

15 August 2025

Hon Tom Bathurst AC KC, Chairperson  
NSW Law Reform Commission  
via email: [nsw-lrc@dcj.nsw.gov.au](mailto:nsw-lrc@dcj.nsw.gov.au)

Dear Hon Bathurst

The Australian Association of Christian Schools (AACS) welcomes the opportunity to contribute to the NSW Law Reform Commission's review of the *Anti-Discrimination Act 1977 (NSW)* (ADA)

### **About the Australian Association of Christian Schools (AACS)**

The AACS represents almost a hundred independent Christian schools in every state and territory in Australia, including in 48 locations in NSW. Characterised as co-educational, non-denominational Protestant schools that operate autonomously under the governance of parent associations and school boards, the majority are open enrolment, welcoming over 45,000 students from a wide variety of socio-economic, cultural and religious backgrounds. In New South Wales our members include those schools that are affiliated with Christian Education National, St Philips Christian Education and the Pacific Group of Christian Schools.

### **Parental Choice**

AACS schools were established by parents seeking an education for their children framed by a Biblical worldview within an authentic faith-based learning environment. Parents choosing our schools make a deliberate choice and a financial commitment to educate their children in schools where staff can teach and model the faith to their children. Many parents with no faith or other faith traditions also choose our schools for their children in full knowledge and support of the school's Christian ethos. To deliver the type of authentic Christian education that parents want, our school leadership and staff team, including those in both teaching and non-teaching roles, must be able to support and live out the school's values and beliefs,

working together in a spirit of unity to foster a community of faith where children can be nurtured in the faith as part of their educational journey.

### **Religious Freedom – International Context**

Religious freedom is a foundational human right recognised in international law and essential to the health of a diverse, pluralistic democratic society. For many Australians, particularly those of faith, this freedom is not a theoretical concept but a lived reality as expressed daily through worship, church involvement and the ability to choose faith-based education. Christian schools, including those represented by AACCS, provide a tangible way for families to exercise their religious freedom rights by making an informed decision about the type of education they want for their children.

Australia is a signatory to the *International Covenant on Civil and Political Rights* (ICCPR) which affirms both the right to manifest one's religion "either individually or in community with others... in teaching, practice, worship and observance" and the specific right of parents "to ensure the religious and moral education of their children in conformity with their own convictions" (Article 18). These protections acknowledge that religious belief is not merely private but, includes the freedom to establish and maintain institutions that reflect a particular faith tradition.

Any restriction on the ability of faith-based schools to employ staff who share their beliefs, maintain conduct standards aligned with their ethos or deliver education in accordance with their worldview undermines the integrity of the institution and the rights of parents. Limiting these freedoms diminishes the capacity of such schools to authentically express and embody their faith in all areas of community life.

Under international law, the freedom to practise and express one's religion or beliefs can only be restricted in very limited circumstances. Article 18(3) of the ICCPR provides that restrictions must be "necessary" to protect public safety, public order, health, morals or the fundamental rights and freedoms of others. The *Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR* (1984) clarify that any restriction on rights must pursue a

legitimate aim, be necessary in a democratic society, proportionate to that aim and the least restrictive means available. Necessity requires clear justification based on evidence, rather than a simple proportionality test and measures must not go beyond what is needed to achieve the legitimate aim.

When rights appear to be in tension, the Siracusa Principles affirm that priority should be given to the most fundamental rights protected under the ICCPR — including religious freedom. They also require that any limitation be non-discriminatory and never single out or disadvantage a particular group, such as people of faith or the institutions they establish.

In this context, maintaining the ability of Christian schools to operate consistently with their beliefs is not only a matter of institutional policy but of upholding Australia’s binding obligations under international law.

