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ASSOCIATION *of*
INDEPENDENT
SCHOOLS *of* SA

16 June 2006

Same-Sex Inquiry
Human Rights Unit
Human Rights and Equal Opportunity Commission
GPO Box 5218
Sydney NSW 2001

Dear Sir/Madam

**National Inquiry into Discrimination against People in Same-Sex Relationships:
Financial and Work-Related Entitlements and Benefits**

Please find attached the response from the Association of Independent Schools of South Australia (AISSA) to the National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits.

Yours sincerely

Garry Le Duff
Executive Director

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Response to

**Human Rights and Equal
Opportunity Commission**

**National Inquiry into
Discrimination against
People in Same-Sex
Relationships: Financial and
Work-Related Entitlements
and Benefits**

EXECUTIVE SUMMARY

This response is presented by the Association of Independent Schools of South Australia (AISSA). The AISSA represents the interests of 97 South Australian Independent schools with an enrolment in excess of 39,000. The AISSA is recognised as the peak body for Independent schools (non-Catholic) by governments, other education and training sectors and key interest groups within the community in South Australia. AISSA is also a registered industrial organisation under the *Fair Work Act* 1994.

Over 98% of students in the Independent school sector attend schools which are underpinned by a religious ethos (Minister's Advisory Committee for Non-Government Schools 2006). Parents choose individual Independent schools because they meet the education needs of their children and have values and an ethos consistent with the belief systems of their family.

In some cases parents choose particular schools because they have a commitment to 'traditional' family values, including a commitment to monogamous heterosexual relationships. In some religions same-sex relationships are inconsistent with the beliefs of the religion. Hence, in the case of schools founded on the tenets and beliefs of these religions, same-sex relationships are inconsistent with the ethos of the school.

The AISSA considers it appropriate for parents to expect that if they choose an Independent school based on the school's adherence to a particular religious ethos, then the school will operate within and according to that ethos.

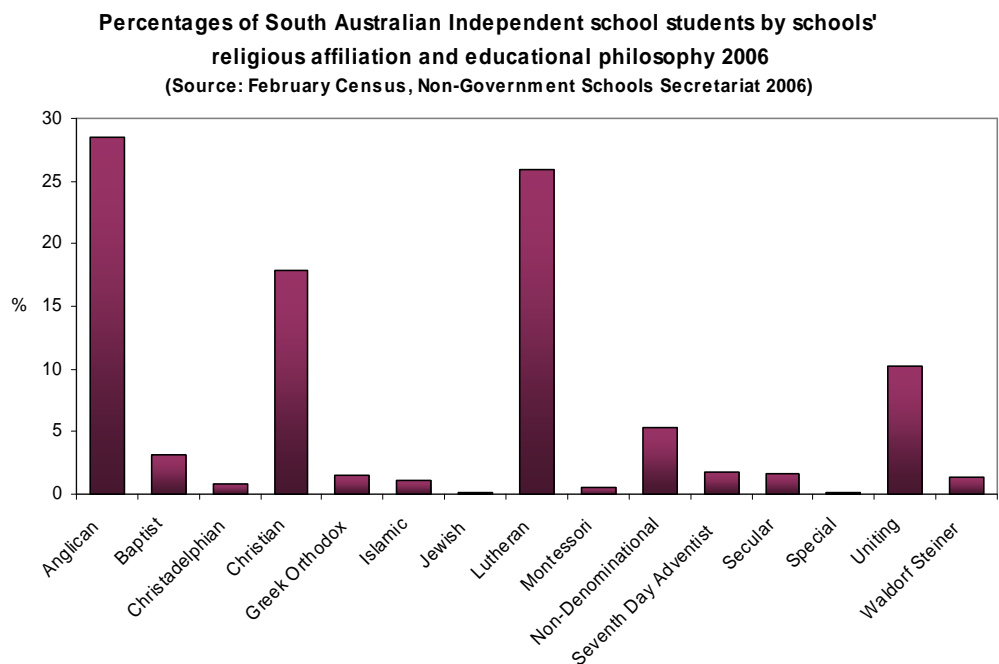
Australian legislation, including the *Human Rights & Equal Opportunity Commission Act* 1986, has historically recognised people's right to freedom of religious belief and enabled faith based schools to operate in accordance with the religious tenets and beliefs upon which they have been founded. It needs to be noted that legislation in this area is only applicable in cases where there is a genuine commitment by the institution to the religious tenets and beliefs and that the actions are in accordance with those beliefs. AISSA considers that this provides an appropriate balance between the rights of all parties.

