

Inquiry into Australia's Human Rights Framework

The National Catholic Education Commission (NCEC) welcomes the opportunity to make this submission to the Inquiry into Australia's Human Rights Framework by the Parliamentary Joint Committee on Human Rights (PJCHR).

Background

NCEC is the peak body for Catholic education in Australia and is responsible for the national coordination and representation of Catholic schools and school authorities. Our role is to ensure the needs of Catholic schools are served through funding, legislation, and policy.

Working closely with state and territory Catholic Education Commissions, NCEC advocates at the national level on behalf of the Catholic sector and the hundreds of thousands of Australian families who entrust the education of their children to our schools.

One of the most unique and valuable features of Australia's education system is the wide-ranging availability of genuine, affordable school choice which has been positively supported by Australian families and by both major political parties over successive parliaments.

Catholic education is unique in its provision and scope in the world offering a parallel, alternative system of faith-based schools alongside government. We are the largest single provider of non-government schooling and the major provider of faith-based schooling in Australia.

Catholic schools are universal in reach and open to all families who seek a Catholic education. Australia's 1,759 mostly low-fee Catholic schools educate one in five, or nearly 794,000, students and employ more than 104,000 staff. The total Gross Value Added (GVA) contribution of Catholic education to the Australian economy is estimated to be approximately \$12.7 billion.¹ This represents more than 17% of the school education sector per year.

The mission of Catholic education, since its inception, has been to serve students from a range of socioeconomic backgrounds, particularly the disadvantaged and marginalised. Our schools welcome students from a range of backgrounds including an increase in Aboriginal and Torres Strait Islander students (up 195% since 2000). Students with disability represent almost 21% of Catholic school enrolment, and 42% of students experience socio-educational disadvantage. Almost 40% of Catholic schools are in regional and remote areas.

NCEC works to foster a thriving Catholic education sector that offers parents a choice of, and affordable access to, faith-based education for their children that is consistent with Catholic beliefs, values, and teachings. Catholic education also continues to advocate for fair and inclusive funding that sustains both government and accessible faith-based schools across Australia.

Catholic schools make a significant contribution to the educational, moral, and social fabric of this nation. Over 200 years, Catholic schools have educated millions of Australian children. Catholic school alumni have gone on to make substantial contributions in civic life, in business, in the Church, in community leadership, in social outreach, and among other arenas of public and private life.

Catholic school families, many of whom have a long and multi-generational involvement in our communities, continue to choose a Catholic education because it aligns with their beliefs and values.

¹ Estimation based on 2019 Ernst & Young analysis of Catholic Education Western Australia.

The sustained growth of our school communities shows the great importance, and the sacrifice Catholic school families continue to make to choose a school that meets the educational needs of their children and one that reflects their faith and values.

Our schools are committed to educational excellence and are underpinned by charisms of prayer, witness, catechesis, social justice, and pastoral care. Providing learning opportunities for students, staff, and parents to nurture and display these qualities in service of others plays a crucial role in the educational, service, and faith formation provided by Catholic schools.

Introduction

NCEC does not intend to address all of the matters of interest or Terms of Reference for this inquiry. Rather, this submission identifies some matters of particular interest to Catholic schools and systems.

The Australian Catholic Bishop's Conference (ACBC) submission to the present inquiry provides a short discussion of the background for the context of understanding human rights as a fundamental principle of justice in Catholic thought. The background and context of the understanding of human rights in Catholic thought provided in the ACBC's submission should be read as complimentary to and underlying this submission by NCEC.

This submission will focus on four main points:

- Human rights could be more appropriately, effectively, and coherently protected in Australia. NCEC does not have a position on whether the Australian Parliament should enact a federal human rights Act.
- It is important for any future human rights Act/Charter and consequent framework be appropriately conceived and constructed, without any particular internationally recognised and protected rights being diminished or favoured.
- The current proposed model by the Australian Human Rights Commission, like existing Australian state and territory human rights Acts/Charters, does not adequately or effectively address and protect all human rights, such as freedom of conscience, religion and belief (ICCPR art. 18).
- The current inquiry, and any subsequent human rights Act/Charter and framework, should not be seen as meeting the Australian Government's obligation to its election commitment and National Platform which 'recognises that the freedom to have or adopt a religion or belief, to change a religion or belief, or not to have or adopt a religion or belief is absolute' and to 'ensure that Australia's anti-vilification laws are fit for purpose' to prevent discrimination against people of faith, during the term of this parliament.

Current Protection of Human Rights in Australia

As the Australian Human Rights Commission's (AHRC) recent Position Paper *Free and Equal: A Human Rights Act for Australia 2022* notes,

Australia has a patchwork legal framework of human rights protection. The rights that are protected are located in scattered pieces of legislation, the Constitution and the common law. It is incomplete and piecemeal...²

² *Free and Equal: A Human Rights Act for Australia 2022*, 9.

