

The President
Australian Human Rights Commission
GPO Box 5218
SYDNEY NSW 2001

27 March 2018

**Request for Human Rights and Discrimination Inquiry
into the National School Chaplaincy Program**

Dear President,

We write to request that the Australian Human Rights Commission inquire into the National School Chaplaincy Program because it interferes with the right to religious freedom and involves religious discrimination in hiring decisions.

The Commission has power under section 11(1)(f) of the *Australian Human Rights Act 1986* to inquire into any act or practice that may be inconsistent with or contrary to any human right. The Commission also has power under section 31 of the Act to inquire into any act or practice (including any systemic practice) that may constitute discrimination.

The National School Chaplaincy Program

The Commonwealth provides funds to the States and Territories to operate the NSCP. The NSCP allows schools to request funding to engage a 'school chaplain' to work in the school. The role of the school chaplain is to provide pastoral care services. The work of school chaplains under the NSCP Guidelines is non-religious.

The NSCP Guidelines set out the criteria for hiring a person as a school chaplain, including that the person "is recognised through formal ordination, commissioning, recognised religious qualifications or endorsement by a recognised or accepted religious institution."

This selection criterion amounts to requiring a person be religious. It excludes non-religious people from working as school chaplains. In practice, it leads to school chaplain job advertisements requiring that applicants be Christian. We have attached the position description for a job advertisement for a NSCP school chaplain that states in black and white that applicants must be Christian.

Religious discrimination

The selection criteria for school chaplain positions involve discriminating against people on the basis of religious belief, affiliation or activity in connection with employment. We believe this to be unlawful under federal, State and Territory laws. We also believe this a breach of the right to freedom of religion and belief under international law.

The Victorian Government states publicly that the NSCP involves religious discrimination. In a Frequently Asked Questions document,¹ the Victorian Department of Education and Training writes:

Why can't Victorian government schools employ a chaplain directly?

Under the NSCP agreement, the Commonwealth Government has defined a chaplain as an individual who:

- is recognised by the school community and the appropriate governing authority for the school as having the skills and experience to deliver school chaplaincy to the school community; and
- is recognised through formal ordination, commissioning, recognised religious qualifications or endorsement by a recognised or accepted religious institution; and
- meets the NSCP's minimum qualification requirements.

The *Equal Opportunity Act 2010* (Vic) prohibits a non-religious body, such as a Victorian government school, from discriminating against a job applicant on the basis of the person's religious belief/activity or lack of religious belief/activity. In order to give effect to the requirements of the NSCP agreement and not breach anti-discrimination laws, schools are required to engage third party chaplaincy service providers to provide chaplaincy services.

Whilst the Victorian Government is correct to acknowledge that the NSCP Guidelines require religious discrimination in the hiring of school chaplains, we believe it is wrong to suggest that the outsourcing method of hiring chaplains avoids the Victorian Department of Education and Training breaching the *Equal Opportunity Act 2010* (Vic). This is because the EO Act defines "employer" to include not only the direct employer but also "a person who engages another person under a contract for services". There are similar provisions in other applicable anti-discrimination laws.

In other words, both the chaplaincy provider organisation who directly employs a school chaplain and the educational authority which has contracted with the chaplaincy provider organisation are engaging in religious discrimination. This discrimination and human rights breach is done at the behest of the Commonwealth as a direct result of the NSCP Guidelines.

The religious discrimination and breach of the right to freedom of religious belief is not justified

Being of a particular faith is not an inherent or genuine requirement of the job of school chaplain. The work of chaplains is entirely non-religious. As the High Court noted in *Williams v Commonwealth* (2012) 248 CLR 156 the work of a school chaplain under the NSCP "could have been done by persons who met a religious test. It could equally have been done by persons who did not."

Being of a particular faith is not necessary to avoid injury to the religious susceptibilities of the adherent of any faith. The work of chaplains takes place in public schools and not within

¹ http://www.education.vic.gov.au/Documents/school/principals/health/NSCP_FAQs_Jan2018.docx

the organisation of the chaplaincy provider organisation or within any other religious context. Public schools are secular and are filled with students from a diversity of religious backgrounds and students with no religious affiliation. It cannot offend anyone's religious susceptibilities for a person to be hired without regard to the person's religious beliefs to perform non-religious work in a non-religious context.

Recommendations

The provision of pastoral care to school students is a worthy policy goal. It is wrong that religious discrimination is involved in hiring the people who are to provide pastoral care to students. It is wrong that the Commonwealth Government has developed a policy that involves religious discrimination and breaches of the right to freedom of religion and belief.

We request that the Commission inquire into the NSCP and recommend the NSCP Guidelines be amended to remove the religiously discriminatory selection criteria.

Yours sincerely



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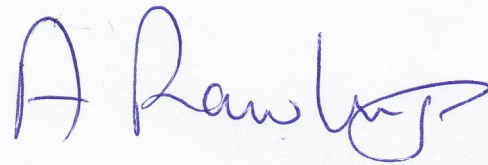
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