

Update: Freedom of Religion in Education

16th February 2019



Late last year, ARPA called members and readers to action regarding religious freedom for schools in Australia. Of concern was the ability for schools to legally discriminate in enrolment and employment, particularly with regards to sexual orientation and gender identity.

For many years Christian schools have appreciated exemption clauses from anti-discrimination laws. These exemptions were applied “in good faith... in order to avoid injury to the religious susceptibilities of adherents to that religion or creed.”¹ Schools have not used these laws to persecute staff or students who struggle with same-sex attraction, but rather to protect their teachings on marriage or sexuality by being able to take action should staff or students start living in or advocating for lifestyles that contradict biblical teachings.

However, homosexual-rights activists now want to abolish these exemptions, claiming they conflict with human rights. Sexual orientation and gender identity are increasingly seen as an intrinsic part of a person’s core identity, something to be protected and not challenged. Leftist politics has shifted from focussing on economic and social oppression, and parties such as the Australian Labor Party (Labor) and Greens have become relentless in their push for government protection of LGBTI rights.

Consequently, we now have a collision of worldviews on matters surrounding sexuality and sexual identity. Reformed Christians believe that our ultimate identity is found in being a child of God and that all aspects of our life, including our sexuality, come under His will. In very simple terms, this means that God designed people, His image bearers, to be either male or female. He also has our best interests at heart when He says sexual relationships may only be enjoyed in the confines of marriage between a man and a woman

Sadly, this sort of language is becoming problematic. In fact, advocating for heteronormativity (the worldview that promotes heterosexuality as the normal and preferred sexual orientation) is seen as oppressive and homophobic. The poorer social and mental health outcomes experienced by homosexual and transgendered people, such as the well-documented higher suicide rates, are often blamed on a lack of social acceptance, rather than on intrinsic issues with the lifestyle itself.

In December 2017, homosexual rights activists achieved a major victory in their quest for social acceptance with the legalisation of same-sex marriage in Australia. This was the culmination of decades of campaigning, taking a minority issue out of the criminal statutes and placing it front and centre as a human rights issue. Legalising same-sex marriage has added legitimacy and legal clout to same-sex relationships. However, their fight for recognition is not over, as many parliamentary speeches celebrating the legalisation of same-sex marriage made very clear.

Activists don’t have the audacity to attack churches, at least for now, but the education sector is certainly under scrutiny, especially Christian schools. Some Christian schools (particularly those which abandoned denominational membership as a requirement for employment or enrolment) are making public judgement calls about the lifestyles of the students and teachers they admit to their school. A Waikiki Baptist school made headlines in 2017 when it dropped a teacher from its

¹ Sections 38 (1) and 38 (2) of the *Sex Discrimination Act 1984*.

relief list because he was in a same-sex relationship.² Schools use taxpayer money to provide a public service, so there is a public interest in examining the way they operate. It doesn't help that religious schools only have 'exemption clauses' from anti-discrimination laws. These clauses can easily be modified or removed by a majority vote in Parliament, providing a weak spot for activists to attack. Unfortunately, religious freedom is not nearly as protected in Australian law as other attributes, such as race or gender.

Exemption clauses for religious schools are currently under intense examination in Federal Parliament. This began when recommendations from the Religious Freedom Review were leaked to the media in October 2018. That review was originally commissioned to pacify concerns about legalising same-sex marriage but, somewhat ironically, it caused a media storm by throwing a spotlight on religious schools' exemption clauses which had existed quietly for decades.

Prime Minister Scott Morrison responded hastily and tried to put out the fire by promising to introduce a Bill into Parliament which would change anti-discrimination exemptions so that schools could not expel gay students. Without holding a majority in Parliament, the Prime Minister needed cross-party support for such a Bill, but Labor and the Greens wanted the legislation to go further. A flurry of Bills and amendments were introduced in December, but after heated debate and a lot of technical squabbling the issue was still unresolved when Parliament rose for the summer recess.

Most recently the Government released its response to the Religious Freedom Review, and a Senate Inquiry reported on one of Labor's Bills to amend the discrimination exemptions for religious schools.

Government Response to the Religious Freedom Review:

In mid-December the Morrison Government released its response to the Religious Freedom Review. The Religious Freedom Review, informally known as the 'Ruddock Review,' made a total of 20 recommendations, most of which the Government has accepted in-principle.

Some of the recommendations are commendable, including for instance, the introduction of a Religious Discrimination Bill, designed to restore the balance of rights so that freedom of religion becomes at least equal to other rights. Other beneficial recommendations include strengthening laws so that charities not be disqualified from funding, simply because they advocate a traditional view of marriage, and that state governments should give clear outlines on how parents can remove children from religious and moral programs such as 'Safe Schools'.

