

Dear Department of Communities and Justice, and NSW Law Reform Commission,

Thank you for the opportunity to make a submission to the review of the NSW Anti-Discrimination Act 1977.

Below are my thoughts for the Review.

I make this submission as a private citizen with an interest in public ethics and the legal system.

### General Remarks

These are general comments on the current direction of “anti-discrimination”.

Points (1) & (4) of the Terms of Reference for the review imply that the Act should be reformed to conform to “modern understandings of discrimination“. I beg to disagree with this assertion.

The understanding of “discrimination” is changing, being expanded from unjust discrimination, such as people being denied some service or employment on arbitrary or irrelevant grounds, to also include situations where people are denied some service or employment even when there is a good reason, if that reason is contrary to some new “woke” or progressive viewpoint.

Discrimination is also increasingly being intentionally or unintentionally confused with *compelled speech*. Internationally, there have been several court cases where some business owner, while not generally refusing to serve customers who do not share the business owner’s worldview, have been falsely accused of *discrimination* because the business owner refused to promote some message directly or indirectly for the customer – a message that the business owner disagreed with. These court cases have usually been dismissed, because compelled speech is distinct from unfair discrimination, and particularly in the United States, compelled speech is contrary to First Amendment Free Speech rights.

Likewise, the understanding of “vilification” is also changing, from speaking evil of an individual through slander, defamation etc, to also include expressing an opinion that disagrees with certain lifestyles or someone else’s beliefs.

Hence, we now have occurring in Australia a series of court cases against citizens who have expressed some conservative opinion or standard (such as via social media etc) - including comments made not necessarily in reference to any person. I understand that there is currently even a court case where someone has had an Apprehended Violence Order taken out against them because they wrote an article in the news media expressing an opinion that “trans” people have not really changed their sex or gender. How disagreeing with a certain lifestyle or belief is inflicting “violence” on someone that they have never met or heard of is hard to believe, but these cases are happening.

In this way, complaints to the Anti-Discrimination Board are being used as weapons of “lawfare” and the Board is biased towards these false complaints, making a mockery of justice. So in regards to this, as mentioned in Point (10) of the Terms of Reference, the powers and functions of the Anti-Discrimination Board do need to be reviewed and revised.

“Discrimination” has become a loaded word, with connotations of bigotry and injustice, but the truth is that “discrimination” is not a cover-all - there is unjust discrimination, and there is appropriate, reasonable, and necessary discrimination. Discrimination is necessary in everyday life – every time we choose between two items, we “discriminate” between the two. For instance, employers need to discriminate between various job applicants, based on the applicants’ qualifications, experience and suitability for the job, in order to select who they think is the best person to fill their position. This is distinct from unfair discrimination, where attributes not relevant to the job are considered.

So, the modern “anti-discrimination” regime and the drive against “vilification” is really a drive against conservative opinion, Freedom of Speech, and the freedom to run one’s business and personal dealings in accordance with one’s moral standards and conscience. Therefore, this “modern” application of anti-discrimination has corrupted the legal system, resulting in more injustice, not less. This seems to be a worldwide trend in Western countries. So, in my opinion we need less measures against “discrimination”, not more.

Therefore, in this sense and in accordance with Point (5) of the Terms of Reference, the vilification protections do need to be harmonised with the criminal law, and the criminal law needs to be applied in a common-sense fashion, not by criminalising opinions.

#### The Outcomes of Inappropriate and Excessive Anti-Discrimination Applications

Most of the 13 points in the Terms of Reference are vague and unspecific, and are difficult to comment on in detail, as they do not inform as to what changes the government or the Law Reform Commission might have in mind.

However, judging from the recommendations of similar reviews in other Australian jurisdictions, the likely recommended changes, as well as negatively impacting freedom of speech and conscience as mentioned above, may also restrict religious freedoms, in accordance with the increasing secularisation of society (or as one former Australian Prime Minister put it, may implement measures to “de-authorise the Judeo-Christian influence on society”).

Assuming this is the case, faith-based institutions, and organisations such as religious schools, would be particularly affected, such as by having restrictions on their hiring and enrollment practices imposed on them.

Such proposals would reduce the religious character of faith-based schooling and narrow or eliminate the difference between secular state-based schooling and faith-based schooling.

This effectively removes from parents the option of giving their children an exclusively faith-based education, and forces all children to be exposed to the latest social lifestyles and sexual fads as desirable ways of living.

For governments to say that they are doing this in order to comply with Australia’s international obligations to uphold the right of parents to choose the type of schooling their children should have (as some governments have said), is grossly self-contradictory, particularly as Australia is signatory to UN conventions which guarantee parents the right to choose the type of education their children should have.

The spiritual and moral emphasis and environment provided by religious educational institutions is the reason why many parents choose to send their children to a faith-based school, and the number of parents choosing to do so is increasing.

If this difference becomes negligible or too minimal, many parents are not going to want to spend tens-of-thousands of dollars a year sending their children to a supposedly faith-based school, only to have the children exposed to the same dangerous LGBT, transgender, and oral and anal sex, propaganda that is now being increasingly pushed in state-based schools.

