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Safe for Whom? Religious School Employers, Employees and Discrimination Exemptions: is it possible to protect both?

When conscience by the law is overturned
some say that justice by that law is spurned;
but when such laws some conscience doth prefer,
to overturn such laws no justice can defer.

Abstract

The background to this paper is that it is common for exemptions (including in relation to employment) in anti-discrimination legislation for religious bodies to be based on concepts such as "*conforms to the doctrines of that religion*" or "*necessary to avoid injury to the religious susceptibilities of the adherence of that religion*" or "*discriminates in good faith in order to avoid injury to the susceptibilities of adherents of that religion or creed*".

For nearly 15 years the relevant Qld provision, section 25 of the *Anti-Discrimination Act 1991* (Qld), has been based on concepts much more closely linked to conduct in the workplace. The paper will analyse that provision and its underlying rationale and submit that the respective needs of employers and employees are more appropriately met by such a test. The paper will also consider whether, if there were no religious exemption provision, the gap would (on that rationale) be filled by the employee's duty of loyalty or fidelity.

Structure

Scope of Paper

This paper is limited to religious exemptions in relation to conduct by employers, using the Queensland terminology, "in work and work-related areas". It is also, largely, limited to Australian Law.

Two Contentious Issues

First, this paper does not challenge **the legitimacy of anti-discrimination laws**. Given that such laws (greatly) increase the power of the State over (especially) individuals, small groups and small organisations, there are a range of possible objections from a libertarian perspective, and obvious tension between the right to associate (or not associate) and the right to equal opportunity in life. In this paper, the legitimacy of anti-discrimination laws is not challenged.

Second, the paper does challenge **the legitimacy in principle** (as distinct from the width) **of exemptions from such laws based on religious faith**. As a general principle, laws of general application should apply to all, unless there is a compelling reason to exempt some from compliance. My position is that religious, or faith-based, conscience, should not be privileged over other conscience, but I concede that argument is largely incapable of resolution. To the religious, it is "obvious" why faith-based conscience should be privileged, and to the atheist it is equally "obvious" why the least appropriate ground for exemption from laws of general application is faith-based conscience. To the religious, faith is a gift from God; to the atheist it is the capacity to convince oneself that what one knows to be false is in fact true (a phenomenon certainly not limited to religious faith). What is freedom of religion to the religious is, to the atheist, a claim for privilege based on the least meritorious basis of all.

Let us assume two employers who have a conscientious objection to employing a person raising a child as part of a same-sex couple.

One says "This is contrary to the doctrines of my faith".

The other says "I have a strong conscientious objection to employing such a person as my experience of life, my values and my reading of relevant scientific literature lead me to the view that it is harmful to children".

The issue is why the first should be entitled to a conscientious objection, but not the second. Of course, if the law granted exemption to both such consciences the reach of anti-discrimination would be greatly confined.

This feature of anti-discrimination law was noted by the Senate Committee on the Exposure Draft of the *Marriage Amendment (Same-Sex Marriage) Bill* in its recent report, at 3.120—

> "The committee is guided by the limited usage of conscientious belief in Australian law today and notes that to allow conscientious belief to be used to allow discrimination against a class of persons would be unprecedented under Australian law. The Committee would be disinclined to disturb decades of anti-discrimination law and practice in Australia."

I have just become aware of Gray (2016), which deals with this issue in some detail at 96-103 and 108. In doing so, he outlines the arguments of Professor Julian Rivers (contrary to his own position) and at 102-3 sets out part of a significant passage by Lord Justice Laws. Although sitting as the England and Wales Court of Appeal, he sat alone (presumably because he was determining an application for permission to appeal). Paragraphs 21, 22, and 23 read in full—