If Australia is to remain a diverse and multi-faith and multi-cultural society it is essential, that the religious and cultural belief systems of Australians relating to sexuality and same-sex relationships, continue to be respected in any legislative reforms.

1.0 INTRODUCTION

1.1. Profile of the Sector

South Australian Independent schools educate students within a curriculum underpinned by a diverse range of religious affiliations (Anglican, Baptist, Christian, Christadelphian, Greek Orthodox, Islamic, Jewish, Lutheran, Seventh Day Adventist, Uniting) and educational philosophies (Montessori, Waldorf Steiner). The sector also includes a number of secular schools and a special school which educates students with severe intellectual disabilities. A number of Independent schools are also members of a system, for example, the Lutheran Schools Association and Adventist Schools Australia.



Over 98% of students in the Independent school sector attend schools which are underpinned by a religious ethos (Minister's Advisory Committee for Non-Government Schools 2006). Enrolment growth in schools, which are underpinned by a religious ethos, has significantly increased since 1994. This growth has been most prominent in schools located in the outer suburbs and regional centres across South Australia. Four new Independent schools have opened since 2004, each of which is underpinned by a religious ethos. People are clearly indicating, through this enrolment growth, that they support the faith based values of these schools.

Independent schools are distinguished by a model of governance based on local management and accountability to school communities. Autonomy is an essential principle underpinning non-systemic and systemic Independent schools. Independent schools are accountable to government through the requirements for registration under the *Education Act 1972* and on a number of other legislative levels, including the *Children's Services Act 1985*, *Children's Protection Act 1993* and the *Disability Discrimination Act 1992*. The direct

accountability of Independent schools to parents is a key strength of the Independent school sector.

1.2. Submission Outline

This submission provides an overview of the significance of religious beliefs on the governance, policies and educational programs of the majority of Independent schools. It also gives an indication of the ways in which freedom of religion has been legislatively protected.

2.0 COMMITMENT TO ETHOS OF INDEPENDENT SCHOOLS

2.1. Overview

In this section the AISSA outlines the importance of the ethos of the school to the operation of the school.

2.2. School Ethos

Example 1

' _____ was formed by Christian parents who desired a high academic standard of education for their children in a caring and disciplined environment where Christian values and principles were actively supported.

Our Vision:

"To be a Christian community that fosters innovation and excellence in its programmes for the academic, vocational and physical development of its students; nurtures spiritual and emotional growth and prepares students to move into life beyond the School, confident and competent in their chosen field".

Our Mission:

"To identify, encourage and develop the potential in each child through:

- Effective selection, training and retention of staff to develop a balanced, best-practice programme of learning which is integrated throughout the student's time at the school.*
- Building a community based on relationship with God and each other where the character of Jesus Christ is valued, developed and displayed'.*

Example 2

Mission Statement

_____ aims to...

Encourage and train children in all aspects of life in such a way that God is seen to be at the centre of everything.

Be an extension of the God given mandate for parents to bring their children up in the wisdom and knowledge of God.

Encourage a high standard of education, social behaviour and community responsibility.

In co-operation with parents the school aims to develop the educational and personal potential of each student within a caring _____ community.

Example 3

AIMS

About God

To foster in every student a desire to serve God and other people and in doing so, to develop a respect for truth and a lasting set of values emanating from the truth.

About the Child

To develop the spiritual, social, academic and physical potential of each student in a caring, yet disciplined environment; to assist each student toward a mastery of basic academic skills, and to foster creativity and excellence.

About the Family

To develop and maintain a cooperative relationship with the families of students that will demonstrate the _____ faith to both students and family members.

About the Community

To foster a cooperative relationship between all members of the _____ family and to extend this cooperative relationship to the wider community.

