



Diversity Council Australia Ltd

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Matt Corrigan
General Counsel
Australian Law Reform Commission
By email: antidiscriminationlaw@alrc.gov.au

Religious Educational Institutions and Anti-Discrimination Laws

Dear Matt Corrigan,

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace.

We have over 1,200 member organisations, reaching more than 20% of the Australian labour market.

The issue of religious freedom and practice in the workplace is one that is of major interest to DCA and our members and we welcome the opportunity to make this submission.

This submission draws on our earlier research and consultation with DCA members in previous inquiries to respond to the propositions in the consultation paper.

DCA has long held the view that exemptions to anti-discrimination legislation can weaken protections for marginalised groups and that religious exemptions on any grounds should be specifically limited to those circumstances where there is a specific religious element to employment or the provision of goods and services, mirroring inherent requirement and genuine occupational qualifications in other areas.

Previously, DCA has recommended that the government consider harmonisation of anti-discrimination laws, and while it is outside the scope of this inquiry, we believe that a review of all anti-discrimination laws would help provide consistency in this area.

Please feel free to contact myself or Cathy Brown, Director of Communications and Advocacy, on 0424 578 698 or advocacy@dca.org.au, you require any further information about this matter.

Yours sincerely

Lisa Annese
Chief Executive Officer

1. ABOUT DIVERSITY COUNCIL AUSTRALIA

Who we are

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We provide unique research, inspiring events and programs, curated resources and expert advice across all diversity dimensions to a community of member organisations.

DCA's Membership represents over 20% of the Australian workforce

DCA's prestigious group of over 1,100 members is drawn from business and workplace diversity leaders and includes some of Australia's biggest employers. Our membership reaches over **20%** of the Australian labour market.

About our members

1,100 member organisations, including almost 40 ASX100 Listed companies.

Our members are drawn from across the corporate, government and not-for-profit sectors and vary from small to large workforces in size.

Our founding members include ANZ, AMP, BHP, Boral, Coles, IBM Australia, Myer, Orica, Rio Tinto and Westpac.

DCA's Members are listed on our website here: <https://www.dca.org.au/membership/current-dca-members>.

Our belief, vision and mission

- Our belief is that diversity and inclusion is good for people and business.
- Our vision is to create a more diverse and inclusive Australia.
- Our mission is to encourage and enable Australian organisations to create diverse and inclusive workplaces.

What we do

DCA, formerly known as the Council for Equal Opportunity in Employment Ltd, was established in 1985 as a joint initiative of the Australian Chamber of Commerce and Industry and the Business Council of Australia to demonstrate the business community's commitment to equal opportunity for women.

Our focus since then has expanded to cover all aspects of diversity in employment, reflecting changes in practice to embrace all areas of the diversity of human resources.

DCA is not government funded - its income is generated from membership fees, sponsorships and services to business/employers.



Our Research

DCA works in partnership with members to generate ground-breaking evidence-based diversity and inclusion resources that enables Australian organisations to fully leverage the benefits of a diverse talent pool.

DCA research is grounded in the contributions of people with lived experience. DCA projects use expert panels, focus groups, think tanks and surveys to make people with lived experience central to the project findings.

DCA resources are ahead of the curve. They establish leading diversity thinking and practice, enabling Australian organisations to re-imagine and reconfigure the way they manage talent in today's dynamic operating environments.

DCA resources drive business improvement. They are high impact, driving business improvement through providing evidence-based guidance on how to fully leverage the benefits of a diverse talent pool.

DCA resources are practice focused. They respond to the information needs of industry leaders and the people they employ.

DCA resources speak to the Australian context. DCA projects generate leading diversity thinking and practice that speaks to Australia's unique and distinctive institutional, cultural and legal frameworks.

DCA resources considers all diversity dimensions. The full spectrum of diversity dimensions are investigated including age, caring responsibilities, cultural background and identity, disability, Aboriginal and/or Torres Strait Islander status, sexual orientation, gender identity, intersex status, social class and work organisation.

