



## Pre-reading for Leaders Forum March 2023

### Session on Future of employment in Catholic schools in WA

#### 1.0 Purpose

1. The purpose of this paper is to outline the recommendations of the Law Reform Commission of Western Australia for consideration by the Government on possible amendments to enhance and update the Equal Opportunity Act 1984 (WA).
2. The Review of the Equal Opportunity Act 1984 (WA) Final Report is available in its entirety [here](#). The section relevant to employment in Catholic schools is 4.5.4.5 *Religious education institutions employment exception* which starts on page 178 of the Final Report.
3. This briefing summarises the recommendations of the Final report and provides talking points for discussion in determining how they will be implemented in Catholic schools in WA. Any direct quotes from the Final Report will appear in italics.

#### 2.0 Background

1. At present, the Equal Opportunity Act 1984 *allows educational institutions established for religious purposes to discriminate on any ground in the employment of staff or in the engagement of contract workers, where this is done in accordance with the doctrines, tenets, beliefs or teachings of the religion, and is done in good faith.*
2. In practice, Catholic schools in WA employ Catholics in designated positions including Principals and other leadership roles, teachers of Religious Education, and favour the employment of Catholics over non-Catholics where possible.
3. The concept of “manner of life” has also been mandated in the Teachers’ Enterprise Bargaining Agreement, allowing any allegations against a teacher, regardless of their religious belief, to be investigated by the Principal, and has extended into both their personal and professional lives.
4. The removal of the manner of life clause from the Teachers Enterprise Agreement in order for it to be registered with the Fair Work Commission will not prohibit Catholic Education WA from requiring all staff to be supportive of the ethos and objectives of Catholic education, as has always been the requirement.

#### 3.0 Submissions received on the religious education institutions employment exception

1. The Final Report states that when the community’s views were sought on whether the religious education institutions employment exception should be retained or removed, *it received strong support for both the retention and removal of the exception.*
2. Support for the retention of the religious education institutions employment exception included:
  - a. It ensures that *what is taught at home is reinforced by the teaching and modelling of staff at the school.*
  - b. That an entire community approach to Religious Education requires that all staff have *a genuine faith in the religion underpinning the school.*
  - c. That removing the exception would require schools to *employ a member of staff whose private life contradicts the fundamental religious moral teaching.*

- d. That to have staff who can *model a religious life is equally important to formal instruction*, and that all staff should *speak and act in keeping with that faith*.
3. Support for the removal of the Religious education institutions employment exception included:
  - a. LGBTIQ+ staff feel *significant pressure to hide their identity for fear of discrimination or losing their job*, which is *highly detrimental and contributes to a decline in mental health*.
  - b. *That LGBTIQ+ students are often aware that teachers are hiding their identities at school, which sends a strong harmful message that they should be ashamed of their sexual identity or orientation*.
  - c. *A considerable majority of employers in faith-based schools do not need and never utilise the provisions, and existing contractual obligations are sufficient to ensure that faith-based schools have the ability to hire in accordance with their beliefs, practices and customs*.
4. The Commission considered the submissions and recommended that The Act should contain an employment exception for religious educational institutes (Recommendation 78).

#### **4.0 Scope of the exception**

1. The Commission has adopted the approach taken in the Victorian Religious Exceptions Act, namely that:

*This exception is limited to the employment of staff and the appointment of commission agents and contract workers if:*

- *conformity with the doctrines, beliefs or principles of the religion is an inherent requirement of the job;*
- *the person cannot meet that inherent requirement because of their religious conviction; and*
- *the discrimination is reasonable and proportionate in the circumstances.*

(Recommendation 79)

2. This means that, to require that applicants for a certain position are Catholic, it will need to be a *genuine occupational requirement of the role*.

#### **5.0 Inherent requirement of the job**

1. Examples included in the Final Report of positions where religious affiliation could be considered an inherent requirement of the job are principals and chaplains as the religious leaders of the school, staff who teach Religious Education, and possibly student mentors.
2. Roles outlined where it would not be an inherent requirement include maths teachers and gardeners.

#### **6.0 Implications for WA Catholic Schools**

1. Positions where being Catholic is an inherent requirement
  - a. Catholic Education can develop a rationale for why it is an inherent requirement for certain positions, including Principals and members of school leadership teams, teachers of Religious Education and members of Executive, to be Catholic.

- b. For any other roles, it will be essential for Principals and Line Managers to undertake a process of discernment when advertising a role to determine whether being Catholic is an inherent requirement of the role.
  - c. Where it is determined that it is an inherent requirement, this should be articulated in the position description and selection criteria, and subsequent letters of offer and acceptance or employment agreement.
  - d. The Human Resources Team can assist principals and line managers with this discernment.
  - e. The Final Report explains that *an inherent requirement of a position is a similar concept to the duties of a position or the genuine occupational qualifications or requirements of a position*, and this is the approach which would be adopted.
2. Positions where being Catholic is not an inherent requirement
- a. The Final Report states that *religious schools will not be required to employ people who are hostile to their religious doctrine or ethos. (Schools) can ensure by contract or common law that teacher and contract workers exhibit fidelity and good faith towards the school so as to prevent a staff member from acting contrary to the ethos and fundamental principals of a school.*
  - b. Schools using the templated letters of offer and acceptance and approved employment agreement templates will have suitable wording included to ensure that prospective staff understand the requirement to be supportive of the Catholic ethos and objectives when they accept a position in Catholic Education WA.