About the Curriculum

To provide a balanced school programme in which the _____ faith is integrated throughout the curriculum.

Operating Principles

To be open (so far as its resources shall permit) to the whole of the local community regardless of the parents' economics status, and regardless of the parents' religious affiliations, provided that the parents support the Aims of the _____.'

Independent schools educate children and young people within a curriculum underpinned by a particular set of values or ethos. AISSA has listed above the aims and goals of three Independent schools, to indicate the ways in which faith and spirituality are deeply embedded in schools underpinned by a religious ethos.

The importance of the values element of schooling has been recognised by State/Territory and Commonwealth Ministers of Education, through the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA). The Council's *Declaration on National Goals for Schooling in the Twenty-First Century* states, for example, that,

'...Schooling provides a foundation for young Australians' intellectual, physical, social, **moral, spiritual** and aesthetic development.' (emphasis added)

Parents choose individual Independent schools because they meet the education needs of their children and have values and an ethos consistent with their belief systems. In some cases, parents choose particular schools because the school has a commitment to 'traditional' family values. In 2004, a research project found that the 'religious or moral values of the school' were important in parents' choice of a non-government school (SMH 2004).

Parents are, and should be, the primary definers of the value and belief systems of their children. It is appropriate for parents to expect that if they choose an Independent school based on the schools' adherence to a particular religious ethos, then the school will operate within and according to that ethos.

2.3. Application of Ethos to Employment of Staff

It is a central tenet of Independent schools that staff, and the wider school community, will be committed to the underlying philosophies (educational and/or religious) and principles of the school. For the majority of Independent schools in South Australia, it is critical that they have the ability to employ staff across all occupations who share the religious values of the school. The values and ethos of the school provide the context for all aspects of school life including the educational programs.¹

Religion in religious Independent schools is not an 'accessory' or an 'add-on'. It is embedded in the very essence of the school including, school policies and practices, pedagogy, the curriculum and the co-curricular activities of the school.

In many religious Independent schools it is a necessity that staff be committed to the religion of the school and model their lives on the religion's values and beliefs. This applies to the employment of all persons, including

¹ However, it needs to be noted that the broader principle applies to other schools in the sector.

non-teaching staff. In regard to a number of schools in the Independent school sector staff perform what is, in essence, a ministerial role as the schools have been formed as extensions of ministries.

There is an expectation that staff in these schools embody the values of the school both within and outside of school life. This necessitates that school employees conduct themselves in a manner consistent with the principles of the school both within school hours and outside of school hours. Schools are community based organisations and consequently substantial interaction often occurs within the school community outside, as well as inside, of school hours. Moreover, beliefs are embodied in every part of a person's being. Simply put, a person's faith affects the whole of their life and actions. It is not confined to the words that they say or repeat within particular situations or times.

In a number of religious schools a commitment to the beliefs and principles of the school, requires that all staff be committed to monogamous heterosexual relationships. However, it needs to be noted that this forms only one part of a commitment to Christian principles that is expected in these schools.

If employees do not meet these requirements, then they act contrary to the very essence of the school and, hence, may threaten the religious susceptibilities of the school. Significantly, they may not be able to adequately fulfill their responsibilities to students, as expected by parents and the school community. Children and young people respect teachers when they see commitment in action. Young people are perceptive and can identify whether or not there is a genuine commitment to the ethos of the school. If the commitment is hollow then children and young people are naturally skeptical and less likely to be respectful, compromising the learning environment of the school. The viability of the school may also be threatened through a potential loss of student enrolments.

The requirement that an employee is committed to the principles of the relevant organisation can be seen in other employment areas. For example, the Selection Criteria, for an employment position in one Australian Union, lists 'Committed to union principles' under 'Knowledge/skills and experience'. (http://www.cpsu.org.au/about/1054702310_22791.html accessed 16/02/04).

2.4. Application of Ethos to Enrolment Procedures

In some schools it is a necessary requirement of enrolment that the student and his or her family have a particular faith and/or live their lives according to certain standards based on that religious faith.

