

Should religious schools be able to exclude LGBTI students and teachers?

What they said...

'Because faith-based schools are religious communities, they need...to be able to insist on adherence to the codes of conduct that they reasonably believe are required by the faith'

Professor Patrick Parkinson of the University of Sydney

'LGBTIQ+ people have a lot to contribute to our...schools. To deny our students access to amazing teachers is surely a greater assault to "decency" than what these teachers are doing in the privacy of their own homes'

Comment made by a gay teacher working in a religious school

The issue at a glance

On October 9, 2018, the recommendations of the Ruddock Review (officially known as the Religious Review Expert Panel) were leaked to the media.

<https://www.smh.com.au/politics/federal/read-the-full-20-recommendations-from-the-religious-freedom-review-20181011-p50918.html>

Among the Panel's recommendations were that the exemptions currently granted under federal anti-discrimination law, allowing religious schools to discriminate against homosexual students and teachers, be clarified and retained.

The leaked recommendations provoked an uproar as they highlighted the current capacity of religious schools to exclude LGBTI students and teachers. With regard to students, this is a power that is very infrequently used and which politicians, the media and the public at large appear either to have largely ignored or been unaware of.

The Labor Opposition immediately condemned these recommendations, focusing particularly on the apparent power of religious schools to expel students on the basis of the sexual orientation, however they also defended the right of LGBTI teachers to be employed within religious schools. The full text can be accessed at <https://theconversation.com/view-from-the-hill-discrimination-debate-will-distress-many-gay-school-students-104721>

On December 13, 2018, the government announced that it had accepted fifteen of the twenty recommendations made by Ruddock Review. The remaining five would be further examined; these included the recommendations relating to the exclusion of LGBTI students and teachers by religious schools. <https://www.pm.gov.au/media/government-response-religious-freedom-review>

The debate has revolved primarily around the rights of LGBTI students to be accepted within religious schools in Australia; however, the question of the employment rights of LGBTI teachers within religious schools will be revisited in 2019.

Background

Unless otherwise indicated, the information printed below has been abbreviated from a Wikipedia entry titled 'Freedom of religion in Australia'. The full text can be accessed at https://en.wikipedia.org/wiki/Freedom_of_religion_in_Australia

Freedom of religion in Australia is allowed in practice and protected to varying degrees through the constitution and legislation at the Federal, State and Territory level. Australia is a secular country with legislated separation of church and state and with no state religion. The

nation has over 13.5 million people who identify as religious and 7.1 million who identify as irreligious.

Relevant legislation protecting religious freedoms include sections of the Constitution of Australia, Federal anti-discrimination laws and State/Territory-based human rights acts and anti-discrimination laws. As these freedoms are not protected in a single piece of legislation, but rather appear as sections, clauses and exemptions in other acts or laws, legal religious freedom protections are often a source of great debate and difficult to discern in Australia.

Constitutional position on religious freedom

The Constitution of Australia prohibits the Commonwealth from establishing laws which create, force or prohibit any religion. It also restricts the Commonwealth from using religion as a qualifier or test in order to hold public office. Section 116 of Chapter V. The States in the Australian Constitution reads:

The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

The section is based on the First Amendment to the United States Constitution. The article does not prohibit the States of Australia from implementing such laws, meaning legislation at the state level could provide for restriction or enforcement of religion.

Anti-discrimination laws

Anti-discrimination laws addressing unfair treatment on the basis of a range of attributes, including religion, also apply at the state and federal level. These laws contribute to religious freedoms by allowing Australians to practice religion without fear of consequence from the executive, organisations or individuals. This is achieved by prohibiting detrimental treatment as a result of an individual's religious appearance, beliefs or observances. Some argue these laws are inconsistent at the state level and may be limited at the federal level.

Religious exemptions

General religious exception or exemption clauses exist within the various federal and state human rights acts with the aim to ensuring religious activities or observances are not impacted or inhibited by the protections provided by each act. These exemptions therefore protect freedom of religion by permitting what would otherwise be considered discrimination if it is in the context of "an act or practice of a body established for religious purposes that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious sensitivities of adherents of that religion."

In the case of the Australian Human Rights Commission Act 1986, for example, an exemption is provided:

Discrimination ... does not include any distinction, exclusion or preference:

(d) 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.

Varying groups have argued that existing religious exceptions and exemptions go too far and impede the rights of individuals, whilst others argue the correct balance has been struck, and yet others petition for wider-reaching religious exemption clauses.

The Religious Review Expert Panel (the Ruddock Review)

Following the passage of same-sex marriage legislation in Australia in 2017, a federal review was commissioned by the Turnbull Government to examine the suitability of current religious freedom protections, specifically within the context of the new Marriage Amendment Act

2017. There was concern that attempts might be made to force some people to officiate at or otherwise assist same-sex marriage ceremonies about which they had religious objections. The Religious Freedom Review was chaired by Philip Ruddock, the former Attorney-General for Australia at the time same-sex marriage was banned by the Howard Government in 2004, and had no associated terms of reference.

Turnbull's government indicated it would not release the report received in May 2018 until it had been considered in full by the government. Following the deposition of Malcolm Turnbull as Prime Minister, his replacement Scott Morrison indicated his government would not release the report or form a full response to it before the end of 2018.

On 9 October 2018, extracts of the review were leaked to Fairfax Media, which reported that schools affiliated with a religion "would be guaranteed the right to turn away gay students and teachers under changes to federal anti-discrimination laws" recommended by the review. The Prime Minister initially defended this, but stated that the media coverage of the leaked report was "confused".^[36] Religious schools have held the right to discriminate against teachers and students on the basis of their gender or sexual orientation since 2013, however the Ruddock report recommended that schools additionally be required to hold a publicly-available policy and put the best interests of the child first.

Following further media coverage and public pressure, the Labor opposition announced their support would be lent to the government should it seek to repeal the discrimination law exemptions already in existence which allow religious schools to ban students based on their sexuality. The Morrison Government subsequently agreed to introduce a bill to parliament with that aim. The Australian Greens and Labor opposition have further committed to revoking discrimination exemptions that also allow discrimination against teachers based on their sexual orientation, however the government has so far not indicated its position.

In December, 2018, the government moved to defuse the parliamentary impasse over the treatment of gay students within religious schools by referring the issue to the Australian Law Reform Commission for -review. <https://www.theaustralian.com.au/national-affairs/morrison-stand-on-freedom-of-religion/news-story/6255d77a870f940d2a60da49397631eb>

Anti-religious Discrimination Act

On December 13, 2018, Scott Morrison announced that his government would introduce a specifically anti-religious discrimination bill into federal parliament in 2019. Draft legislation for the reform will be released in early 2019 and will include a provision for the creation of a 'freedom of religion' commissioner to sit within the Australian Human Rights -Commission. <https://www.theaustralian.com.au/national-affairs/morrison-stand-on-freedom-of-religion/news-story/6255d77a870f940d2a60da49397631eb>

The Prime Minister stated, 'This is an essential part of multiculturalism, in the same way no Australian should be discriminated against for their ethnicity or sexuality. Protecting freedom of belief is central to the liberty of each and every Australian.'

