



Australian Government

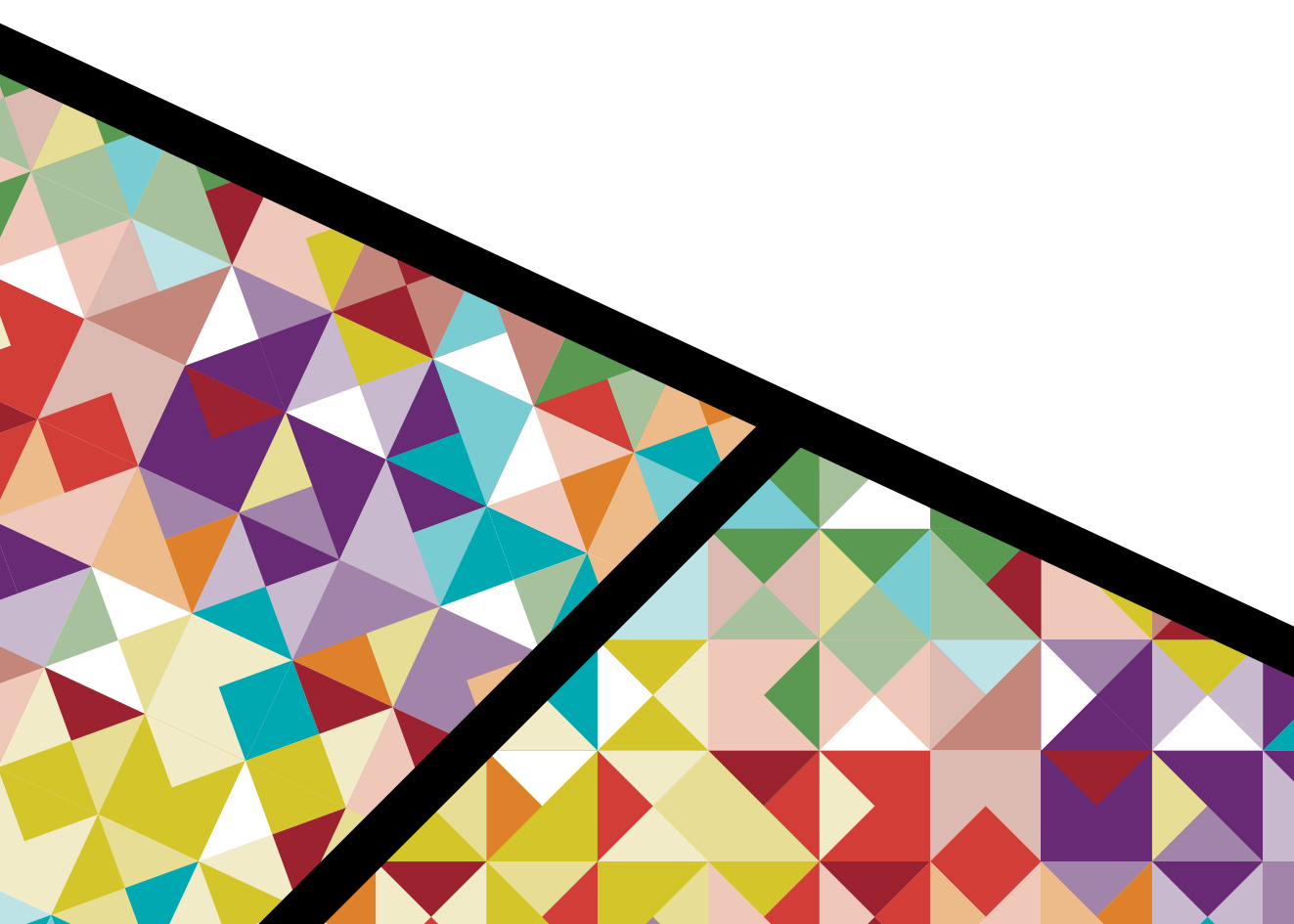
Australian Law Reform Commission

FINAL REPORT

**MAXIMISING THE REALISATION
OF HUMAN RIGHTS:
RELIGIOUS EDUCATIONAL INSTITUTIONS AND
ANTI-DISCRIMINATION LAWS**

ALRC Report 142

December 2023



Submissions and brief responses

Students: repeal of s 38(3)

4.22 The repeal of s 38(3) of the *Sex Discrimination Act* under **Recommendation 1** reflects Proposition A.1 in the *Consultation Paper*. Proposition A.1 was that 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. There was broad stakeholder support for Proposition A.1 from religious bodies and organisations, theological colleges, peak educational bodies, children's advocates, human rights agencies, professional legal bodies, non-governmental organisations, academics, and unions.¹³ This support reflects the general political consensus on prohibiting discrimination against students. For example, there was bipartisan support for the repeal of s 38(3) of the *Sex Discrimination Act* when the Sex Discrimination Amendment (Removing Discrimination Against Students) Bill 2018 (Cth) was introduced. As the Commonwealth Parliament could not agree on related legislative amendments, the Bill ultimately lapsed.