The particular ethos and philosophy presented by a school, is one parents *choose* to adopt by sending their children to that particular school, and accept through the contract they enter into on enrolment of their children at an Independent school for the education of their children. In general, current legislation does not inhibit this.

3.0 LEGISLATIVE RECOGNITION OF FREEDOM OF RELIGION AND BELIEF

3.1. Overview

South Australian legislation enables Independent schools to operate according to the 'precepts' of their religion, upon which the school has been founded and is administered. Respect for 'freedom of religion and belief' has also been recognised on Federal and (other) State levels within Australia through various legislation including the *Human Rights & Equal Opportunity Commission Act 1986*, the *Equal Opportunity Act 1995 (Vic)*, the *Anti-Discrimination Act 1991 (Qld)*, and the Western Australian *Equal Opportunity Act 1984 (HREOC: 1)*.

It is necessary to emphasise that exemptions are only applicable in cases where there is a genuine commitment by the institution to religious tenets and beliefs and that the actions are in accordance with those beliefs. AISSA considers that they provide the appropriate balance between the rights of all parties.

3.2. South Australia

3.2.1. Overview

South Australia is a multi-cultural and a multi-faith state. ABS 2001 census data reveals that 66.7% of people identified as having a religious affiliation. Just over 64% of people identified as having a Christian affiliation (ABS 2002).² The importance of religious beliefs, including beliefs regarding homosexuality, has been recognised legislatively in South Australia, through an exemption, within the *South Australian Equal Opportunity Act 1984*.

The *South Australian Equal Opportunity Act 1984* contains an exemption for Religious Bodies under s50. Faith-based Independent schools are currently exempt in regard to sexuality under Part 3 of the *Equal Opportunity Act 1984*. s. 50(2),

Where an educational or other institution is administered in accordance with the precepts of a particular religion, discrimination on the ground of sexuality that arises in the course of the administration of that institution and is founded on the precepts of that religion is not rendered unlawful by this Part.

This exemption has enabled faith-based Independent schools to operate according to the 'precepts' of their religion, upon which the school has been

² While it is the case that there has been some decline in the percentages of people identifying a Christian affiliation, a substantial proportion of the population continue to identify as Christian. It should be noted that the religion question is optional and in 2001, 12.6% did not state their religious affiliation. 20.6% reported no religion, a slight decrease from 1996.

founded and is administered. There is no evidence that this exemption has been misused.

3.2.2. Statutes Amendment (Relationships) Bill 2005

In 2004, the South Australian Government introduced the *Statutes Amendment (Relationships) Bill 2004*. This Bill sought to amend various South Australian Acts which discriminate on the basis of same-sex relationships.

The *Statute Amendments (Relationships) Bill 2004* was referred to the South Australian Legislative Council Administered Standing Committee, the Social Development Committee, for consideration. During this inquiry the AISSA raised its concern that the current exemption in the Equal Opportunity Act, regarding discrimination on the ground of sexuality, may no longer be sufficient in the wake of the proposed changes to the Act and, hence, that the Bill would (unintentionally) limit the ability of many member schools to operate within an ethos based on their religious faith. Legal advice provided to the AISSA confirmed this opinion.³

AISSA recommended that part 25 of the Bill the Statutes Amendment Bill amend also the above discussed s 50 (2) exemption in order to more explicitly protect the rights of faith-based educational authorities so as to ensure that where current exemptions apply, these were not restricted by the recognition of same-sex relationships.

The Committee recommended that the Bill be changed to address AISSA's concerns. The Government agreed and the amendment was subsequently incorporated in the *Statutes Amendment (Relationships) Bill 2005*.

3.3. Other Responses

3.3.1. Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth)

An information paper prepared for Human Rights and Equal Opportunity Commission (HREOC), entitled, 'The *Human Rights and Equal Opportunity Commission Act 1986* (Cth): its application to religious freedom and the right to non-discrimination in employment' explains the way in which exemptions for religious bodies and organisations apply to the HREOC Act:

'If a complaint is made against a religious or non-religious organisation that it made a distinction on the basis of the religious belief of a job applicant or employee, that institution may be able to argue that the distinction... does not breach the requirements of the Act if it is a distinction in respect of a

³ The proposed amendment of section 5 – Interpretation of the *Equal Opportunity Act* would have, among other things, inserted a definition of *de facto partner* (as defined by the *Family Relationships Act 1975*) and amended the definition of *marital status* (f), so as to be defined as 'cohabitating with another (irrespective of the sex of the other) as a couple on a genuine domestic basis (other than as a legally married couple)'.

particular job based on the **inherent requirements of the job**.