<https://www.theaustralian.com.au/national-affairs/morrison-stand-on-freedom-of-religion/news-story/6255d77a870f940d2a60da49397631eb>

<https://www.theaustralian.com.au/national-affairs/education/faithbased-schools-no-place-for-gay-teachers/news-story/50f5f7cb6cb7b0e0f44bbd46aa22f94d>

Internet information

On February 9, 2019, a response to an opinion piece of Herald Sun columnist Susie O'Brien was written by Mark Spencer, Executive Officer, National Policy, Christian Schools Australia and published on the Christian Schools Australia website.

Spencer's comment is a detailed defence of the right of Christian schools to exclude LGBTI students and teachers.

The full text can be accessed at <https://csa.edu.au/response-to-susie-obrien-herald-sun/>

On December 20, 2018, Law and Religion Australia published a 'Response to Ruddock Report' by guest blogger, Dr Alex Deagon, Lecturer in law, Queensland University of Technology, which analyses in detail each of the recommendations made by the Ruddock review and the government's response.

The full text can be accessed at <https://lawandreligionaustralia.blog/2018/12/20/response-to-ruddock-report-dr-alex-deagon-guest-blog/>

On December 13, 2018, Law and Religion Australia published a comment and analysis by the site's moderator, Neil Foster, Associate Professor in Law, at Newcastle University titled 'The Ruddock Report has landed!'

The comment and analysis responds to each of the twenty recommendations of the Ruddock report.

The full text can be accessed at <https://lawandreligionaustralia.blog/2018/12/13/the-ruddock-report-has-landed-part-1/>

On December 13, 2018, The Australian published a report titled 'Morrison's stand on freedom of religion' which detailed the government's plan to take a -religious discrimination act to the next election.

The full text can be accessed at <https://www.theaustralian.com.au/national-affairs/morrison-stand-on-freedom-of-religion/news-story/6255d77a870f940d2a60da49397631eb>

On December 5, 2018, news.com.au published a report titled 'Protecting gay students becoming a headache for Scott Morrison' which outlined the Opposition's concerns that the Prime Minister's proposed protections were not adequate.

The full text can be accessed at <https://www.news.com.au/lifestyle/parenting/school-life/protecting-gay-students-becoming-a-headache-for-scott-morrison/news-story/e4b12187fa8f5077bc1881d4f93fb5fe>

On December 4, 2018, Catholic News carried a report titled 'Stand-off over gay students and teachers legislation' which detailed the dispute between the government and the Opposition over whether religious schools should have power to indirectly discriminate and the ability for religious schools to have their own internal rules that govern how LGBTI students act.

The full text can be accessed at <http://cathnews.com/cathnews/33767-stand-off-over-gay-students-and-teachers-legislation>

On November 20, 2018, The West Australian published a report titled 'Islamic schools worried by anti-discrimination laws to stop firing of gay teachers' which reported the supposed concern of some Islamic religious leaders that changes to Australia's anti-discrimination laws could leave Islamic schools open to charges of discrimination against LGBTI staff.

The full text can be accessed at <https://thewest.com.au/news/religion-and-belief/islamic-schools-worried-by-anti-discrimination-laws-to-stop-firing-of-gay-teachers-ng-b881024999z>

On October 25, 2018, the Human Rights Law Centre published an analysis titled 'Explainer: Religious discrimination in schools' which outlines the current operation of Australian law to allow religious schools to discriminate against LGBTI students and teachers.

The full text of the analysis can be accessed at
<https://www.hrlc.org.au/news/2018/10/23/explainer-religious-discrimination-in-schools>

On October 22, The Herald Sun published a comment by columnist Susie O'Brien titled 'Protect the human rights of gay teachers' which argued against religious schools being able to exclude GLBTI teachers.

The full text can be accessed at <https://www.heraldsun.com.au/news/special-features/news-in-education/susie-obrien-protect-the-human-rights-of-gay-teachers/news-story/707d04826fef266a3f9ce84277e14323>

On October 16, 2018, The Conversation published an opinion by Mary Lou Rasmussen, Professor, School of Sociology, Australian National University, et al, titled 'There's no argument or support for allowing schools to discriminate against LGBTIQ teachers' which argues against the exemptions allowed religious schools which permit them to discriminate against LGBTIQ teachers.

The full text can be accessed at <https://theconversation.com/theres-no-argument-or-support-for-allowing-schools-to-discriminate-against-lgbtqi-teachers-104765>

On October 16, 2018, The Australian published a report titled 'Grand Mufti challenges gay teachers' rights to work in Islamic schools' The report detailed the opposition of Sheik Taj El-Din Hilaly to LGBTI teachers working within Muslim schools in Australia.

The full text can be accessed at <https://www.theaustralian.com.au/national-affairs/education/grand-mufti-challenges-gay-teachers-rights-to-work-in-islamic-schools/news-story/106fa1e353f71557b678fc7726c5a6a7>

On October 15, 2018, the Law Institute Journal of the Law Institute Victoria published a comment titled 'Remove exemptions allowing schools to expel gay students, lawyers say' The article presents a number of arguments for why these exemptions should be removed. The full text can be accessed at <https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/October-2018/Remove-exemptions-allowing-schools-to-expel-gay-st>

On October 12, 2018, The Sydney Morning Herald published the full twenty recommendations of the Ruddock review.

The recommendations can be accessed at <https://www.smh.com.au/politics/federal/read-the-full-20-recommendations-from-the-religious-freedom-review-20181011-p50918.html>

On October 11, 2018, the ABC published a report titled 'No school should be allowed to turn away a gay student, Scott Morrison says' which detailed the Prime Minister's intention to protect LGBTI students from being excluded from religious schools.

The full text of the report can be accessed at <https://www.abc.net.au/news/2018-10-11/no-school-should-be-allowed-to-turn-away-a-gay-student-pm-says/10366628>

On October 10, 2018, The Herald Sun published an opinion piece by columnist Andrew Bolt titled 'Freedom of religion report misses target' in which Bolt criticises the Ruddock review for discriminating against LGBTI students.

The full text of the comment can be accessed at <https://www.heraldsun.com.au/news/opinion/andrew-bolt/freedom-of-religion-report-misses-target/news-story/76bbdf771a72fdcb39c5fc3e61422191>

On October 10, 2018, The Conversation published a report by Michelle Grattan titled 'View from The Hill: Discrimination debate will distress many gay school students' detailing concerns that the current debate surrounding whether religious schools should be able to expel gay students had the potential to be distressing for them.