Thus, the watering down of faith-based institutions' right to "discriminate" to favour staff who share the institution's faith and worldview - which is the type of recommendation that usually comes out of these anti-discrimination reviews - could destroy the religious-schooling industry [note – such an outcome would be ideal for those who usually push for these types of changes], causing a mass exodus of students from faith-based schools into the state school system, causing overcrowding and a large increase in government educational spending. Faith-based schools save governments money because the parents subsidise the cost of their children's education. (I understand that almost a third of Australian school students currently attend religious schools.)

Forcing religious schools to choose staff that do not share the religion's philosophy and moral and ethical values is not combatting unfair discrimination. Rather, it is restricting freedom of conscience, and probably freedom of religious practice as well.

Furthermore, the faith communities are large (probably in total exponentially larger than the activist groups pushing these proposed changes), and if religious schooling is seriously compromised, it could have dramatic political implications for the government that does this.

### Analysis of Specifics

The suggestion that only teachers and staff who directly teach religious doctrines, should be required to adhere to the faith and ethos of the school they are employed by, is specious but false.

Teachers and staff are role models for the students, and the faith worldview comes into the teaching of ALL subjects. For instance, when teaching social sciences, Christian teachers can emphasise the benefits that Christian social morality and social work have brought to society. When teaching science, such as the theory of evolution, teachers can teach that evolution is only a theory, and that most people of faith believe in direct creation, and the teacher is also able to distinguish between the atheistic theory of evolution, and the theistic (God controlled) version of the theory.

A Christian-school teacher explained it to me in an email this way, after I enquired about the teaching of a certain subject in the Christian school that my children attend, and I quote from his email:

"All subject syllabi delivered by NESA (the Board of Studies) are secular in nature ... so all teachers are working from syllabus that are not from a Christian worldview. However, all teachers that are employed by the Christian school must teach from a Christian worldview. Part of the Christian school's recruitment process is to find out whether prospective teachers have a Christian worldview on issues like creation, marriage, gender, and sexuality."

"This means that when the teachers teach, they are not promoting a 'woke' worldview but a Christian worldview. Teaching from a Christian worldview still allows the teacher to teach students from the syllabus about ideas that are contradictory to the Bible. These ideas can then be critiqued from a Christian worldview. So, when the teacher teaches on issues like Black Lives Matter, gender ideology, the role of women in management, etc, it can all be done through the lens of a Christian worldview. This then prepares students for life beyond school where they will be confronted by such issues."

Furthermore, if a teacher is in a same-sex relationship, as well as this being a contradictory role model, is this teacher going to be able to sincerely and effectively teach that oral and anal sex are diametrically opposed to the teaching of the bible (and probably against the teaching of most faiths)?

And other school staff roles also come into play in this regard. How are religious students supposed to get spiritual advice from a school counsellor who is an atheist?

And can a teacher who is an atheist meaningfully participate in staff and student prayer meetings, and give guidance in this way?

And there is the issue of staff unity. How can there be staff unity when the staff room is divided between opposing worldviews and the emphasis on how various subjects should be taught? This can cause internal tensions and divisions in the school.

There are also issues and differences in the way state-based and faith-based schools approach discipline and student-staff relationships.

This issue of staff compatibility is not limited to religion or staffing religious schools. Other organisations also need to select staff compatible with their beliefs. No organisation can thrive, or possibly even survive, if it is divided against itself, or if it is staffed with people opposed to its mission.

Should the Labor Party be forced to hire an administrator who is an active member of the Liberal Party, just because that candidate has the highest qualifications on paper? Should The Wilderness Society be forced to hire a campaign director who is a proponent of forest logging, just because that person is an experienced event manager? The fallaciousness of forcing educational institutions to hire staff opposed to their worldview can be seen from these similar examples.

Any government or political party that suggest that schools should not have the right to select staff compatible with their beliefs and ethos, is highly hypocritical.

Regarding the issue of whether religious schools should be able to discriminate against students who identify as homosexual, transgender, atheist, etc, the answer is that religious schools do not discriminate against such students, and I have never seen any evidence that they do. In fact, such students are particularly welcome in these schools, because attending the school exposes the student to the Christian message.

But once you start putting regulations in place specifying and outlawing various discriminations against students – discrimination which does not exist - then you give malicious activists a foothold to start using false allegations to attack the schools through the legal system.

What faith-based schools do “discriminate” against is not orientation or identification, but behaviour. For instance, students who identify as homosexual may be welcome in the school, but sodomy in the toilet room at lunchtime is not. Nor is the active promotion of philosophies and practices that are against the school’s or religion’s beliefs.

This is essentially no different to the non-toleration of various “bad behaviours” in government schools, although the list of unacceptable behaviours may be slightly different between government and religious schools.

## Conclusion

Parents have a right – that is supported in international human rights law – to choose schooling that provides religious and moral education that aligns with their convictions, and in an environment that is supportive of those convictions.

The usual recommendations from “anti-discrimination reviews” if implemented would remove this right and impose other peoples’ values and morality on faith-based educational institutions.

Please avoid making such undemocratic recommendations from your anti-discrimination review.

Please also avoid conflating unfair discrimination with legitimate discrimination, or with compelled speech or vilification or opinion – these are all different things.

It is time that governments and Law Reform Commissions listened to parents instead of to small groups of malicious activists bent on destroying the Christian heritage that Western society was originally based on.

Thank you.

David A W Miller.