POSITIONING

The importance of taking an intersectional approach

Intersectionality refers to the ways in which different aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation. It is therefore critical when drafting and implementing parental leave policy that legislators, policymakers and those implementing such policies, understand intersectionality, and take an intersectional approach to implementing such policies.



2. Introduction and background

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace.

We have over 1,200 member organisations, reaching more than 20% of the Australian labour market.

DCA supports our member organisation in becoming more diverse and inclusive through Australian research, expert advice and via events and discussions.

We work across a range of diversity areas including Aboriginal and Torres Strait Islander status, gender, disability, age, race and cultural diversity, social class, sexuality and gender identity, alongside other areas.

Managing and promoting religious freedom and tolerance in the workplace is an issue of growing importance in Australian organisations given the increasingly culturally and religiously diverse nature of the workforce and the community.

In response to this interest, DCA created a guide for Australian organisations, [Creating Inclusive Multi-Faith Workplaces](#), which is designed to assist organisations in building workplaces that are not just meeting their requirements for legal accommodations, but supporting respect and inclusion for all. We have included a summary of this research as an appendix to this submission.

Our expertise is in workplace diversity and inclusion, so the majority of our response relates to the Propositions that will impact on workplaces. However, DCA's vision is for a more diverse and inclusive Australia, which informs the broader work we do.

DCA's view on exemptions to anti-discrimination laws

DCA has long held the view that exemptions to anti-discrimination legislation can weaken protections for marginalised groups and that any such exemptions must be limited and carefully balanced.

In 2016ⁱ, responding to the exposure draft of *Marriage Amendment (Same-Sex Marriage) Bill*, DCA members told us they:

- Opposed the introduction of exemptions based on the concept of 'conscientious belief';
- Opposed the introduction of exemptions that would allow ministers of religion to refuse to solemnise a wedding for an LGBTIQ+ couple on the basis of a 'conscientious belief', regardless of the teachings of their church;
- Opposed the introduction of exemptions that would allow civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of 'conscientious belief'; and
- Opposed the introduction of exemptions that would allow civil celebrants the right to refuse to marry LGBTIQ+ couples on the basis of religious beliefs.

ⁱ See DCA's *Submission on the Exposure Draft of the Marriage Amendment (same-sex marriage) Bill*, here: <https://www.dca.org.au/submissions/submission-exposure-draft-marriage-amendment-same-sex-marriage-bill>



In 2015, responding to the Australian Human Rights Commission's call for submissions in advance of AHRC inaugural Religious Freedom Roundtable, DCA argued that:

We are strongly of the view that the current exemptions and exceptions in anti-discrimination law at both State and Commonwealth levels, diminish the appropriate coverage of universal anti-discrimination protections. DCA believes that religious exemptions on any grounds should be specifically limited to those circumstances where there is a specific religious element to employment or the provision of goods and services, mirroring inherent requirement and genuine occupational qualifications in other areas.

This submission draws on our earlier research and consultation with DCA members in previous inquiries to respond to the propositions in the consultation paper.



3. DCA's response to the propositions in the consultation paper

PROPOSITION A – Discrimination against students on the grounds of sexual orientation, gender identity, marital or relationships status, or pregnancy

1. Religious educational institutions should not be allowed to discriminate against students (current or prospective) on the grounds of their sexual orientation, gender identity, marital or relationship status, or pregnancy, or on the grounds that a family member or carer has one of those attributes.
2. Religious educational institutions should be permitted to train religious ministers and members of religious orders, and regulate participation in religious observances or practices, unfettered by sex discrimination laws. Where applicable, religious educational institutions should also continue to benefit from the exception available to charities in relation to the provision of accommodation.
3. Religious educational institutions should be permitted to teach religious doctrines or beliefs on sex or sexual orientation in a way that accords with their duty of care to students and requirements of the curriculum.

DCA's response to Proposition A:

While our focus is on workplace inclusion, DCA's vision is to create a more diverse and inclusive Australia.