The full text can be accessed at <https://theconversation.com/view-from-the-hill-discrimination-debate-will-distress-many-gay-school-students-104721>

Arguments in favour of religious schools being able to exclude LGBTI students and teachers

1. Some religious schools consider any non-heterosexual sexual orientation antithetical to their beliefs

The key reason that many Christian schools will not employ teachers who are either in an unmarried heterosexual relationship or an LGBTI relationship is that this is fundamentally contrary to the way of life that they believe the Bible is enjoining all believers to live.

Mark Spencer, executive officer, National Policy, Christian Schools Australia, has explained the centrality of heterosexual marriage to the beliefs of Bible-based Christian schools. Mr Spencer has stated, 'While the beliefs of evangelical, Bible-based Christian schools cover a wide range of matters it is our views on sexuality and sexual conduct that seem to garner the attention of the community. A Biblical view of sexual morality holds that a person's decisions regarding his or her body are physically, spiritually and emotionally inseparable. Such decisions affect a person's ability to live out God's intention for wholeness in relationship to God, to others, and to oneself. Further, the Bible affirms sexual intimacy is reserved for marriage between one man and one woman.' <https://csa.edu.au/response-to-susie-obrien-herald-sun/>

This position has been further explained by Alex Crain, the editor of Christianity.com. Crain states, 'The historic Christian view according to accurate biblical interpretation is that sex outside of the sacred bonds of male-female marriage is wrong...In God's good design, sex is reserved for a man and a woman who have entered into a legally binding marriage covenant. This kind of life-long commitment forms the basis for a garden-like relationship in which true intimacy can grow into a loving family. Multiply that same model many times over and a healthy society blossoms and thrives.' <https://www.christianity.com/christian-life/political-and-social-issues/the-rainbow-flag.html>

Among the verses from the Bible that are said to underpin this traditional Christian view of marriage are: 'God created man in his image; in the divine image he created him; male and female he created them. God blessed them, saying: "Be fertile and multiply, fill the earth and subdue it"' (Genesis 1: 27-28); 'And the rib that the LORD God had taken from the man he made into a woman and brought her to the man. Then the man said, "This at last is bone of my bones and flesh of my flesh; she shall be called Woman, because she was taken out of Man." Therefore a man shall leave his father and his mother and hold fast to his wife, and they shall become one flesh' (Genesis 2:21- 24); 'Let marriage be held in honour among all, and let the marriage bed be undefiled, for God will judge the sexually immoral and adulterous' (Hebrews 13:4) and 'But because of the temptation to sexual immorality, each man should have his own wife and each woman her own husband'(1 Corinthians 7:2)

<https://www.whatchristianswanttoknow.com/bible-verses-about-marriage-20-great-scripture-quotes/>

Similar textually sanctioned opposition to homosexuality can be found in Islam. The Islamic condemnation of homosexuality is based largely on the Qur'anic story of the Prophet Lut (known as Lot in the Judeo/Christian context). This story is repeated several times in the Qur'an. Each story follows a similar pattern, but the details change from one telling to the next, as

we shall see. This story of Lot and his family and the destruction of Sodom and Gomorrah is mentioned in verses 7:80, 11:77, 15:59, 21:71, 26:161, 27:55, 29:26, 37:133, and 54:33.

https://www.edudivers.nl/faq/quran_about_homosexuality

One text specifies the punishment that might be inflicted. 'The Prophet (peace be upon him) said: If you find anyone doing as Lot's people did, kill the one who does it, and the one to whom it is done (38:4447).' <https://theconversation.com/friday-essay-the-quran-the-bible-and-homosexuality-in-islam-61012>

A 2013 Pew global study of Muslims showed overwhelming disapproval of homosexuality. In only three of the nearly 40 countries surveyed do as many as one-in-ten Muslims say that homosexuality is morally acceptable: Uganda (12 percent), Mozambique (11 percent) and Bangladesh (10 percent). <https://religionnews.com/2016/06/17/muslim-attitudes-about-lgbt-are-complex-and-far-from-universally-anti-gay/>

2. Australian law and international conventions protect religious institutions' right to exclude Supporters of the right of religious schools to exclude LGBTI teachers and students argue that they are guaranteed this right as part of their freedom of religion.

The legal information site go.to.court.com.au has stated, 'Australia's anti-discrimination regime is enshrined in both federal and state and territory law. At federal level, the legislation that governs anti-discrimination law is the Age Discrimination Act (ADA), the Australian Human Rights Commission Act, the Disability Discrimination Act (DDA), the Sex Discrimination Act (SDA) and the Racial Discrimination Act (RDA). Both the ADA and the SDA contain religious exemptions in relation to acts and practices by 'a body established for religious purposes.' These exemptions apply to all the grounds of discrimination covered by the legislation. In effect, this means that religious bodies are exempt from having to comply with the principles of non-discrimination.' <https://www.gotocourt.com.au/civil-law/religious-exemptions-discrimination/> In effect this guarantees that organisations such as religious schools are entitled under these exemptions to exclude both teachers and students who do not adhere to their belief system. <https://www.gotocourt.com.au/civil-law/religious-exemptions-discrimination/>

As a piece of state- or territory-based legislation that embodies this principle, the Australian Capital Territory's Discrimination Act 1991 states, 'Section 33(2) of the Discrimination Act specifically provides that it is not unlawful to "discriminate against someone ... in relation to the provision of education ... by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion ... if the [discrimination is] in good faith to avoid injury to the religious susceptibilities of adherents of that religion".'
<https://www.canberratimes.com.au/politics/federal/loopholes-or-targeted-exemptions-our-misunderstood-human-rights-law-20181101-p50dc4.html>

Similarly, Article 18 of the International Covenant on Civil and Political Rights (ICCPR) to which Australia is a signatory, states, 'Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.' <https://www.humanrights.gov.au/freedom-thought-conscience-and-religion-or-belief>

These references to 'community', 'observance', 'practice' and 'teaching' have been read as a protection for religious schools and their right to determine the membership of the communities which they form.

Professor Patrick Parkinson of the University of Sydney has defined the five basic freedoms essential to religious freedom:

Freedom to manifest a religion through religious observance and practice; freedom to appoint people of faith to organisations run by faith communities; freedom to teach and uphold moral standards within faith communities; freedom of conscience to discriminate between right and wrong; and freedom to teach and persuade others.' <https://ipa.org.au/ipa-review-articles/defending-religious-liberty>

The Evangelical Alliance Foundation (EAF) has stated, 'Religious freedom includes the right to form religious organisations and to operate these according to religious values. The right to do so is protected by Article 18... Religious communities do not need general exemption from anti-discrimination laws. They do, however, need the freedom of positive selection –that is, the right to advertise for and select staff (whether professional staff or otherwise) who will honour the beliefs, values and codes of conduct of the faith-based community...