### **Religious Freedom – Domestic Context**

The 2018 Ruddock Religious Freedom Review made clear recommendations: freedom of religion must be embedded as a *fundamental and equal* human right within anti-discrimination frameworks. Among its key findings, the Review recommended that New South Wales and South Australia make it unlawful to discriminate on the basis of a person’s ‘religious belief or activity’, while also preserving the rights of religious bodies, schools and charities to operate in accordance with their doctrines and values.<sup>1</sup>

The Review also endorsed the adoption of “objects clauses” in anti-discrimination laws to “reflect the equal status in international law of all human rights including freedom of religion”<sup>2</sup> and that any limitations on religious freedom must conform to the Siracusa Principles.<sup>3</sup> The Review emphasised that protecting religious freedom involves more than prohibiting discrimination against individuals but also requires proactive legal measures to

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<sup>1</sup> Expert Panel (2018), *Religious Freedom Review: Report of the Expert Panel to the Prime Minister* (The Hon. Philip Ruddock, Chair) Commonwealth of Australia, Recommendation 16. Available at: <https://www.ag.gov.au/sites/default/files/2020-03/religious-freedom-review-expert-panel-report-2018.pdf>

<sup>2</sup>ibid, Recommendation 3

<sup>3</sup>ibid, Recommendation 2

safeguard the institutional autonomy of religious organisations in relation to employment, governance and education.

NSW remains one of only two Australian states without comprehensive legal protections for religious belief and activity. This legal gap leaves faith communities exposed to piecemeal exemptions, uncertain precedents and the threat of future legislative rollback. The time has come for NSW to enshrine religious freedom as a fully recognised human right, not simply as a narrow exemption but as a proactive legal protection grounded in Australia's international human rights commitments.

### **The ALRC Recommendations and the National Response**

The urgency for reform in NSW is underscored by the Australian Law Reform Commission (ALRC)'s Inquiry into religious educational institutions and anti-discrimination laws. Despite extensive consultation the ALRC's Final Report, tabled in March 2024 failed to adequately balance competing rights and prioritised non-discrimination of certain groups over religious freedom for religious educational institutions to employ people with the same faith.

The ALRC's Consultation Paper and Final Report both recommended the removal section 38 in the *Sex Discrimination Act 1984* (Cth) and proposed that the 'reasonableness test' within s7B would be adequate protection for religious education institutions to continue to operate in accordance with their doctrines, tenets, beliefs or teachings.

The ALRC's approach stands in contrast to international standards which treats religious freedom as a fundamental human right that should not be restricted with narrowly defined conditional exemptions but should be positively protected. If the recommendations were enacted by the Commonwealth government, the ability of religious schools to maintain the integrity of their community would be severely restricted to the point of rendering them functionally secular in their employment and teaching practices.

The ALRC's proposals were deeply concerning to the Christian schooling community and sparked unprecedented national mobilisation. In response, AACCS, alongside partner organisations including Christian Schools Australia (CSA) and the Associated Christian

Schools (ACS), coordinated a Town Hall-style campaign, attracting over 4,000 supporters of Christian education across the country. These “Faith in Our Future” events were sold out in Sydney, Melbourne, Brisbane, Perth, Adelaide and Tasmania and gave voice to thousands of parents, staff and students who were deeply concerned by the ALRC’s proposals.

Attendees were united in their message: Christian schools must be able to employ people who share the faith across all roles within the school and operate in accordance with their deeply held beliefs. This campaign was one of the largest public mobilisations for religious freedom in recent Australian history and sent a clear signal to federal and state governments alike that parental choice and religious freedom are not negotiable.

### **Recent Developments – Northern Territory Reform**

In parallel to the NSW LRC Review, the Northern Territory CLP Government has recently moved to amend its *Anti-Discrimination Act*, restoring a religious educational exemption and tightening vilification provisions, but still falling short of the “positive right” for religious freedom sought by faith leaders. Introduced in late July 2025 by Attorney-General Marie-Claire Boothby, the *Anti-Discrimination Amendment Bill 2025* reinstates the ability for faith-based schools to employ staff of a particular religion and maintain workplace codes of conduct consistent with their doctrines.

This move stands in contrast to the 2022 amendments made by the previous ALP government, which completely removed the exemption for religious schools, leaving religious schools in the Northern Territory completely exposed to discrimination claims when choosing to preference people in employment of the same religion. However, while the Bill is a welcomed improvement, it still falls short of expressing a positive right for religious schools to operate in accordance with their beliefs. This omission means that the protective model remains reactive and conditional, lacking the strong proactive protections to ensure schools can confidently uphold their ethos into the future.

## Response to Consultation Report

Our submission focuses on those aspects of the Terms of Reference within the consultation paper that are most relevant to religious educational institutions, particularly the capacity of Christian schools to employ staff and enrol students in alignment with their beliefs and ethos.