As a general principle, DCA does not believe that schools or religious educational institutions being allowed to discriminate against students (current or prospective) on the grounds of their sexual orientation, gender identity, marital or relationship status, or pregnancy, or on the grounds that a family member or carer has one of those attributes, would contribute to a more diverse or inclusive Australia.



PROPOSITION B – Discrimination against staff on the grounds of sex, sexual orientation, gender identity, marital or relationships status, or pregnancy

1. Religious educational institutions should not be allowed to discriminate against any staff (current or prospective) on the grounds of sex, sexual orientation, gender identity, marital or relationship status, or pregnancy.
2. Religious educational institutions should be able to select staff involved in the training of religious ministers and members of religious orders, and regulate participation in religious observances or practices, unfettered by sex discrimination laws. Where applicable, religious educational institutions should also continue to benefit from the exception available to charities in relation to the provision of accommodation.
3. Religious educational institutions should be able to require staff involved in the teaching of religious doctrine or belief to teach religious doctrine or belief on sex or sexuality as set out by that institution and in accordance with their duty of care to students and staff, and requirements of the curriculum.

DCA's response to Proposition B:

DCA has previously made a [submission](#) to the Australian Human Rights Commission outlining our position on religious freedom and practice in the workplace. In that submission we argued that:

We are strongly of the view that the current exemptions and exceptions in anti-discrimination law at both State and Commonwealth levels, diminish the appropriate coverage of universal anti-discrimination protections. ...

We believe that religious exemptions on any grounds should be specifically limited to those circumstances where there is a specific religious element to employment or the provision of goods and services, mirroring inherent requirement and genuine occupational qualifications in other areas.

Religious organisations are major employers in Australia and DCA is of the view that, as a general principle, religious organisations should be required to adhere to degree of accountability that reflects their level of participation in employment, which is an area of public life clearly covered by anti-discrimination law. We also consider that religious exceptions need to be constructed in a manner that appropriately recognises the religious/secular divide and balances the right to equality with rights to freedom of thought, religion and belief.

DCA is of the view that limiting religious exemptions to those circumstances where there is a specific religious element to employment, strikes an appropriate balance between religious rights and freedoms. For example, we support continued exceptions where a religious body employs a person as a priest, minister of religion etc. Similarly, if a religious school employs a teacher of religion it would appear reasonable for that person to be required to adhere to the relevant religion and its tenets.

However, DCA does not support general exemptions for religious bodies for any acts and practices. For example, it should be unlawful to discriminate against a school bus driver hired by a religious organisation on the grounds of [their] sexual orientation.

PROPOSITION C – Preferring staff involved in the teaching, observance, or practice of religion on religious grounds

1. In relation to selection, appointment, and promotion, religious educational institutions should be able to preference staff based on the staff member's religious belief or activity, where this is justified because:

- participation of the person in the teaching, observance, or practice of the religion is a genuine requirement of the role;
- the differential treatment is proportionate to the objective of upholding the religious ethos of the institution; and
- the criteria for preferring in relation to religion or belief would not amount to discrimination on another prohibited ground (such as sex, sexual orientation, gender identity, marital or relationship status, or pregnancy), if applied to a person with the relevant attribute.

2. The nature and religious ethos of the educational institution should be taken into account in determining whether participation of the person in the teaching, observance, or practice of the religion is a genuine requirement of the role.

DCA's response to Proposition C:

As noted above, DCA's view is that limiting religious exemptions to those circumstances where there is a specific religious element to employment, strikes an appropriate balance between religious rights and freedoms.

We agree with the ALRC's view that any powers to "preference staff based on the staff member's religious belief or activity" should be linked to genuine occupational requirements, should not amount to discrimination on grounds other than religious belief or activity, and must include a proportionality test.

Other recommendations

Previously, DCA has recommended that the government consider harmonisation of anti-discrimination laws.

We agree with the need for further reforms in this area, including to address the inconsistency arising from this reform. In this regard, we concur with the recommendations made by others for one single review of anti-discrimination law.