Because faith-based schools are religious communities, they need to have the right at least to employ staff (in both teaching and non-teaching roles) who adhere to the faith, whether or not all such schools would wish to exercise that right. They also need to be able to insist on adherence to the codes of conduct that they reasonably believe are required by the faith.'

<http://www.ea.org.au/site/DefaultSite/filesystem/documents/public%20policy/A%20NATIONAL%20AGENDA%20FOR%20RELIGIOUS%20FREEDOM.pdf>

3. Parents should be able to send their children to religious schools that reflect their beliefs
Those who defend the right of religious schools to exclude those whose sexual orientation and preferences do not accord with the schools' values argue that this is necessary to protect the right of parents to send their children to the school of their choice.

The Independent Schools Council of Australia has noted that parents' right to send their children to their school of choice has long been supported by Australian governments. The Council notes, 'Since the 1970s Australian governments have supported choice in schooling, providing public funding to non-government schools as a way of ensuring that all schools have at least a minimum level of facilities and resources for all students.'

<https://isca.edu.au/about-independent-schools/about-independent-schools/parents-and-school-choice/>

The Council further argues, 'School choice policies underpin pluralism in society. They allow families with different ethnic, religious and cultural identities to choose a school to best meet the needs of their child and their own values, within a frame of common social values.'

<https://isca.edu.au/about-independent-schools/about-independent-schools/parents-and-school-choice/>

The Council further argues, 'Parents' right to choose the kind of education to be given to their children is included in the Universal Declaration of Human Rights as well as the International Covenant on Economic, Social and Cultural Rights which commits its signatories "to have respect for the liberty of parents . . . to choose for their children schools, other than those established by public authorities . . . to ensure the religious and moral education of their children in conformity with their own convictions," with the proviso that that education must conform to minimum standards laid down by the state.' <https://isca.edu.au/about-independent-schools/about-independent-schools/parents-and-school-choice/>

Many religious schools maintain that, for them to provide the type of instruction that parents are seeking, their staff must be exemplars of the way of life that the schools' religious beliefs dictate. Mark Spencer, national policy executive officer for Christian Schools Australia, has stated, 'A Biblical view of sexual morality holds that a person's decisions regarding his or her body are physically, spiritually and emotionally inseparable. Such decisions affect a person's ability to live out God's intention for wholeness in relationship to God, to others, and to oneself. Further, the Bible affirms sexual intimacy is reserved for marriage between one man and one woman.' <https://csa.edu.au/response-to-susie-obrien-herald-sun/>

Many religious schools maintain that their employment practices must ensure that the schools only employ teachers whose personal conduct reflects the religious values of the school.

Mr Spencer argues, 'Every teacher across Victoria will also tell you that there is much more to their role than merely conveying curriculum content. Teachers of maths don't just teach maths – they guide and assist young people through the often difficult and confronting task of growing up. Teachers support the roles of parents in raising these young people, helping them to work out who they are, who they want to be, and, in Christian schools like ours, who they are in relationship to Christ and what He wants for their lives.' <https://csa.edu.au/response-to-susie-obrien-herald-sun/>

Regarding the schools' right to exclude gay students in order to respect the beliefs of a majority of parents who send their children to these establishments, the Ruddock Review stated, 'To some school communities, cultivating an environment and ethos which conforms to their religious beliefs is of paramount importance...

To the extent that this can be done in the context of appropriate safeguards for the rights and mental health of the child, the panel accepts their right to select, or preference, students who uphold the religious convictions of that school community.'

<https://www.news.com.au/lifestyle/parenting/school-life/awful-plan-to-reject-gay-students-teachers/news-story/c0a77bff2e30a45e6728e1217f815a60>

4. The ability to discriminate when selecting teachers and students preserves the identity of religious schools

Those who defend the right of religious schools to refuse to exclude homosexual students and teachers argue that doing so protects the identity of the school. They argue that a Christian school is made up of a community that adheres to and practises a certain set of beliefs and that if it accepts students or employs teachers who do not either adhere to or practise those beliefs then it has undermined the reason for its existence; it no longer embodies the values that it was set up to promote.

This view has been explained with regard to employment practices by Professor Patrick Parkinson, Academic Dean and Head of School of the University of Queensland's Law School. Professor Parkinson has stated, 'I think the number one issue for the long-term future is the freedom of faith-based organisations to employ staff or prefer to employ staff who hold to the beliefs of that faith. Christian schools should be able to insist that staff adhere to the values of the faith in order to be able to maintain their identity as a Christian school.'

<https://www.eterinitynews.com.au/australia/schools-focus-of-religious-freedom-debate/>

Regarding the right of religious schools to choose staff whose lifestyles reflect the schools' core beliefs, the Religious Review Expert Panel Report acknowledged the frequent submissions they received which argued, 'Spiritual education is not just about teaching content in classes, but also the formation of a community or environment that supports the teachings of their faith. A key theme in these discussions was the need for staff to model the religious and moral convictions of the community and to uphold, or at least not to undermine, the religious ethos of the school. The Panel heard repeatedly that faith is "caught not taught".' The Review Panel concluded, 'Faith-based schools should have some discretion to discriminate in the hiring of teachers and other staff on the basis of religious belief, sexual orientation, gender identity, or marital or relationship status for the reasons outlined above. This enables schools positively to select staff and contractors that adhere to the religion and its practices in order to foster or protect the religious ethos of the school.'

<https://www.ag.gov.au/RightsAndProtections/HumanRights/Documents/religious-freedom-review-expert-panel-report-2018.pdf>

Regarding the right of religious schools to refuse admission to students on the basis of their sexual orientation, the Religious Freedoms Review Expert Panel Report stated, 'To some

school communities, cultivating an environment and ethos which conforms to their religious beliefs is of paramount importance. To the extent that this can be done in the context of appropriate safeguards for the rights and mental health of the child, the Panel accepts their right to select, or preference, students who uphold the religious convictions of that school community.'

