion paper. Our comments are limited to those matters that touch on religious freedom. We understand that the ACBC has also provided some comments about the discussion paper. The NCEC supports and endorses the ACBC submission.

1. The NCEC welcomes the identification by the HRC of the lack of specific protection in federal anti-discrimination for religious activity or belief. The NCEC appreciates the position of the HRC on this issue and is open to working with the HRC to ensure that the RDB is supported through the parliamentary process.
2. Regarding the comments about the operation of the exemptions in federal discrimination law, given the comments above, the NCEC does not wish at this stage to comment on the substantive issue around exemptions. We are concerned however about some of the content in the discussion paper on this point and the assertions made:
 - a. The statement *permanent exemptions have the effect of "freezing in time" community standards* is, with respect, a misstatement and suggests a lack of appreciation about the purposes of exemptions in anti-discrimination laws.

- b. The NCEC rejects the HRC's characterisation of exemptions *freezing in time* 'community standards'. Moreover, we are concerned that this language, unintentionally has the effect of 'othering' those with religious beliefs. It suggests that religious believers and communities which may rely on these exemptions sit apart from society and operate outside community standards.
- c. Australia's Catholic schools do not stand apart from other educational providers. We appreciate that our schools operate in a pluralistic society and they are open to all who appreciate and wish to share in our mission.
- d. You would be aware that the approach to accommodating religious freedom to date in Australia has been within the framework of anti-discrimination law. At the state and territory level, this legislation differs. At both the state and federal level, accommodations for religious freedom are provided by the inclusion of exemptions.
- e. In the absence of other legislation, these exemptions or **balancing clauses** (a term we believe more accurately reflects both the intent and operation of the exemptions) are crucial to ensuring the freedom of all to act in accordance with religious beliefs and mission in Australia.³
- f. While recognising that the right to religious freedom is not absolute and legal restrictions may sometimes be necessary to protect the rights of others, the existing balancing clauses (exemptions) are important because Catholic organisations (including our schools) want to maintain the capacity to operate and teach in accordance with our faith.
- g. If the HRC proceeds with this aspect of the conversation, the NCEC calls on the HRC to ensure that these balancing clauses (exemptions) are described accurately and considered in the diverse context in which they operate. Attempts to frame balancing clauses (exemptions) as an impediment to legitimate human rights are unfair and inaccurate.

The NCEC would welcome the opportunity to discuss this issue with the HRC further.

Yours sincerely,



Jacinta Collins
Executive Director

National Catholic Education Commission

³ See further Neil J Foster, "Freedom of Religion and Balancing Clauses in Discrimination Legislation" Oxford Journal of Law and Religion Vol. 5 (2016) p. 385 – 430.