Many of Australia's international human rights commitments and obligations have not been incorporated into the nation's legal systems. While the Australian Capital Territory, Victoria, and Queensland have legislated human rights Acts or Charters,

(t)he lack of an overarching federal instrument means that a person's access to rights protections is wholly contingent on where they live.³

The view that human rights protections could be more effectively implemented and successfully enforced in Australia has long been held by the AHRC⁴ and is a widespread position within the Australian community.⁵

The Position Paper suggests that human rights could be better protected in Australia through its proposed model which would 'coherently implement Australia's international obligations domestically, and ... reflect and codify fundamental common law rights.'⁶ The model would do so primarily through an Act incorporating rights outlined in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Whether an enacted Bill of Rights is the most appropriate and effective way to ensure the human rights of Australians are protected is a policy question still open to legal and political discussion.⁷

While accepting the case that human rights could arguably be better protected in Australia law, NCEC does not have a position on whether Australia should, like many other liberal democracies, introduce a constitutional Bill of Rights or legislate for a federal human rights Act/Charter.

The Need for a Potential Federal Human Rights Act to be Properly Constructed

The AHRC's Position Paper seeks to identify the gaps in Australia's incomplete and piecemeal human rights protections and makes the case to remedy this situation through a federal human rights Act. The proposed model is designed to 'complete the central, missing piece of our domestic legislative framework for the portion and protection of human rights.'⁸

The Position Paper's argument that Australia needs such a federal Act is summarised and illustrated by an infographic *Why we need a Human Rights Act for Australia*.⁹ The infographic rightly states that 'People's rights matter, all of the time', that the legal, political, and policy framework should respect, protect, and prevent violations of human rights, and that this position reflects Australia's commitment

³ Ibid.

⁴ Gillian Triggs, *Opening Address* RDA+40 Conference <https://humanrights.gov.au/our-work/race-discrimination/publications/perspectives-racial-discrimination-act-papers-40-years>

⁵ See for example Lucy Geddes & Hamish McLachlan *50 Human Rights Cases that Changed Australia* (Federation Press, 2023), Scott Stephenson *Should Australia Have a Bill Of Rights?* <https://pursuit.unimelb.edu.au/articles/should-australia-have-a-bill-of-rights>, Human Rights Watch <https://hrwa.org.au/>, Elisabeth Taylor *Faith No More? The inadequacy of Australia's protections for religious freedom* <https://www.cis.org.au/publication/faith-no-more-the-inadequacy-of-australias-protections-for-religious-freedom/>, *Explainer: Why We Need a Human Rights Act For Australia* <https://www.amnesty.org.au/explainer-why-we-need-a-human-rights-act/>.

⁶ *Free and Equal: A Human Rights Act for Australia 2022*, 15.

⁷ See for example, Chief Justice Robert French *Protecting Human Rights Without a Bill of Rights* <https://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj26jan10.pdf>, Justice David Malcolm *Does Australia Need a Bill of Rights?* <http://classic.austlii.edu.au/au/journals/MurUEJL/1998/23.html>, Jeffrey Goldsworthy, Tom Campbell, Adrienne Stone *Protecting Rights Without a Bill of Rights* (Routledge, 2020), Adrienne Stone *Tom Campbell's Proposal for a Democratic Bill of Rights* <http://classic.austlii.edu.au/au/journals/UMelbLRS/2009/21.html>.

⁸ *Free and Equal: A Human Rights Act for Australia 2022*, 5.

⁹ Ibid, 13.

to democratic principles, and 'Australian values' that respect civil liberties, rights and fundamental freedoms.

The AHRC states that the model presented in the Position Paper 'offers a viable and actionable set of proposals' to 'anchor the promotion and protection of human rights in Australia'. The model is intended to have educative, legal, policy, and political outcomes by embedding 'transparent, human rights-based decisions as part of public culture' and political decision making.¹⁰

The aim and purpose of the proposed model is to name and codify human rights in Australia in order to support 'a cultural shift towards rights-mindedness becoming part of the national psyche rather than just an afterthought.'¹¹

The Position paper is a substantial piece of work, in length as well as breadth of scope and, if implemented, its proposals would have significant implications for the legal, political, policy, and social landscape in Australia.

An ill-conceived and poorly constructed federal human rights Act has the potential to diminish certain rights or favour some at the expense of others. Inappropriate or imbalanced codification of rights has, by the Position Paper's own lights, significant and serious implications for political decision making and public culture across the entire country, in addition to the national psyche.

A comprehensive community consultation process will be particularly important considering the significant aspirational and actual ramifications of introducing a federal human rights Act.