<https://www.ag.gov.au/RightsAndProtections/HumanRights/Documents/religious-freedom-review-expert-panel-report-2018.pdf>

Christian Schools Australia told the Religious Freedoms Review Expert Panel, 'Faith communities, including Christian schools, must be able to take action that separates individuals from that community when their actions undermine the community. This option remains a necessary response to situations determined by a community to be a threat to that community.' <https://www.theguardian.com/world/2018/oct/11/the-right-to-expel-children-from-school-isnt-about-freedom-its-about-cruelty>

Explaining this position on his Law and Religion blog, Neil Foster, Associate Professor in Law at the University of Newcastle, stated, 'One of the primary reasons that these schools are established, is so that a religious world-view can be presented to students. Parents send children to a Christian school, for example, assuming that the school will be both teaching and modelling Christian virtues, which include those such as self-control and abstaining from sexual sin.' <https://lawandreligionaustralia.blog/2018/10/12/ruddock-report-religious-schools-and-same-sex-attracted-students/>

Special Minister of State, Alex Hawke, has similarly stated that religious schools should be allowed to discriminate against homosexual students. Asked whether religious schools should be able to reject students as well as teachers on the basis of their sexuality, Mr Hawke replied, 'Absolutely, absolutely. I don't think it's controversial. I don't think it's controversial in Australia that people expect religious schools to teach the practice of their faith and their religion. That's the point of a religious school, and in Australia you have a choice of schooling.' <https://www.theaustralian.com.au/national-affairs/religious-schools-right-to-discriminate-against-gays-existing-law/news-story/d50fa0aaf15603dac9a0e4d4e7329a88>

5. The Ruddock review's recommendations provide greater certainty and care for LGBT+ teachers and students

Supporters of the recommendations made within the Ruddock review regarding religious schools' capacity to exclude LGBT+ teachers and students claim that the recommendations protect both the rights of religious schools and the rights of gay students and teachers. Those who favour the recommendations note that although they protect the right of religious schools to exclude some staff and students on the basis of their sexual orientation and practices, the recommendation also respect the psychological welfare of students and require that school selection practices be made public so that both potential students and teachers are aware of whether or not a particular religious school would make them welcome.

In an opinion piece published in *The Conversation* on October 10, 2018, Liam Elphick, Lecturer, Law School, University of Western Australia; Amy Maguire, Senior Lecturer in International Law and Human Rights, University of Newcastle; and Anja Hilkmeyer, Lecturer in Law, University of Tasmania collectively argued 'Despite much commentary to the contrary, the recommendations [of the Ruddock review] actually constrain rather than expand federal religious exemptions to LGBT+ protections.'

<https://theconversation.com/ruddock-report-constrains-not-expands-federal-religious-exemptions-96347>

In an opinion piece published on the ABC on October 15, 2018, Renae Barker, Lecturer at the University of Western Australia's School of Law, and an Honorary Research Fellow at the Centre for Muslim States and Societies, noted, 'Far from expanding these existing rights [of

religious schools to discriminate against LGBT+ students and staff], recommendations five and seven [of the Ruddock review] advise constraining and narrowing them. In particular, both recommended the introduction of measures to increase transparency in the way these exemptions are used.' <https://www.abc.net.au/religion/transparency-is-the-way-forward-for-religious-exemptions/10379256>

A requirement that there be full transparency regarding a religious school's acceptance of LGBT+ students and staff helps to protect students and staff from applying to and becoming part of an institution that may subsequently seek to exclude them.

Rena Barker explained further, 'With greater transparency comes greater scrutiny. Under the proposed changes to the law, religious schools who wish to take advantage of the exemptions in the Sex Discrimination Act will be required to have a "publicly available policy outlining its position in relation to the matter"...

At present no such requirement for transparency exists. As a result, while religious organisations may be making use of an exemption, they also may not be. It is only when a dispute arises, where an individual believes that the exemption applied by the religious organisation was done... unlawfully, that public debate and therefore scrutiny can occur. Equally, where a religious organisation chooses not to make use of an exemption, this too would be a matter of public record. Those who interact with these religious organisations would then have the necessary knowledge to make informed decisions about their continued interactions.' <https://www.abc.net.au/religion/transparency-is-the-way-forward-for-religious-exemptions/10379256>

With regard to the potential exclusion of LGBT+ students, recommendation seven similarly requires transparency and also that in taking any decision to exclude 'The school has regard to the best interests of the child as the primary consideration in its conduct.'

<https://www.smh.com.au/politics/federal/read-the-full-20-recommendations-from-the-religious-freedom-review-20181011-p50918.html>

While there is scope to debate how 'the best interests of the child' will be defined and determined, supporters of the Ruddock review's recommendation in this matter stress that it gives primary consideration to the wellbeing of the young student.

Arguments against religious schools being able to exclude LGBTI students and teachers

1. Religious freedom should not be used as a justification for discrimination

Critics of existing exemptions granted religious schools regarding sexual discrimination and their endorsement by the Ruddock review condemn these provisions as an attack on tolerance and Australia's stance against prejudice. They argue that so-called 'religious freedom' should not be used as a defence for prejudice and discrimination.

In a letter published in *The Age* on October 11, 2018, Reverend Graham McAnalley stated, 'Giving schools the right to reject students on the basis of their sexual orientation is not freedom of religion; it is bigotry and discrimination masquerading as religion.' <https://www.theage.com.au/national/religious-freedom-the-legal-right-to-shame-and-shun-some-students-20181010-h16fzr.html>

In the same edition of *The Age*, letter writer Ange Mackie also argued, 'Is it really OK to say to lesbian, gay or transgender people that they are not allowed in school? But we need to practise our religion with freedom, say those who want to discriminate. There are things that originated in some religions, such as female genital mutilation and polygamy, that are against the law. These are extreme examples but they illustrate that religious practices change over time.' <https://www.theage.com.au/national/religious-freedom-the-legal-right-to-shame-and-shun-some-students-20181010-h16fzr.html>

A similar point was made by Geoff Feren in a letter to The Age also published on October 11, 2018, which stated, 'This review has zero intellectual integrity in arguing that it is possible to maintain "appropriate safeguards for the rights and mental health" of LGBTI students, whilst permitting religious schools to discriminate against them.'

<https://www.theage.com.au/national/religious-freedom-the-legal-right-to-shame-and-shun-some-students-20181010-h16fzr.html>

Opponents of the Ruddock review argue that religious freedom should not depend on the right to discriminate against others. This point was made in an opinion piece published in the Sydney Morning Herald on December 15, 2018, written by Tim Soutphommasane, Australia's Race Discrimination Commissioner from 2013 to 2018. Mr Soutphommasane stated, 'People often equate the issue of religious discrimination with religious freedom. Only the two aren't quite the same.'

The question of religious discrimination is straightforward. None of us could reasonably object to the law protecting someone against being turned away from a shop because of their religious background'. <https://www.smh.com.au/national/plans-for-religious-protections-complicated-by-one-thing-20181213-p50m26.html>

However, Soutphommasane goes on to warn that many equate religious freedom with the right to discriminate against others. He warns that 'Any legislation [giving religious schools the power to reject, sack and expel on the basis of sexual identity or preference] risks empowering discrimination in the name of religious freedom. What appears to be a shield against discrimination may turn into a sword of discrimination – one taken to LGBTI people, in particular.' <https://www.smh.com.au/national/plans-for-religious-protections-complicated-by-one-thing-20181213-p50m26.html>

Soutphommasane concludes, 'The government...is proposing amendments to all anti-discrimination laws, which would ensure that freedom of religion has "equal status" with a right to non-discrimination. The effects would be uncertain. It could end up tilting the field in favour of those who want the liberty to discriminate on the grounds of their religious beliefs.' <https://www.smh.com.au/national/plans-for-religious-protections-complicated-by-one-thing-20181213-p50m26.html>

Delivering the annual human rights lecture at Curtin University in Perth on September 28, 2018, former High Court Justice Michael Kirby argued similarly. Kirby warned that laws on religious freedom should not allow people to 'isolate, denigrate and humiliate minorities'. <https://www.watoday.com.au/national/western-australia/religious-freedom-laws-must-not-discriminate-former-high-court-justice-warns-20180929-p506uc.html>

2. Religious schools receive government funding and should adhere to law-enshrined Australian values

Opponents of homosexual students and teachers being excluded from religious schools argue that as recipients of government funding such schools have an obligation to adhere to the anti-discrimination values endorsed by the state, rather than seek legal exemptions which allow them to disregard some of the rights the state seeks to guarantee its citizens. They argue that in a state where homosexual rights are protected under law as a societally endorsed value, religious schools, in receipt of government funding, should not be able to violate these rights.