Religious organisations may also be able to avail themselves of a second exception. Section 3(d)... provides that a distinction on the basis of the religious belief of a job applicant or employee although based on a prescribed ground, does not breach the requirements of the Act if it is a distinction in connection with employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, being a distinction, exclusion or preference made in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or that creed...

The inherent requirements of a particular job include not only the duties of the employee but also the circumstances in which the particular employment is to be carried out.' (emphasis in text, full text is available via the HREOC website at:

http://www.hreoc.gov.au/human_rights/religion/index.html).

3.3.2. Queensland

Queensland, after considerable media and public debate, recently amended their *Anti-Discrimination Act 1991*. This legislation now provides that:

'It is not unlawful for an employer to discriminate with respect to a matter that is otherwise prohibited under section 14 or 15, in a way that is not unreasonable, against a person if—

(a) the person openly acts in a way that the person knows or ought reasonably to know is contrary to the employer's religious beliefs—

- (i) during a selection process; or
- (ii) in the course of the person's work; or
- (iii) in doing something connected with the person's work; and

Example for paragraph (a)—

A staff member openly acts in a way contrary to a requirement imposed by the staff member's employer in his or her contract of employment, that the staff member abstain from acting in a way openly contrary to the employer's religious beliefs in the course of, or in connection with the staff member's employment.

(b) it is a genuine occupational requirement of the employer that the person, in the course of, or in connection with, the person's work, act in a way consistent with the employer's religious beliefs.' (S25 (3) *Anti Discrimination Act 1991*)

3.3.3. Victoria

In Victoria the *Equal Opportunity Act* 1995 provides a specific exemption for religious schools in relation to Part 3 – ‘When is Discriminated Prohibited’. It states:

‘76. Religious schools

(1) This section applies to a person or body (other than a body established for religious purposes) that—

(a) establishes an educational institution to be conducted in accordance with religious beliefs or principles; or

(b) directs, controls or administers an educational institution conducted in accordance with religious beliefs or principles.

(2) Nothing in Part 3 applies to anything done by a person or body to which this section applies in the course of establishing, directing, controlling or administering the educational institution (including the employment of people in the institution) that is in accordance with the relevant religious beliefs or principles.’

4.0 CONCLUSION

It is clear that there is significant legislative precedence across Australia for recognising the right of religious bodies and institutions to operate in accordance with the (religious) principles and beliefs that the institution is founded on.

It is essential, if Australia is to remain a multi-faith and multi-cultural society, that the religious and cultural belief systems of Australians relating to sexuality and marriage, continue to be respected in any legislative reforms.

The AISSA calls on HREOC to recognise the importance of religion and religious beliefs and to recommend that exemptions which protect the right of faith based schools to operate in accordance with the religious tenets and beliefs upon which they have been founded remain protected.

REFERENCES

ABS (2002) *2001 Census of Population and Housing SA Fact Sheet No. 12 Religious Affiliation*, issued 17/06/02, available at [http://www.abs.gov.au/websitedbs/c311215.nsf/0/190a04f687c02761ca2569b5001c823d/\\$FILE/ATTN15Y8/Religion.pdf](http://www.abs.gov.au/websitedbs/c311215.nsf/0/190a04f687c02761ca2569b5001c823d/$FILE/ATTN15Y8/Religion.pdf)

Human Rights and Equal Opportunity Commission (HREOC) ‘*The Human Rights and Equal Opportunity Commission Act 1986 (Cth): its application to*

religious freedom and the right to non-discrimination in employment' available at http://www.hreoc.gov.au/human_rights/religion/index.html.

Minister's Advisory Committee for Non-Government Schools (2006) *February Census of Non-Government Schools 2006*.

Sydney Morning Herald (2004) 9/8/2004.