Other recommendations which the government has accepted are worrying and could have unforeseen implications. For example, the recommendation to amend laws so that schools can still discriminate only if it is "founded on the precepts of the religion" could be problematic if it means the courts will determine whether a certain belief is legitimately based on a religion or not. Similar concerns about court interpretations exist around a suggested phrase allowing discrimination provided "the best interest of the child (is) the primary consideration in (the school's) conduct." A recommendation that schools publish their enrolment and hiring policies online provides transparency to job applicants, but could prove challenging if it allows activists to look for "discriminatory" schools to target. The recommendation that law reform commissions and human rights commissioners take an increasing role in protecting religious freedom and examining religious

² <https://thewest.com.au/news/wa/gay-teacher-fired-by-south-coast-baptist-college-in-waikiki-sparking-debate-about-discrimination-rights-of-religious-schools-ng-b88665819z>

freedom laws may seem helpful, but it is doubtful whether these agencies, which are already heavily invested in protecting sexuality and identity rights, will be effective in protecting religion.

Senate Inquiry

Over the summer break, a Senate Inquiry was held into one of the main Bills which sought to “remove the capacity of bodies established for religious purposes that provide education to directly discriminate against students on the basis of their sexual orientation, gender identity or intersex status” released its report.³ The Inquiry consisted of MPs from different political parties and received a staggering 9000 items of correspondence as well as submissions from over 1090 organisations and individuals, showing that there is a lot of public interest in this issue.

The committee tabled their report on 14th February 2019, but they could not concur. A ‘majority report’, written by Liberal Senator Hon Ian Macdonald, recommended that the Bill not be passed by the Senate, because it would apply beyond schools to any religious body conducting education, thus having unintended consequences for religious freedom. The majority report recommended that the Senate refer the matter to the Australian Law Reform Commission for its opinion. A dissenting report by Labor Senator Louise Pratt acknowledged that the wording of the Bill could be adjusted to refer more specifically to schools, but recommended that the Bill be passed. A final dissenting report, by Australian Greens Senator Janet Rice, recommended that the Bill be expanded to remove the ability of schools to discriminate against staff as well.

What happens next?

At the time of writing the issue has not re-emerged in Parliament. The Senate will now not sit again until the first week of April, meaning no legislation can pass both houses and become law until then. The Morrison Government has already suffered one historic loss with the vote on legislation about medical evacuations of asylum seekers and is unlikely to secure a vote on this matter that would go its way. Whether the Senate will refer the matter to the Australian Law Reform Commission before parliament rises for the election is unknown.

The composition of the Federal Government after the next election, expected in May 2019, will have a big impact on how this matter progresses. Polls and the media are predicting Labor will win the next Federal election, and it is evident that a Labor government will prioritise sexual identity rights over religious freedom rights. Labor has also vowed to examine rules surrounding staff employment and is under intense internal lobbying from groups such as ‘Rainbow Labor.’ This may not mean that all protections for religious schools will collapse overnight should Labor win, but there will certainly be changes, and it will be harder to maintain and promote a Biblical stance on marriage and sexuality in schools.

What can I do?

Firstly, we should recognise that the Christian view on marriage and sexuality is now the exception, not the norm. Being politically aware and involved should no longer be a matter of whether politics interests you or not, but of being willing to fight to maintain the conditions which currently allow our churches and schools to exist and function in the way they do.

³ **Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018**

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Sexdiscrimination

Secondly, you should know for yourself, and be able to explain to others, why you believe what you believe. ARPA and others will work on assisting you with this, but there are simple things you can do too. In your daily walk, speak positively about Christian education, about your marriage and your children, also with non-Christian people you come across; your hairdresser, your colleagues, etc. Our lives need to be a testimony to the joy of faith! If you can, develop a relationship with your Federal and State politicians so that when these matters are being talked about in Parliament, they have names, faces and places they can associate with Christianity. For every 'rainbow family' that visits a politician, there should be hundreds of Christian families with a father and a mother knocking on their door as well.

Thirdly, respond to calls for action when they are issued. ARPA emails action updates to everyone on our mailing list, which you can join – totally free – at <http://tiny.cc/getARPAupdates>

These action appeals do have results!

Finally, continue to pray for our Christian schools, and please do not take the funding or their freedom to operate for granted. Legislative change on the matter of discrimination against students is almost certain, and schools will be obliged to be much more public with their policies and positions than they were in the past.