Amnesty International Australia's advocacy manager, Emma Bull, has argued that the sanctity of religion should not be used to justify discrimination or marginalisation. Ms Bull stated, 'Organisations which receive public funding to provide education or services should not be exempt from anti-discrimination laws - they should provide services to all Australians on an equal basis.' <https://www.smh.com.au/national/a-step-backwards-parents-hit-back-at-right-for-schools-to-discriminate-20181010-p508uu.html>

David Marr, in an opinion piece published in *The Guardian* on October 11, 2018, noted with approval the situation that exists within the United Kingdom regarding religious schools' right to exclude homosexual teachers and students. Marr writes, 'When faiths take public money to run schools and hospitals in the UK they have to play by secular rules. The choice is stark: faith or funds. At this point, the central Christian need for the right to sack gay staff and expel gay kids ... evaporates.' Marr contrasts the Australian situation unfavourably with that in Britain. He states, 'For the moment we are being told, however distasteful we find the sight of faiths harassing gay pupils – and gay teachers, taxpayers are expected to keep footing the bill.' <https://www.theguardian.com/world/2018/oct/11/the-right-to-expel-children-from-school-isnt-about-freedom-its-about-cruelty>

In a comment published in *The Conversation* on October 10, 2018, Michelle Grattan agreed, 'Before people say these are not government schools and so should have free rein, remember that they get big dollops of taxpayers' money.

While it may be reasonable to allow them some exemptions based on faith issues, they should also conform to core community values.

It certainly is not in line with those values to think a school should be able to accept one boy while refusing admittance to his brother on the ground the second boy is gay and is willing to strongly defend his sexuality.' <https://theconversation.com/view-from-the-hill-discrimination-debate-will-distress-many-gay-school-students-104721>

Craig Campbell, a homosexual teacher who was sacked by a Western Australian religious school after he revealed his sexual orientation, has argued that allowing such employment practices in schools which are financially supported by the government is inappropriate. Mr Campbell stated, 'These are taxpayer-funded schools and it essentially becomes taxpayer-funded discrimination.' <https://www.abc.net.au/news/2018-10-12/gay-teacher-attacks-push-for-religious-school-discrimination/10365816>

Opponents of such supposedly 'taxpayer-funded discrimination' point out that it is rejected by a clear majority of Australians. In April 2018, a YouGov Galaxy Poll of more than 1,000 people across Australia found 78 percent of Australians said religious schools should not be entitled to receive taxpayer funds if they discriminate against LGBTIQ teachers and students. [http://www.parliament.wa.gov.au/parliament/bills.nsf/3A45EE5D6BCC0B86482582B700093749/\\$File/Bill84-1SR.pdf](http://www.parliament.wa.gov.au/parliament/bills.nsf/3A45EE5D6BCC0B86482582B700093749/$File/Bill84-1SR.pdf)

In the second reading of a bill introduced into the Western Australian Parliament in 2018 to remove the exemption to antidiscrimination laws in that state which allows for the exclusion of homosexual students and teachers it was claimed, 'The general community is very clear about this; they want less discrimination against LGBTIQ people, not more. And they especially do not want taxpayer funds spent in religious schools that discriminate in this fashion.'

[http://www.parliament.wa.gov.au/parliament/bills.nsf/3A45EE5D6BCC0B86482582B700093749/\\$File/Bill84-1SR.pdf](http://www.parliament.wa.gov.au/parliament/bills.nsf/3A45EE5D6BCC0B86482582B700093749/$File/Bill84-1SR.pdf)

3. Dismissing or refusing to employ a teacher on the basis of sexual orientation is unjust
Opponents of religious schools being able to exclude teachers on the basis of their sexual orientation claim that such employment practices are unjust.

Those who object to teachers being judged on the basis of their sexual preferences claim that this is an irrelevant selection criterion as a person's sexual orientation does not affect his or her capacity to teach. This point was emphasised by Queensland Labor MP Terri Butler when she commented during an ABC Q&A program, 'A gay teacher doesn't teach gay maths. They just teach maths.' <https://www.thechronicle.com.au/news/qa-christian-schools-concern-over-losing-right-to-/3550429/> The point was endorsed by Herald Sun commentator, who said of Butler's observation, 'It was a cut-through moment in this debate.'

<https://www.heraldsun.com.au/news/special-features/news-in-education/susie-obrien-protect-the-human-rights-of-gay-teachers/news-story/707d04826fef266a3f9ce84277e14323>

It has also been noted that the possibility of discrimination against LGBTI teachers working within religious schools has a negative impact upon those with a particular sexual identity or orientation who have been employed by such schools.

It has been noted that not all religious schools absolutely preclude LGBTI staff, rather they require that these staff do not alert students to their sexual orientation or identity. It has been claimed this leaves these staff in a state of anxiety and confusion.

In a submission to the Inquiry by the Senate Legal and Constitutional Affairs Committee on Legislative Exemptions that Allow Faith-Based Educational Institutions to Discriminate against Students, Teachers and Staff, Dr Tiffany Jones, Department of Educational Studies, Macquarie University, noted her research had found 'LGBTIQ teachers surveyed (42 percent) mostly did not know if their school had policies protecting them against discrimination..., 27 percent said their school did offer policy protection [and] 25 percent said it did not...' <https://tinyurl.com/yypczoxh>

Dr Jones noted the negative impact that this uncertainty and rejection had upon the teachers concerned. She wrote, 'Because of these confusingly inconsistent conditions, most teachers (56 percent) did not work at schools supporting staff to be "out". Many said working in religious school environments made them feel shame, hide their identity at school and become more restrained in expressing their sexuality generally. One reflected "I worked in Catholic schools for many years and didn't realise how much it impacted on my own sexuality until I worked in a school that was more accepting."' <https://tinyurl.com/yypczoxh>

Dr Jones concluded, 'Due to the homophobia and transphobia in school environments, 27 percent stopped participating in aspects of work life or activities, 24 percent took extra sick days, 17 percent moved schools and several left education altogether...Australian data on the value of policy protection is influential in global policy convenings...leadership is needed.' <https://tinyurl.com/yypczoxh>

In an opinion piece published in Eureka Street on August 30, 2017, a gay teacher working in a Catholic school described his situation. He wrote, 'I am a gay man and, also, a religion teacher in a Catholic school. Recently, I've begun to wonder if my teaching days are numbered, particularly given Archbishop Denis Hart's comments...about Catholic organisations firing gay staff.