"21. In a free constitution such as ours there is an important distinction to be drawn between the law's protection of the right to hold and express a belief and the law's protection of that belief's substance or content. The common law and ECHR Article 9 offer vigorous protection of the Christian's right and every other person's right to hold and express his or her beliefs, and so they should. By contrast, they do not, and should not, offer any protection whatever of the substance or content of those beliefs on the ground only that they are based on religious precepts. These are twin conditions of a free society. The first of these conditions is largely uncontentious. I should say a little more, however, about the second. The general law may of course protect a particular social or moral position which is espoused by Christianity, not because of its religious imprimatur, but on the footing that in reason its merits commend themselves. So it is with core provisions of the criminal law, the prohibition of violence and dishonesty. The Judeo-Christian tradition, stretching over many centuries, has no doubt exerted a profound influence upon the judgment of law-makers as to the objective merits of this or that social policy, and the liturgy and practice of the established church are to some extent prescribed by law. But the conferment of any legal protection or preference upon a particular substantive moral position on the ground only that it is espoused by the adherents of a particular faith, however long its tradition, however rich its culture, is deeply unprincipled; it imposes compulsory law not to advance the general good on objective grounds, but to give effect to the force of subjective opinion. This must be so, since, in the eye of everyone save the believer, religious faith is necessarily subjective, being incommunicable by any kind of proof or evidence. It may, of course, be true, but that ascertainment of such a truth lies beyond the means by which law are made in a reasonable society. Therefore it lies only in the heart of the believer who is alone bound by it; no one else is or can be so bound, unless by his own free choice he accepts its claims.

22. The promulgation of law for the protection of a position held purely on religious grounds cannot therefore be justified; it is irrational, as preferring the subjective over the objective, but it is also divisive, capricious and arbitrary. We do not live in a society where all the people share uniform religious beliefs. The precepts of any one religion, any belief system, cannot, by force of their religious origins, sound any louder in the general law than the precepts of any other. If they did, those out in the cold would be less than citizens and our constitution would be on the way to a theocracy, which is of necessity autocratic. The law of a theocracy is dictated without option to the people, not made by their judges and governments. The individual conscience is free to accept such dictated law, but the State, if its people are to be free, has the burdensome duty of thinking for itself.

23. So it is that the law must firmly safeguard the right to hold and express religious beliefs. Equally firmly, it must eschew any protection of such a belief's content in the name only of its religious

> credentials. Both principles are necessary conditions of a free and rational regime."

This was in response to a witness statement by Lord Carey, a former Archbishop of Canterbury.

I have not had time to research whether this view has been the subject of any judicial comment, though it is referred to in his Wikipedia entry.

Part One - Anti-Discrimination Law

The "traditional" conceptualisation of the exemption

The *Sex Discrimination Act* (Cth), as it currently stands, contains a number of provisions expressed in the "traditional" wide terms. The most relevant for present purposes is Section 38(1) which reads—

> "Nothing in paragraph 14(1)(a) or (b) or 14(2)(c) renders if unlawful for a person to discriminate against another person on the ground of the other person's sex, sexual orientation, gender identity, marital or relationship status or pregnancy in connection with employment as a member of the staff of an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates **in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed**."

A range of related exemptions also include that terminology.

It is beyond the scope of this paper to review case law on such terminology, but it is obviously potentially wide and uncertain. See, generally, Evans (2012), Babie (2015) and Russo (2014) on religion and law in Australia, and articles cited in the List of References.

The Queensland Settlement of 2002

The current legislation is the original Act, as amended on various occasions, the *Anti-Discrimination Act 1991*. The amendments critical for present purposes were contained in the *Discrimination Law Amendment Act 2002*. This was the outcome of major public debate and consultation by government and can legitimately be called "the Queensland settlement". (It is not parochial to observe that it seems to have received only fleeting references in texts and journal articles).

The Position Prior to 2002

In relation to the work or work-related areas, section 25, headed "Genuine occupational requirements", reads—

> "A person may impose genuine occupational requirements for a position"

The examples in the Act related to acting, political work and body searches.

Section 29, also in relation to the work or work-related area, read, so far as relevant:

> "(**1**) It is not unlawful to discriminate with respect to a matter that is otherwise prohibited under Section A if the discrimination—

(a) is in connection with work in, or a partnership operating, an educational or health-related institution under the direction or control of a body established for religious purposes; and

(b) is **in accordance with the doctrine of the religion concerned**; and

(c) is **necessary to avoid offending the religious sensitivities of people of the religion**.

(**2**) Subsection (1) does not apply to discrimination on the basis of age, race or impairment."

