



RELIGIOUS SCHOOLS AND DISCRIMINATION

Everyone deserves to be treated with dignity and respect, no matter where they work or study.

Yet carve-outs in our national anti-discrimination laws currently allow religious educational institutions to discriminate against staff and students based on their gender, sexual orientation, pregnancy and marital status.

RELIGIOUS EDUCATIONAL INSTITUTIONS IN AUSTRALIA

A SNAPSHOT OF THE SECTOR

There are approximately 1,800 Catholic schools and 1,100 independent schools in Australia, together employing more than 200,000 staff and educating more than 1.4 million students.¹

1 in 3 students and almost 2 in 5 staff are enrolled or employed in private schools, most of which are religiously affiliated.²

There are also a small number of religiously-affiliated universities and colleges in Australia.

HOW PREVALENT IS DISCRIMINATION IN THE SECTOR?

Not all religious educational institutions discriminate against LGBTQ+ people, women and people with different religious beliefs.

But our review found that:

- Catholic schools are **overwhelmingly silent** on LGBTQ+ inclusion, leaving staff and students afraid to be who they are.

¹ ABS (2022) *Schools, Australia 2021*.

² Equality Australia (2024) *Dismissed, Denied and Demeaned: A national report on LGBTQ+ discrimination in faith-based schools and organisations*, pp. 24-25.

³ Id, pp. 26-45.

- Independent schools, particularly non-denominational Christian schools, are **more likely to be discriminatory** rather than affirming places for LGBTQ+ people.
- As many as 1 in 3 independent schools require staff to be 'practising' Christians, **reducing employment opportunities** in independent schools by almost 33% for LGBTQ+ people and others.³

Equality Australia, the Independent Education Union and the Australian Law Reform Commission (ALRC) have each documented stories of discrimination, including:

- teachers who have been dismissed or refused employment for being gay, marrying a divorcee or becoming pregnant out of wedlock or with the assistance of IVF;
- students who have been denied leadership positions based on their sexuality and sex;
- parents who have been denied enrolment for their children because they are trans.⁴

HOW IS THIS DISCRIMINATION LEGAL?

Section 38 of the *Sex Discrimination Act 1984* (Cth) allows religious educational institutions to discriminate against staff and students based on their gender, sexual orientation, pregnancy and marital status.

Religious educational institutions can:

- fire or refuse to hire staff, and
- suspend, expel, refuse to enrol, or disadvantage a student,

simply because they are gay, trans, pregnant, divorced or unmarried.

⁴ Id, pp. 13-24; ALRC (2023) *Maximising the Realisation of Human Rights: Religious educational institutions and anti-discrimination laws*, [3.52]-[3.53]; Independent Education Union of Australia (IEU) (2020) *Submission on Religious Discrimination Bill 2019*, attachment 2.



Similar exceptions exist in the *Fair Work Act 2009* (Cth) for employees.⁵

RECOMMENDED REFORMS

Consistently with the Government's election commitments, the ALRC has recommended **repealing section 38** and amending the *Fair Work Act 2009* to:

- prohibit discrimination against staff and students based on their gender, sexual orientation, pregnancy or marital status;
- allow religious educational institutions to prefer staff of their own faith when hiring.

The ALRC has also recommended extending protections to people who are discriminated against because of the gender, sexual orientation, pregnancy or marital status of a personal associate, such as a family member.

KEY INSIGHTS FROM THE ALRC REPORT

In November 2022, the Australian Government commissioned the ALRC to conduct an inquiry into religious educational institutions and anti-discrimination laws.

The stated purpose of the inquiry was for the ALRC to advise the Government on the legal changes which should be made to implement the Government's commitments consistently with Australian's international human rights obligations.

The ALRC received 428 submissions, 41,000+ survey responses, and directly consulted with 131 key individuals and organisations in its landmark inquiry.

Some Conservative religious voices have since lobbied the Prime Minister to ignore the findings of

the ALRC report because it does not support their views.⁶

Key insights from the ALRC report include:

- **Australia is virtually on its own** among comparable countries in having a large, publicly-funded private school sector which enjoys broad exemptions from anti-discrimination laws.⁷
- There is **strong public support**, including among parents and people of faith, for removing special exceptions allowing religious schools to discriminate against LGBTQ+ people and others. Opponents of this reform can only demonstrate support for their view by skewing polling questions or research samples.⁸
- The **religious ethos of a school can be maintained** without exemptions.⁹ Indeed, a majority of states and territories have already undertaken these reforms.¹⁰
- Carve-outs in our existing anti-discrimination laws **can be addressed now** without waiting for a Religious Discrimination Bill.¹¹
- There has been **no flood of complaints** in those states and territories which have already undertaken these reforms, even despite having more complainant-friendly processes.¹²

For more information contact info@equalityaustralia.org.au or visit our website www.equalityaustralia.org.au.

⁵ *Fair Work Act 2009* (Cth), ss 153, 195, 351 and 772.

⁶ G Brown (2024) 'Labor urged to revisit religious freedom laws', *The Australian*, 14 April.

⁷ ALRC, [3.10], [3.17], [4.150]-[4.155] & [8.176]-[8.179].

⁸ ALRC, [3.36]-[3.39].

⁹ ALRC, [4.7], [4.20]-[4.21], [4.37]-[4.39], [4.158], [5.8]-[5.11], [5.35]-[5.50].

¹⁰ ALRC, [4.7], [4.135], [4.141], [4.145], [12.90] & [12.93].

¹¹ ALRC, [5.65]-[5.66].

¹² ALRC, [3.50] & [5.9]-[5.10].