It's the great unspoken rule of Church organisations that gay people must fly under the radar. A "don't ask, don't tell" policy is implied, but all of us are acutely aware we work in one of the few jobs not protected by anti-discrimination laws. This black cloud hangs over our every public action because, for some reason, teachers' lives are something our communities feel entitled to know and talk about...

People ask: "Why don't you just move into the state system?" It's a fair question. But my answer is simple: I just don't want to. I love working in a place where my faith is ingrained in the everyday routine; a place where Catholicism's history and tradition are taught, explored and questioned.' <https://www.eurekastreet.com.au/article/inside-the--glass-closet--of-a-gay-catholic-teacher>

The teacher concluded, 'LGBTIQ+ people have a lot to contribute to our Catholic schools. To deny our students access to amazing teachers is surely a greater assault to "decency" than what these teachers are doing in the privacy of their own homes.'

<https://www.eurekastreet.com.au/article/inside-the--glass-closet--of-a-gay-catholic-teacher>

4. Excluding homosexual students is psychologically harmful for them

It has been claimed that excluding homosexual students from religious schools is psychologically harmful, stigmatising the young person and so fuelling feelings of self-doubt and inadequacy that can prompt emotional disorders and even lead to self-harm and suicide. The Australian mental health lobby group, Beyond Blue, has stated, 'Although most LGBTI Australians live healthy, happy lives, a disproportionate number experience worse health outcomes than their non-LGBTI peers in a range of areas, in particular mental health and suicidality.' <https://www.beyondblue.org.au/docs/default-source/default-document-library/bw0258-lgbti-mental-health-and-suicide-2013-2nd-edition.pdf?sfvrsn=2>

Beyond Blue further states, 'At least 36.2 percent of trans and 24.4 percent of gay, lesbian and bisexual Australians met the criteria for experiencing a major depressive episode in 2005, compared with 6.8 percent of the general population...The elevated risk of mental ill-health and suicidality among LGBTI people is not due to sexuality, sex or gender identity in and of themselves but rather due to discrimination and exclusion as key determinants of health. This is sometimes referred to as minority stress.'

Beyond Blue quotes the situation of a 20 year old gay woman who has stated, 'Knowing what was facing me religion-wise and with my family I was pretty suicidal between the ages of about 16 and 19 ... Not so much because of people's homophobia but because of feeling totally trapped between a religion/family that didn't accept homosexuality and being who I was.' <https://www.beyondblue.org.au/docs/default-source/default-document-library/bw0258-lgbti-mental-health-and-suicide-2013-2nd-edition.pdf?sfvrsn=2>

The Greens' federal LGBTIQ spokesperson, Janet Rice, has argued that the Religious Review Expert Panel recommendation allowing exclusion of homosexual students was 'unacceptable' as it would 'change our laws to allow religious schools to expel students on the basis of who they are or who they love at a time when they are already vulnerable'.

<https://www.theguardian.com/australia-news/2018/oct/10/liberal-dave-sharma-rejects-religious-schools-right-to-expel-gay-students>

Opponents of religious schools' right to exclude homosexual students have argued that even the debate surrounding the issue will prove traumatic for gay students. The Sydney Morning Herald reported one mother who stated, 'It was quite alarming when I heard about [the recommendation on the radio this morning, I sat upright and turned the volume up and wondered if my son was listening... It would increase his anxiety. One day they're talking about cake-bakers and the next day they're talking about kids, who are quite a vulnerable group... I think it's terrible for kids. Things like the marriage debate didn't really affect them at this age but this is all about them, it's pretty nasty stuff.'

<https://www.smh.com.au/national/a-step-backwards-parents-hit-back-at-right-for-schools-to-discriminate-20181010-p508uu.html>

One former school captain from a religious private school, who had kept her same-sex orientation a secret for fear of victimisation, is particularly concerned by the debate surrounding the removal of gay students from private schools. She has stated, 'I can't imagine what it's like for kids all around the country at the moment hearing this news. What it would feel like to not know if tomorrow they could be told, "Okay we need you to leave because we don't want you here".' <https://www.abc.net.au/triplej/programs/hack/i-was-the-secretly-gay-captain-of-a-private-christian-school/10360846>

Craig Campbell, a homosexual teacher who was sacked by a Western Australian religious school after he revealed his sexual orientation, has argued that the debate around exclusion is very damaging to gay students. Ms Campbell stated, 'All the research shows that students learn best in environments which keep them safe. I think the debate does the exact opposite, it removes their safe environment. These are kids who are killing themselves over things like this and a school wants its final relationship with a student to be one of rejection.'

<https://www.abc.net.au/news/2018-10-12/gay-teacher-attacks-push-for-religious-school-discrimination/10365816>

Some critics have argued that endorsing the right of religious schools to exclude homosexual students will have negative psychological effects on gay people into the future as it will entrench homophobia by denying heterosexual students the opportunity to associate with gay peers. The LGBTIQ network in the Uniting Church of Australia, the Uniting Network, has stated, 'If religious schools are permitted to exclude LGBTIQ children from their schools, around one third of Australians will continue not to have any natural connection with LGBTIQ people, potentially ingraining homophobia, biphobia and transphobia in Australian society indefinitely.' <https://www.smh.com.au/national/a-step-backwards-parents-hit-back-at-right-for-schools-to-discriminate-20181010-p508uu.html>

5. Sexual orientation is significantly biologically determined

Opponents of religious schools being able to exclude LGB students and teachers argue that such a policy is unjust as it discriminates against people on the basis of behaviour which is generally substantially biologically determined and so not a matter of choice. Critics argue that such exclusion is comparable to discrimination on the basis of race or gender, also attributes over which people can generally exert no control.

Defenders of the right of homosexual people not to be discriminated against argue that there is a significant body of scientific research and clinical opinion maintaining that sexual orientation is not a choice on the part of individuals who exhibit a particular sexual preference. On April 25, 2017, Scientific American published the results of a study conducted by scientists at the University of Lethbridge in Alberta, which offered cross-cultural evidence that common genetic factors underlie same-sex, sexual preference in men.