A later part of the Act, "General Exemptions for Discrimination" included Section 109, reading:

"The Act does not apply in relation to—

(a) the ordination or appointment of priests, ministers of religion or members of a religious order; or

(b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; or

(c) the selection or appointment of people to perform function in relation to or otherwise participate in, any religious observance or practice; or

(d) unless section 29 (Educational or health-related institution with religious purposes) or section 90 (Accommodation with religious purposes) applies—an act by a body established for religious purposes if the act is—

(i) in accordance with the doctrine of the religion concerned; and

(ii) necessary to avoid offending the religious sensitivities of people of the religion."

The 2002 Changes

The Act referred to above—

- repealed Section 29 entirely;
- amended Section 25 by inserting subsections (2) → (8) as set out below; and
- amended Section 109 by inserting subsection (2)—

"An exemption under subsection (1)(d) does not apply in the work or work-related area or in the education area"

The Legislative Position since the 2002 Amendments

Section 25 now reads (still headed "Genuine occupational requirements")—

"(1) A person may impose genuine occupational requirements for a position.

Examples of genuine requirements for a position—

* Example 1—
* selecting an actor for a dramatic performance on the basis of age, race or sex for reasons of authenticity

* Example 2—
* using membership of a particular political party as a criterion for a position as an adviser to a political party or a worker in the office of a member of Parliament

* Example 3—
* considering only women applicants for a position involving body searches of women

* Example 4—
* employing persons of a particular religion to teach in a school established for students of the particular religion

(2) Subsection (3) applies in relation to—

(a) work for an educational institution (an employer) under the direction or control of a body established for religious purposes; or

(b) any other work for a body established for religious purposes (also an employer) if the work genuinely and necessarily involves adhering to and communicating the body's religious beliefs.

(3) 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.

(4) Subsection (3) does not authorise the seeking of information contrary to section 124.

(5) For subsection (3), whether the discrimination is not unreasonable depends on all the circumstances of the case, including, for example, the following—

(a) whether the action taken or proposed to be taken by the employer is harsh or unjust or disproportionate to the person's actions;

(b) the consequences for both the person and the employer should the discrimination happen or not happen.

(6) Subsection (3) does not apply to discrimination on the basis of age, race or impairment.

(7) To remove any doubt, it is declared that subsection (3) does not affect a provision of an agreement with respect to work to which subsection (3) applies, under which the employer agrees not to discriminate in a particular way.

(8) In this section—

religion includes religious affiliation, beliefs and activities.

selection process means a process the purpose of which is to consider whether to offer a person work."

By placing the exemption in the genuine occupational requirements provision, rather than in a stand-alone religious exemptions provision, and by defining it as above (see especially the bolded provisions), the conceptual basis, it is submitted, relates to loyalty to the employer, especially in relation to the religious ethos, the implementation of which is fundamental to the very existence of the religious educational institution.

So relevant discrimination will be lawful for religious institutions where all the elements of Section 25 are met—

"(a) sex;

(b) relationship status:

(c) pregnancy;

(d) parental status;

(e) breastfeeding;

~~(f) age;~~ (see sub-section 6 above)

~~(g) race;~~ (see sub-section 6 above)

~~(h) impairment:~~ (see sub-section 6 above)

(i) religious belief or religious activity;

(j) political belief or activity;

(k) trade union activity;

(l) lawful sexual activity;

(m) gender identity;

(n) sexuality;

(o) family responsibilities;

(p) association with, or relation to, a person identified on the basis of any of the above attributes"

It is suggested the exemption will only rarely apply to "way of life" issues, such as non-marital cohabitation or pregnancy, sexual orientation and so on.

It will however apply to such behaviour as—

- mocking the religion to students in class;

- (in some circumstances) proselytising to students views contrary to the employer's religious beliefs;
- (in some circumstances) behaving at a school function in an inappropriately affectionate way to a domestic partner in a relationship which is contrary to the employer's religious beliefs.

Comments on section 25

The first point to make about the section 25(1) examples is that such circumstances do not necessarily (though they may) constitute a genuine occupational requirement. For example, it would be difficult to successfully submit that only a white-skinned person of European heritage could play Juliet or Ophelia, or dance in Swan Lake. Similarly, a circumstance falling within example 4 would need to be analysed carefully.