It follows from the Position Paper's stated aim and purpose that is important for any future human rights Acts/Charters and consequent frameworks be appropriately conceived and constructed without any particular rights being diminished or favoured.

Current Inadequate Protections for Freedom of Conscience, Religion and Belief

Free and Equal: A Human Rights Act for Australia 2022

The importance to ensure the proper construction of a potential federal human rights Act/Charter is illustrated by the potential effect of the wording of the rights for inclusion as listed in the Position Paper.¹² One of the listed human rights is the right to freedom of thought, conscience, religion and belief. The text in the Position Paper reads:

(1) Every person has the right to freedom of thought, conscience, religion and belief. This right includes -

(a) the freedom to have or to adopt a religion or belief of their choice; and

(b) the freedom to manifest their religion or belief in worship, observance, practice and teaching, either individually or as part of a community and whether in public or private.

(2) No-one may be coerced in a way that would impair their freedom to have or adopt a religion or belief in worship, observance, practice or teaching.

The intent of this propose right is to implement Article 18(1-3) of the ICCPR¹³, which reads:

¹⁰ Ibid, 6.

¹¹ Ibid.

¹² Ibid, 111.

¹³ Ibid, 349.

1. 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.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

On its website the AHRC recognises, among other things, that

(t)he right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound ... The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency ... Freedom to have (as distinct from manifesting) a religion or belief is absolute ... Freedom to manifest religion or belief has individual and collective aspects and is wide ranging ...¹⁴

However, the wording of the proposed right to freedom of thought, conscience, religion and belief in the Position Paper varies significantly enough from that of Article 18 of the ICCPR to cast doubt on the far-reaching and profound nature of the proposed right.

The conception of the proposed right to freedom of thought, conscience, religion and belief in the Position Paper also appears to be far narrower than the expansive definition and standard in international law as communicated by the United Nations Human Rights Council.¹⁵

While this outcome may not be the intent of the wording in the Position Paper of the proposed right to freedom of thought, conscience, religion and belief, the lack of clarity is concerning and a federal human rights Act may, if enacted with this wording, not provide effective protection according to the intent of Article 18 of the ICCPR.

Existing human rights Acts/Charters

As noted by the scope material for the current inquiry, the Australian Capital Territory, Victoria, and Queensland have existing human rights Acts/Charters. It may be that the deficiencies noted above in the proposed right to freedom of thought, conscience, religion and belief in the AHRC's Position Paper are due to the fact that the wording has been 'based on s14 of the Victorian Charter, s20 of the Queensland Human Rights Act and s14 of the ACT Human Rights Act.'¹⁶

As but one example, while s14 of the Victorian *Charter of Human Rights and Responsibilities Act 2006* protects freedom of thought, conscience, religion and belief, the Victorian *Equal Opportunity (Religious Exceptions) Act 2021* limits the ability for Catholic educational institutions in Victoria to preference the

¹⁴ Australian Human Rights Commission, *Freedom of thought, conscience and religion or belief*

<https://humanrights.gov.au/our-work/rights-and-freedoms/freedom-thought-conscience-and-religion-or-belief>.

¹⁵ United Nations Commission on Human Rights *Rapporteur's Digest on Freedom of Religion or Belief* Second Edition (2023) <https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>.

¹⁶ Ibid.

employment of staff who are Catholic and/or are willing to support the ethos and mission of the Catholic school.

Not only does the *Equal Opportunity (Religious Exceptions) Act 2021 (Vic)* violate practical realities, natural rights, and common sense it is also a clear example of legislative over-reach by government and an intrusion by government into the affairs of religious bodies. This legislation goes further in its limitation of the ability of faith-based schools to operate in accordance with their beliefs, than that of any other anti-discrimination legislation in any jurisdiction in Australia.

Even the Victorian Government acknowledged that it is not aware of discrimination by religious providers which the *Equal Opportunity (Religious Exceptions) Act 2021 (Vic)* seeks to remedy. The legislation unfairly targets religious bodies and faith-based educational institutions such that they may be forced to violate their inherent beliefs and values in managing employment matters.

The *Equal Opportunity (Religious Exceptions) Act 2021 (Vic)* clearly does not strike a balance between fundamental human rights which are supposedly protected through the Victorian *Charter of Human Rights and Responsibilities Act 2006*.

It is clear that not only are existing human rights Acts/Charters potentially ineffectual and deficient in protecting some rights, the use of their wording by the Position Paper for a proposed federal human rights Act is likely to replicate and codify such deficits across the country at the federal level.

Recent Australian Law Reform Commission Inquiry

The current lack of effective and balanced rights-mindedness which the AHRC seeks to address through the proposed model in its Position Paper has been illustrated recently by the Australian Law Reform Commission's (ALRC) Religious Educational Institutions Inquiry.