<https://www.scientificamerican.com/article/cross-cultural-evidence-for-the-genetics-of-homosexuality/> In August, 2017, Medical Daily reported on a 2016 study, published in the Archives of Sexual Behaviour, which found linkages in a specific region of the X chromosome labelled Xq28 and in another region of chromosome 8, known as 8q12, in over 400 gay siblings. These linkages suggest a physiological origin for the development of homosexuality and also suggested that it may be inheritable.

<https://www.medicaldaily.com/homosexuality-partly-rooted-genetics-rather-lifestyle-choice-says-science-420807> Medical Daily also referred to a 2015 study published in Science which used epigenetics to propose that everyone has a gay gene, but its operation depends on whether the attachment of a methyl group to specific regions of DNA is triggered and turned on. Upon analysing homosexual and heterosexual male twins, researchers found a specific methylation pattern was closely linked to sexual orientation. The model was able to predict the sexuality of men with 70 percent accuracy. This research also indicates that homosexuality has a physiological origin. <https://www.medicaldaily.com/homosexuality-partly-rooted-genetics-rather-lifestyle-choice-says-science-420807> A Dutch study of gender atypical behaviour in 7- and 10-year-old twins and later sexual orientation, found that genetic factors account for 70 percent of the variance in this behaviour for both boys and girls and that this phenomenon was substantially linked to homosexuality.

<https://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2016.4a10>

The American Psychiatric Association (APA) has stated, 'Multiple factors, including both biological and environmental contributors, play roles in sexual orientation and gender identity. In short, one's orientation is not a choice.'

<https://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2016.4a10>

The APA's chief executive officer and medical director, Saul Levin, and the APA's president, Renée Binder, have stated, 'Genetic and hormonal factors generally interact with environmental factors that have yet to be determined, though neither faulty parenting nor

exposure to gay individuals causes homosexuality. The preponderance of opinion within the scientific community is that there is a strong biological component to sexual orientation and that genetic, hormonal, and environmental factors interact to influence a person's orientation. There is no scientific evidence that either homosexuality or heterosexuality is a free-will choice... It is the position of APA that there is no rational basis, scientific or otherwise, upon which to punish or discriminate against LGBT people.'

<https://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2016.4a10>

This position has been put by columnist Suzy O'Brien in an opinion piece published in The Herald Sun, on October 22, 2018. Ms O'Brien stated, regarding the rights of LGBTI teachers to be employed within religious schools, 'Sacking staff on the basis of sexuality, when sexual identity is not a choice but a destiny, is the very antithesis of Christian values. Being gay is not the same as having extramarital sex or sex before marriage.

It's not a choice people have; it's a biological fact and it's legal in our society. So it does seem extraordinary that same-sex attracted people can legally marry and then just as legally be sacked because of their relationship.' <https://csa.edu.au/response-to-susie-obrien-herald-sun/>

Further implications

It will be interesting to see the extent to which the recommendations of the Ruddock review are put into effect during the 2019 Parliament.

There appeared to be consensus on both sides of Parliament, the Coalition on the one hand and Labor and the Greens on the other, that religious schools should not be able to exclude students on the basis of their sexual orientation. On October 12, 2018, the Liberal Prime Minister, Scott Morrison, announced that non-government schools would be prevented from expelling LGBT+ students on the basis of their sexuality under new laws to be introduced by his government in the coming year. <https://www.abc.net.au/news/2018-10-13/morrison-government-vows-to-end-discrimination-of-gay-students/10372956>

Many religious schools, primarily Catholic and Anglican but also a number of evangelical schools, have indicated that it is not their practice to exclude LGBT+ students.

<https://www.ternitynews.com.au/australia/missing-schools-that-expel-gay-students/>

Some conservative Christian spokespeople have, however, made a distinction between sexual orientation and sexual behaviour. According to this distinction, while a religious school should not be able to expel a student on the basis of his or her sexual inclination, it should be able to do so if that student engaged in same-sex conduct.

Lyle Shelton, former head of the Australian Christian Lobby, has stated, 'A school should be allowed to ensure that they can protect their ethos. If individuals are acting in a way that's not in accordance with the well-known ethos of that school, those schools should be able to do what they need to do to preserve that.' However, Mr Shelton does not support students being expelled simply for their sexual orientation - if they revealed their sexuality or were outed by their peers, for example. <https://www.smh.com.au/politics/federal/don-t-expel-students-for-being-gay-only-if-they-have-sex-says-lyle-shelton-20181011-p50900.html>

What may make this issue contentious is the attitude of a number of conservative politicians within the Coalition. Special Minister of State, Alex Hawke, for example, has argued that it was 'absolutely' acceptable for religious schools to reject LGBTI students in any circumstances. <https://www.smh.com.au/politics/federal/don-t-expel-students-for-being-gay-only-if-they-have-sex-says-lyle-shelton-20181011-p50900.html>

On December 6, 2018, it was reported that Prime Minister Scott Morrison had infuriated some of his conservative colleagues by unveiling a new private members bill to protect gay students from discrimination in religious schools, triggering complaints he had failed to consult the Coalition party room on the bill and on his proposal to hold a conscience vote to

decide the changes. <https://www.smh.com.au/politics/federal/parliament-paralysed-on-laws-to-prevent-religious-schools-expelling-lgbti-students-20181205-p50kcx.html>

Detailed negotiation between the Prime Minister and the Opposition on these protections for LGBTI students has also broken down over Opposition concerns that particular grounds for exemption would continue to be allowed religious schools which could be used to exclude students. The government, for example, wants to protect schools' capacity to initiate 'rules' that uphold their religious ethos, such as requiring all students to attend chapel. LGBTI advocates and Labor are concerned such rules could be used to discriminate against transgender students by preventing them wearing their preferred uniform, for example.

<https://www.smh.com.au/politics/federal/parliament-paralysed-on-laws-to-prevent-religious-schools-expelling-lgbti-students-20181205-p50kcx.html>

On December 13, 2018, the government released its response to the Ruddock review, which was to accept fifteen of its twenty recommendations in principle. It announced it would establish religion as a protected attribute in a new Religious Discrimination Act, rendering discrimination on this basis unlawful; establish a new statutory position of Freedom of Religion Commissioner in the Australian Human Rights Commission; develop a Human Rights Legislation Amendment Bill for introduction into Parliament as soon as practicable, implementing a range of amendments recommended by the Ruddock Review; support the Australian Human Rights Commission to increase community awareness of the importance of freedom of religion. <https://www.pm.gov.au/media/government-response-religious-freedom-review>

These commitments appear designed to convince the government's religious constituents and its own more conservative members that the government is a defender of religious freedom. In all these pledges, the devil will be in the detail. The negotiations surrounding religious schools' right to exclude LGBTI staff and students demonstrates this clearly. There is no agreement as to how, or indeed if, religious schools' right to exclude on this basis will be implemented.

Should the Coalition government lose the election to be held in the first trimester of 2019, it would become even less likely that all the commitments made by the Morrison government regarding religious freedom will be put into effect.