The Queensland Court of Appeal considered the test in *Chivers v State of Queensland (Queensland Health)* in 2014. Gotterson JA (with whose reasons both other members of the Court agreed) quoted (at page 35) Brennan C.J. in *Qantas Airways Limited v Christie*—

> "The question whether a requirement is inherent in a position must be answered by reference not only to the terms of the employment contract but also by reference to the function which the employee performs as part of the employer's undertaking…"

and (at paragraph 42) *McHugh J from X v Commonwealth*—

> "Whether something is an 'inherent requirement' of a particular employment for the purposes of the Act depends on whether it was an 'essential element' of the particular employment. However, the inherent requirements of employment embrace much more than the physical ability to carry out the physical tasks encompassed by the particular employment."
>
> "…employment is not a mere physical activity in which the employee participates as an automaton. It takes place in a social, legal and economic context. Unstated but legitimate employment requirements may stem from this context. It is therefore always permissible to have regard to this context when determining the inherent requirements of a particular employment."
>
> "…the inherent requirements of a particular employment go beyond the physical capacity to perform the employment."

and referred (at 58) to—

> "…that aspect of Brennan CJ's formulation which speaks of the function which the employee performs **as part of the employer's undertaking**. Here it was of particular relevance that the appellant's nursing functions were to be performed in an undertaking in which the roster system for 24/78 wards were central. To have limited the frame of reference for identification of the genuine occupational requirements of a registered nurse employed in a 24/7 ward, to a review of the physical tasks and functions of the nurse without regard for the working environment in which they were performed, that is to say, provision of nursing care in 25/7 wards, would have led to an error of this kind described by Gummow and Hayne JJ."

Text discussions include Evans (2012) at 163-164, noting a Queensland decision where it was held there was no genuine occupational requirement that (Ms Walsh) the President of St Vincent de Paul Society Queensland be Catholic, and Babie (2015) especially at 115-116.

In Walsh (2007) Member Wensley QC observed, after referring to a "two-stage test"—

> "First, what are the genuine occupational requirements and secondly, is the complainant capable of performing the genuine occupational requirements: paragraph 95. From the cases considered in that case the following broad statements of principal can be discerned—
>
> a. a genuine occupational requirement must be genuine, necessary for and relate to the job. This requires both an objective assessment relating to the job as well as a subjective assessment relating to the employee and his/her "attribute";
>
> b. the section is objective in its terms in the sense that it is not sufficient if an employer or a potential employer regards a specific requirement as a genuine occupational requirement if, in objective terms, it is not;
>
> c. the "genuineness" of the occupational requirement includes both subjective and objective factors;
>
> d. the focus is upon the essential activities in carrying out the particular employment, and upon the inherent requirements of a position which are essential and indispensable to carry out the particular employment;
>
> e. a practical method of considering the question, whether a particular requirement is a genuine occupational requirement, is to ask whether the position would be essentially the same if that requirement were dispensed with;
>
> f. the ultimate determination of that question is wholly a factual question, which must be decided in the affirmative before the second issue, of whether the claimant is capable of performing the genuine occupational requirement, is considered."

Hozack (1997) involved a part-time receptionist. Although the determination was in relation to "operational requirements" under Federal Unfair Dismissal Law, the comments of Madgwick J of the Federal Court are helpful—

> "In these circumstances, it seems to me that, paying due (which is to say, very great) respect to the religious susceptibilities of Church members, it has not been proved that it was an "operational requirement" within the meaning of s 170DE(1) that a person in Ms Hozack's position must be propelled from her employment with the Church. The matter is really concluded by the Church's not having proved it to be a requirement that all the Church's employees exhibit, on a continuing basis, religious standards and values such that, if they were Church members, they would qualify to be Temple-worthy. Further, in my view, such, if it were a requirement, could not truly be said to be an operational requirement of the Church, considered <u>as an employer of persons whose individual work is not intrinsically religious in nature.</u>"
>
> (my underlining)

Cases such as these usually involve a detailed analysis of a range of factual matters, as is clear from both these decisions.

These cases give some indication of the judicial approach to this issue. (For an extended analysis of the broad and narrow views, see Walsh (2015). Whilst the writer takes a different view, this is a useful contribution).