### 3. Tests for Discrimination

While we acknowledge the importance of ensuring clear and workable definitions of discrimination, we caution against reforms that broaden definitions in ways that could unduly burden religious bodies and schools. The current tests for direct and indirect discrimination, while imperfect, provide an established legal framework that balances the rights of individuals with the ability of religious bodies and schools to maintain their distinct identities.

We are particularly concerned about proposals to move from a comparator test to a vague "unfavourable treatment" test, which may make it easier to bring claims against schools for upholding reasonable, belief-based standards. We are also concerned about the inclusion of intersectional and future discrimination, which introduces uncertainty and expands liability without clear boundaries.

***Recommendation #1:** Retain clear, evidence-based thresholds for discrimination claims and ensure any new tests or definitions for discrimination maintain a balance between protecting individual and institutional religious freedom.*

### 4. Discrimination: Protected Attributes

AACS supports the addition of religious belief and activity as a protected attribute within the ADA. Christians and other religious believers should be free from discrimination in public life as individuals and in community with others in the areas of education and other religious activity.

***Recommendation #2:** religious belief and activity should be added as a protected attribute for religious individuals, educational institutions and organisations.*

## **5. Discrimination: Potential New Protected Attributes**

AACS notes the proposal to expand the list of protected attributes. While we recognise the intent to foster inclusion, any additions must be carefully considered to avoid unintended consequences for religious communities. Open ended lists or vaguely defined attributes should be avoided as they could undermine the ability of religious schools to maintain their religious ethos.

***Recommendation #3:** ensure new attributes are precisely defined and make clear that religious schools and bodies do not discriminate when they engage in good faith conduct to maintain their religious doctrines, tenets and beliefs.*

## **6. Discrimination: Areas of Public Life**

Christian schools exist to deliver a holistic education grounded in a biblical worldview. This mission requires a cohesive faith community, including staff who share and model Christian beliefs and conduct. The ability to employ staff who live in accordance with Christian teaching, enrol students from families supportive of the school's religious ethos, and set behavioural expectations consistent with Christian morals are all critical to maintaining this faith-based mission.

***Recommendation #4:** ensure robust exceptions remain for religious educational authorities in both employment and enrolment without imposing standards of reasonableness or proportionality that undermine religious autonomy.*

## 7. Wider Exceptions

The current exceptions in the ADA for “private educational authorities” to discriminate in relation to work or education on almost any protected attribute is overly broad and it would be appropriate for the attribute of disability to be removed from this exception.

If the exception is narrowed for “private educational authorities” there must remain an appropriate exception or positive right for educational authorities that have been established for a religious purpose.

AACS recommends the ADA makes clear that it is not discrimination for a religious educational institution to:

- give preference to people of the same religion in employment decision,
- give preference families of the same religion in enrolment decisions,
- establish codes of conduct for staff and students which set out behavioural expectations, and
- produces a written policy that sets out the doctrines, tenets and beliefs that governs its policies and operations.

This addition of a ‘positive right’ would reflect the international law understanding that when a religious institution acts in accordance with its beliefs it is manifesting a legitimate human right protected under international law, not relying on an exemption or second order right.

AACS strongly cautions against following the approach adopted by the Victorian government in its 2021 amendments to its *Equal Opportunity Act 2010 (VIC)* which imposes several unjustified restrictions upon religious bodies and educational institutions in relation to their employment decisions. The changes mean that religious schools are only protected from discrimination complaints if it can be proven that conformity of religious belief is an *inherent requirement* of the role and that the actions are *reasonable and proportionate* in the circumstances.

Such an approach is overly prescriptive, legally uncertain and impractical for the day-to-day operation of faith-based schools. It places undue burdens on Christian schools, effectively forcing them to justify their foundational religious character in every employment or enrolment decision. We urge the Commission not to recommend a Victorian approach which would undermine the capacity of religious schools to operate in accordance with their beliefs, contrary to international law protections for religious freedom.

***Recommendation #5:** include a 'positive right' for religious educational to operate in accordance with their doctrines, tenets and beliefs in relation to employment, enrolment and operational decisions and do not impose an inherent requirements or proportionality test.*

## **8. Civil Protections Against Vilification**

AACS affirms the importance of protecting individuals from genuine vilification. However, reforms must safeguard freedom of expression, including the right of religious communities to articulate beliefs that may be countercultural or unpopular. We are concerned that a shift to a "harm-based" test could criminalise respectful religious expression and expanded definitions of vilification could chill legitimate teaching of religious beliefs and pastoral care conversations within our schools.