4.23 In relation to submissions made to the ALRC in this Inquiry, key reasons underpinning stakeholder support for Proposition A.1 were:

13 See Anglican Social Responsibilities Commission, Diocese of Perth, *Submission 98*; University of Divinity, *Submission 115*; Victorian Pride Lobby, *Submission 123*; Catholics for Renewal, *Submission 124*; Queensland Human Rights Commission, *Submission 125*; Queensland Council for Civil Liberties, *Submission 156*; L van Leent, M Jeffries, N Barnes and S Jowett, *Submission 158*; Australian Lawyers Alliance, *Submission 162*; Anglican Youthworks, *Submission 176*; ACON, *Submission 191*; Associated Christian Schools, *Submission 193*; Wear It Purple, *Submission 197*; University of Southern Queensland Law, Religion, and Heritage Research Program Team, *Submission 202*; Not published, *Submission 204*; NSW Advocate for Children and Young People, *Submission 209*; Transgender Victoria, *Submission 211*; Thorne Harbour Health, Brave Network and SOGICE Survivors, *Submission 213*; Rainbow Families NSW, *Submission 217*; Public Affairs Commission of the Anglican Church of Australia, *Submission 225*; Queer Department of the National Union of Students and Queer Office of University of Technology Sydney Students' Association, *Submission 252*; Liberty Victoria, *Submission 253*; Victorian Equal Opportunity and Human Rights Commission, *Submission 255*; Pride in Protest, *Submission 260*; Activate Church, *Submission 283*; Not published, *Submission 297*; Not published, *Submission 300*; Queer Unionists in Tertiary Education, *Submission 321*; Kingsford Legal Centre, *Submission 339*; Catholic Secondary Principals Australia, *Submission 363*; Commissioner for Children and Young People WA, *Submission 373*; Equality Australia, *Submission 375*; Australian Human Rights Commission, *Submission 384*; Anglican Schools Australia, *Submission 385*; Independent Education Union, *Submission 387*; Australian Education Union, *Submission 395*; Diversity Council Australia, *Submission 398*; Australian Section of the International Commission of Jurists & International Commission of Jurists Victoria, *Submission 404*; Public Interest Advocacy Centre, *Submission 405*; NSW Council for Civil Liberties, *Submission 407*; Uniting Network Australia, *Submission 408*; Not published, *Submission 410*; Australian Council of Trade Unions, *Submission 411*; Just.Equal Australia, *Submission 422*; Uniting Church in Australia Assembly, *Submission 425*; LGBTI Legal Service, *Submission 427*; Law Council of Australia, *Submission 428*. Other submissions supported greater protection for students more generally: see Australian Discrimination Law Experts Group, *Submission 75*.

- coherence with international and domestic law;¹⁴
- reducing the risk of harm to vulnerable students;¹⁵
- supporting inclusion and diversity;¹⁶ and
- compulsory school education is a public good, supported by public funding, so schools should be safe environments for all students, and should be accountable to community expectations.¹⁷

4.24 Some organisations expressed some caution about the narrowing of exceptions for religious educational institutions in relation to students, citing concerns related to the accommodation of transgender students in single-sex schools and ongoing accommodation of gender segregation in co-educational schools.¹⁸ These concerns are addressed in [Chapter 5](#).¹⁹

4.25 Some religious bodies, educational institutions, peak educational bodies, academics, and non-government organisations did not support the narrowing of exceptions for religious educational institutions in relation to students.²⁰ The ALRC has taken such concerns into account in considering [Recommendation 1](#). Some of

14 See, eg, Australian Discrimination Law Experts Group, *Submission 75*; Australian Lawyers Alliance, *Submission 162*; Kingsford Legal Centre, *Submission 339*; Catholic Secondary Principals Australia, *Submission 363*; Commissioner for Children and Young People WA, *Submission 373*; Australian Human Rights Commission, *Submission 384*.

15 See, eg, Anglican Social Responsibilities Commission, Diocese of Perth, *Submission 98*; Aleph Melbourne, *Submission 179*; Wear It Purple, *Submission 197*; Kingsford Legal Centre, *Submission 339*; Commissioner for Children and Young People WA, *Submission 373*; Equality Australia, *Submission 375*; Australian Human Rights Commission, *Submission 384*; Uniting Network Australia, *Submission 408*. See also Australian Law Reform Commission, 'What We Heard' (Background Paper ADL2, December 2023).

16 See, eg, Catholic Secondary Principals Australia, *Submission 363*; Diversity Council Australia, *Submission 398*. See also Australian Law Reform Commission, 'What We Heard' (Background Paper ADL2, December 2023).

17 Australian Human Rights Commission, *Submission 384*; Australian Law Reform Commission, 'What We Heard' (Background Paper ADL2, December 2023) [102]–[104].

18 See Association of Heads of Independent Schools of Australia, *Submission 196*; Executive Council of Australian Jewry, *Submission 377*; Australian Council of Jewish Schools, *Submission 396*.

19 See [Chapter 5](#) at [\[5.13\]](#)–[\[5.16\]](#) and [\[5.41\]](#)–[\[5.44\]](#).

20 See A Deagon, *Submission 4*; Healinglife Church and Ministries, *Submission 9*; Australian Federation of Islamic Councils, *Submission 84*; P Parkinson, *Submission 95*; Human Rights Law Alliance, *Submission 96*; Australian Union Conference of Seventh-day Adventists, Adventist Schools Australia, *Submission 138*; D Khlentzos, *Submission 175*; Anglican Church Diocese of Sydney, *Submission 189*; Presbyterian Church of Victoria, *Submission 195*; M Fowler, *Submission 201*; Freedom for Faith, *Submission 203*; Sydney Missionary and Bible College, *Submission 205*; Australian Christian Higher Education Alliance, *Submission 208*; Institute of Public Affairs, *Submission 250*; Not published, *Submission 298*; Australian Christian Lobby, *Submission 299*; Islamic Council of Victoria, *Submission 301*; Christian Voice Australia & CitizenGo, *Submission 378*; Bishops of Australasian-Middle East Christian Apostolic Churches, *Submission 388*; Not published, *Submission 391*; Ambrose Centre for Religious Liberties, *Submission 394*; Catholic Education Tasmania, *Submission 397*; Australian National Imams Council, *Submission 401*; Australian Catholic Bishops Conference, *Submission 406*; National Catholic Education Commission, *Submission 409*; I Benson, *Submission 413*; Muslim Legal Network (NSW), *Submission 419*.