On subsections (2)-(8) of section 25, there does not appear to be a decision. One may note, however, that (consistent with its positioning in section 25) the critical words include—

- the employer must discriminate "in a way that is not unreasonable"—
- "openly" acts;
- "in a way that the person knows or ought reasonably to know…";
- "during a selection process";
- "in the course of the person's work";
- "in doing some thing connected with the person's work".

The area of potential real difficulty is the phrase "something connected with the person's work". Clearly, differences may arise here, but the term "connected with" is not uncommon in the law, and it is likely that the conceptual framework in which it appears will limit the risk that the uncertainty inherent in the phrase may widen the exemption beyond the intention of Parliament.

Part Two – The Law of Employment

Would the law of employment protect the interests of such employers to the same extent, if no such exemption appeared in the Act?

The question arises from both the terms, and the apparent rationale, of "the Queensland settlement", i.e., that it is about loyalty to the (religious) employer, and respect for the (religious) ethos of the institution, whilst preserving the protection of anti-discrimination law in relation to other matters such as "life away from work".

To be quite precise, the question is to be considered on the basis that section 25(1) in relation to genuine occupational requirements would remain (including the fourth example, which is religion specific), but subsections (2)-(8), the religious exemption provisions, would be deleted.

A convenient starting point is some of the articles in (1999) Volume 20(2) of the Comparative Labor Law and Policy Journal. These flowed from a symposium examining the law in ten countries, relating to employees' duty of loyalty.

In the Overview article, Aaron (1999) observes at 144—

> "At the same time, the concept of loyalty itself has proved to be a **dynamic and flexible** one. Whether established by common law, statute, or a mixture of both, either expressly or by implication, the rules governing employee loyalty have evolved in varying degrees …"
>
> *(emphasis added)*

In relation to English law, Hepple (1999) introduces his discussion of the common law by stating at 205—

> "The duty of "faithful service" or "fidelity," as it is commonly called, is regarded as a fundamental obligation implied by law into every individual contract of employment. The scope of this obligation during the employment may be clarified, expanded, and (probably) limited by express agreement between employer and employee"

and later notes at 206—

> "The duty of fidelity has come to be regarded as so fundamental that it is now implied as a matter of judicial policy, as a legal incident in any contract of employment."

On the New Zealand position, Geare (1999) commences his description of the duty at 286—

> "It has been well established by the courts that employees have a duty of loyalty (usually expressed as "fidelity") to their employers. This is considered to be an implied term on every contract of employment. In general terms, this has been taken to mean variously that an employee should act:
>
> a) at all times in the best interests of his employer;
>
> b) so as not to allow a conflict of duty or interest to arise.
>
> However, in recent cases, most emphasis has been put on a third generalisation: That the employee should act—
>
> c) to maintain the relationship of trust and confidence".

The existence, scope and conceptual basis of the "trust and confidence" obligation in employment contract law is beyond the purpose of this paper.

For Australia, McCallum and Stewart (1999) introduce the "foundation for Australian precedent upon the breadth of this implied term" with these words at 158—

> "Where express terms are silent upon the matter of employee loyalty, it is necessary to fall back upon the relevant implied terms. The principal term implied by law that governs employee loyalty is the duty of employees to act with good faith and fidelity. These are words of wide import and potentially govern most employee actions in relation to the making of comments, use or disclosure of confidential information, and competitive conduct."

That "foundation" is *Blyth Chemicals v Bushnell (1933)* 49 CCB66, a decision of four judges of the Court (and in which Counsel for the employee was one "Robert Menzies").

The principle was expressed by Starke and Evatt JJ, as—

> "As manager for the appellant, the respondent was in a confidential, position. And it is clear that he might be dismissed without notice or compensation if he acted in a manner incompatible with the due and faithful performance of his duty, or inconsistent with the confidential relation between himself and the appellant …The degree of misconduct that will justify dismissal is usually a question of fact"

and by Dixon and McTiernan JJ, as—

> "Conduct which in respect of important matters is incompatible with the fulfilment of an employee's duty, or involves an opposition, or conflict between his interest and his duty to his employer, or impedes the faithful performance of his obligations, or is destructive of the necessary confidence between employer and employee, is a ground of dismissal … But the conduct of the employee must itself involve the incompatibility, conflict, or impediment, or be destructive of confidence. An actual repugnance between his acts and his relationship must be found."

