



ATTORNEY GENERAL; MINISTER FOR COMMERCE

Our Ref: 44-20896



Hon. Simon O'Brien MLC
Chairman
Standing Committee on Environment and Public Affairs
Parliament House
PERTH WA 6000

Dear Chairman

RE: PETITION NO 107 – RELIGIOUS SCHOOLS DISCRIMINATION

I refer to the Committee's letter dated 18 February 2016 and thank you for inviting my comments on the above petition, of which I have been aware since November 2015.

The petition seeks the repeal or amendment of section 73 of the *Equal Opportunity Act 1984* (WA) ("the Act"). That section provides an exception under the Act available to religious educational institutions.

Section 73 of the Act provides that an educational institution in Western Australia that is conducted in accordance with the doctrines and teachings of a particular religion may discriminate in good faith against a person in the areas of employment and in the provision of education and training, on one or more of the grounds of discrimination under the Act, in order to avoid injury to the religious susceptibilities of adherents of that religion.

Parliament's intention was to strike a balance between the rights of a person not to be discriminated against in the areas of employment and education, and the expectation of parents that they would be able to continue to raise and educate their children in accordance with their religious beliefs without interference.

Anti-discrimination legislation across all States and Territories includes exceptions for religious bodies. These have been subject to community debate and divergent opinions.

A consultation report '*Adding Sexual Orientation and Sex and/or Gender Discrimination*' prepared for the Australian Human Rights Commission in 2011 noted a lack of community consensus on the issue of religious exemptions. Subsequent amendments in 2013 to the *Sex Discrimination Act 1984* (Cth) qualifies the exemptions for religious organisations to the extent that it does not apply to conduct connected with the provision of Commonwealth-funded aged care services.

More recently, the 2015 audit paper completed by the South Australian Law Reform Institute, *'Discrimination on the grounds of sexual orientation, gender, gender identity and intersex status in South Australian legislation'* noted that the submissions received contained divergent opinions on the necessity and appropriateness of existing broad exceptions in South Australian legislation.

The 2007 Review of the *Equal Opportunity Act 1984* (WA) similarly received a number of divergent submissions specifically around the employment exemptions for religious education bodies. The review report recommended section 73 be amended, "so that the exception to the duty not to discriminate on religious grounds in employment in religious educational institutions is confined to employees and contract workers with educational or teaching or pastoral responsibilities."

The Government of Western Australia remains committed to the principles of equal opportunity and anti-discrimination in the Act, and it is mindful of keeping the correct balance between individuals' religious beliefs and freedom from discrimination. In the Government's view, section 73 maintains that delicate balance. Consequently the Government does not see a need to review the operation of section 73 and has no plans to amend it.

Once again, I thank you for giving me the opportunity to comment on this important matter.

Yours sincerely

A handwritten signature in black ink, appearing to read "M. Mischin". The signature is fluid and cursive, with a large initial "M" and a stylized "Mischin".

Hon. Michael Mischin MLC
ATTORNEY GENERAL; MINISTER FOR COMMERCE

29 MAR 2016