In 2022, the ALRC was asked by the Hon Mark Dreyfus KC MP, Attorney-General of Australia, to review current exemptions in anti-discrimination laws for religious schools. The proposals outlined in its Consultation Paper seriously threaten the ability of faith-based schools to prioritise the employment of teachers and staff who share their faith and fail to provide protections for faith-based schools to operate and teach according to their religious beliefs or to build an authentic community of faith.

The National Catholic Education Commission (NCEC) outlined serious concerns to the ALRC including the lack of understanding of religion and religious freedom in the Consultation Paper, and the serious deficiencies in the ALRC's initial proposals which fail to protect religious rights.¹⁷

The proposals outlined in the ALRC's Consultation Paper are a practical example of the significant concerns posed by an inappropriate or imbalanced codification of rights due to an ill-conceived and poorly constructed federal human rights Act.

The NCEC recommended that the ALRC go back to the drawing board on these reforms and consult further with the government's expert advisory group. The NCEC has also indicated that any changes to current anti-discrimination laws must go hand-in-hand with the introduction of laws to protect religious freedom.

The Australian Government's Election Commitment and National Platform

The challenge of religious freedom for faith-based schools is an ongoing and important issue for Catholic school parents, educators, and the broader Catholic community. Since 2017, successive Australian

¹⁷ NCEC, Submission 409 <https://www.alrc.gov.au/inquiry/anti-discrimination-laws/submissions/>.

governments have committed to proactive legislation to protect religious freedoms and the rights of parents to choose a faith-based school for their children, and the right of faith communities to continue to teach and operate faith-based schools.

The current Australian Government has committed to ensure appropriate protections for religious freedom in this term of government.

In their 2021 National Platform, the Australian Labor Party (ALP) committed, if elected, to work towards an equal and inclusive nation. This commitment extends to Australia's diverse religious communities. The platform makes clear that 'Labor recognises that the freedom to have or adopt a religion or belief, to change a religion or belief, or not to have or adopt a religion or belief is absolute'.

Moreover, Labor believes in and supports the right of all Australians to have and to manifest their religion or beliefs, and the right of religious organisations to act in accordance with the doctrines, tenets, beliefs or teachings of their faith. Such rights should be protected by law and, in accordance with Article 18 of the International Covenant on Civil and Political Rights, subject only to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Labor believes that people of faith deserve the same human rights, equality, respect and safety as every other Australian. No Australian should ever be vilified, discriminated against or subjected to violence or threats of violence because of that person's religion or religious belief. Labor will therefore ensure that Australia's anti-vilification laws are fit for purpose.¹⁸

In this context, NCEC received correspondence from the ALP stating,

... Labor believes all Australians have the right to live their lives free from discrimination, including people of faith ... we will act on this as a priority if we form government ... the expansion of our anti-discrimination framework to protect Australians of faith (is) an opportunity to unite the nation, not divide it.

Practical commitments included introducing anti-vilification protections to prevent discrimination against people of faith, protect all students from discrimination on any grounds, and protecting teachers from discrimination at work, while maintaining the right of religious schools to preference people of faith in their selection of staff.

While to date there have been a number of key reviews by the government little progress being made towards protections for religious freedoms. The present PJCHR inquiry, and any subsequent human rights Act/Charter, should not be seen as meeting the Australian Government's obligation to its pre-election National Platform commitments.

NCEC will continue to advocate strongly to the government to meet this commitment, and to all members of parliament on the importance of religious protections for families of faith and for Catholic schools.

¹⁸ ALP National Platform (2021), p. 66, nn46 & 47 <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>



Other Relevant Matters

The discussion above has largely focused on the inadequate protections for freedom of conscience, religion and belief in the AHRC's Position Paper and existing state and territory human rights Acts/Charters.

Unfortunately similar deficiencies and inadequacies are also evident through which some well established internationally recognised and protected rights are diminished and some favoured, particularly with regard to the standards of the ICCPR. Such matters and concerns would need to be addressed through comprehensive community consultation process prior to introducing a federal human rights Act.

Conclusion

Catholic thought emphasizes the inherent dignity of the human person irrespective of personal attributes, values or beliefs and their inalienable right to freedom, while supporting the common good. This inherent dignity is the foundation of universal human rights.

NCEC submits that:

- Human rights could be more appropriately, effectively, and coherently protected in Australia.
- Any future human rights Act/Charter and consequent framework must be appropriately conceived and constructed, and not diminish or favour recognised and protected right.
- Existing human right Acts/Charters, and the AHRC's proposed model does not adequately or effectively address and protect the freedom of conscience, religion and belief (ICCPR art. 18).
- The Australian Government must meet its election and National Platform commitments to protect freedom of religion or belief and the right of religious organisations to act in accordance with the doctrines, tenets, beliefs or teachings of their faith in this term of government.

Yours faithfully

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