***Recommendation #6:** retain a high threshold for vilification and protect the right of religious individuals and institutions to express their religious beliefs in good faith.*

## **9. Harassment**

AACS supports the inclusion of clear and enforceable protections against sexual harassment. Christian schools are committed to providing safe, respectful environments for students and staff. Many schools already have policies in place to address inappropriate behaviour and

promote a culture of care consistent with their faith values. However, any extension of harassment provisions to other attributes must not penalise religious schools for expressing views or setting conduct expectations consistent with their faith values.

There is a risk that ordinary expressions of sincerely held Christian convictions, or the setting of behavioural expectations in line with a school's religious ethos, could be mischaracterised as unlawful harassment. For example, a school that teaches a traditional Christian view on marriage or sexuality in a respectful manner should not be exposed to legal complaint on the basis that such teaching causes offence or discomfort. Similarly, where a staff member is asked to uphold certain behavioural standards as a condition of their employment within a Christian school community, this should not be misconstrued as harassment. Robust anti-harassment provisions must be drafted in a way that carefully distinguishes between harmful, targeted behaviour and the legitimate expression or application of religious belief in a faith-based setting.

***Recommendation #7:** ensure harassment provisions distinguish between genuine harassment and the legitimate expression of religious belief.*

## **10. Other Unlawful Acts and Liability**

Proposals to expand liability under the ADA through systemic discrimination provisions, vicarious liability or accountability for AI-based decision-making can introduce complex legal risks and uncertainties, particularly for small schools that operate on limited resources. Christian schools are typically governed by volunteer parent associations with modest administrative capacity who are committed to delivering a values-based education aligned with their faith. Unlike large corporations or public institutions, they lack the infrastructure to manage extensive compliance and reporting obligations. Imposing broad liability standards may place an undue burden on these schools, diverting focus and resources from their core educational and pastoral responsibilities.

Additionally, concepts like systemic discrimination may be misapplied to religiously motivated policies, potentially targeting legitimate faith practices. As AI is not commonly used in school governance or staffing decisions, liability for algorithmic outcomes is largely irrelevant to this context and would add unnecessary regulatory complexity. Legal reforms must therefore be carefully calibrated to recognise the distinctive nature and scale of Christian schools within the broader educational sector.

***Recommendation #8:** any reform to liability must account for the scale and nature of not-for-profit religious organisations. Clear exemptions or limitations should be provided to ensure that the right to operate in accordance with religious beliefs remains legally sustainable.*

## **11. Promoting Substantive Equality**

The proposal to introduce positive duties to eliminate discrimination poses some concerns for religious educational institutions, including Christian schools. While the goal of promoting substantive equality is commendable, any reforms must be carefully balanced against the right to religious freedom, which is a fundamental human right protected under international law.

Positive duties that require organisations to take “proactive steps” to eliminate discrimination could place Christian schools in the untenable position of having to affirm or promote values, practices or identities that are inconsistent with their religious beliefs and teachings. This would undermine the ability of Christian schools to maintain a community of staff and students that reflects the religious convictions at the heart of their educational mission.

The imposition of such duties could result in unjustified legal pressure on Christian schools to conform to secular norms, eroding their distinctive faith-based character. In practice, this would not promote diversity and inclusion but diminish it by reducing the pluralism in educational options available to families in NSW. Christian schools already make a

substantial contribution to the public good by providing values-based education that is sought by thousands of families. These schools operate with a clear religious framework, and their continued ability to do so requires legal protection that enables consistency between belief and practice.

***Recommendation #9:** any new positive duties introduced must include clear protections for religious schools and must not compel religious bodies or schools to promote beliefs or conduct against their religious doctrines.*

## **Conclusion**

The ability of Christian schools to employ staff and build communities around shared beliefs is fundamental to their continued vitality and contribution to education in NSW. AACCS urges the NSW Law Reform Commission to ensure that any recommended amendments to the ADA include clear and robust protections for religious schools, safeguarding their capacity to operate in accordance with their faith.

We welcome the opportunity to provide further input and to work collaboratively with the Commission to ensure that any reforms uphold and respect the fundamental right to religious freedom.

Yours sincerely

**Vanessa Cheng**  
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