The relevance of these statements to the principles expressed in Section 25 is very clear.

It is submitted these passages (and the text discussions referred to below) establish that the implied term of loyalty—

- is clearly established in law;
- is fundamental to the employment relationship;
- is dynamic and flexible;
- is capable of application in circumstances where it has been little applied in the past;
- (although many of the cases relate to money and property), is clearly applicable to non-pecuniary issues, such as disparagement or workplace conduct disrespectful of the employee's ethos or values.

The textbooks can be of some further assistance. (For those interested in theoretical underpinnings, Freedland (2003) at 171 and Irving (2012) at 370 are useful).

Fridman (1963) at 454 places his initial emphasis on the word "faithful". This seems particularly relevant in the present context, where the employer's ethos and values will be fundamental, and where non-pecuniary harm is likely to be a concern.

Butterworths Employment Law Guide (NZ) (1995) is very useful in its discussion of principle, having been written at a time when New Zealand employment law was largely "deregulated". The discussion of the duty of fidelity commences with the term "good faith" as underlying a variety of more particular duties.

This links with Stewart (2015) at 271—

> "In requiring the employee to be 'loyal' to their employer, the *duty of fidelity* (as it is sometimes called) overlaps with the duties of obedience, co-operation and proper conduct considered in the previous chapter. Many breaches of those obligations could also be considered acts of disloyalty.

The text-writers commonly (and importantly in this context) emphasise the importance of "the scope of the job". See Stewart (2015) at 258 and Irving (2012) at 383; the latter using the expression "determined by construing the contract as a whole in light of the surrounding circumstances known to the parties and the purpose and object of the transaction".

There is recognition in both cases and secondary sources that seniority may be relevant. See Neil and Chin (2012) at 129 and Irving (2012) at 375. As the latter makes clear there, however, that is not to say the duty is not imposed on employees who are not "senior".

It is submitted that the employer's communications to the employee (especially before the contract is formed) and duties, taken in context, will be critical.

Irving (2012) at 373 and following sets out "The five rules of fidelity and their qualifications". That which refers to misuse of position is known as the "no profit rule", but the introductory passage at 390 shows it is of much broader application—

> "The no profit rule is that an employee must not misuse his or her position to advantage the employee or a third party or cause detriment to the employer. The rationale of the no profit rule is to prevent the employee misusing his or her position for personal gain".

Clearly the gain need not be pecuniary.

Disparagement of the employer and/or its values is a foreseeable issue in the circumstances under consideration. See especially McCarry (1981) and Wragg (2015). The former at 343

refers to the importance of motive, a potentially significant issue here. Cases in this category often also involve the closely related issues of secrecy, confidentiality and misuse of employer information more generally. Stewart (2015) at 262 gives two contrasting recent examples – "a blog to accuse her employer of bias and corruption", and a mere "grumble" on Facebook.

A Possible Resolution?

I concede this only works if one accepts the rationale underlying the Queensland settlement, and that some may not.

If there was a genuine occupational requirement provision such as section 25(1) (including the examples) of the *Anti-Discrimination Act 1991* (Qld) then matters such as religion and the others specified could lawfully be considered in that context. That would not exclude the religious context as a possible factor, but would not privilege it either.

If there was no religious exemption at all, and if one accepts the rationale underlying subsections (2)-(8) of section 25, then (arguably) the general law of employment would achieve a substantially similar outcome. The religious nature of the school would be a factor relevant to consideration of possible breaches of the employee's obligations to the employer, but that would not amount to privileging of religion. Organisations based on other principles, or having a quite different "ethos", would similarly be entitled to have their particular ethos taken into account; for example, environmental or disability advocacy groups, or organisations promoting one sport over another.

The submission is that such a resolution would treat all consciences equally, and yet protect the legitimate interests of those conducting religious schools, without privileging religion.

And the bard could rest peacefully!

Postscript

This is to some extent an exploratory, and hopefully undogmatic, paper. I am happy to discuss in the formal session, and informally, both the issues of principle, and whether (even on accepting my principles) particular examples suggest the proposed resolution may not be effective to implement my principles.

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