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No blanket exception for private schools to expel kids for their sexuality exists – and nor should there be

No blanket exception to anti-discrimination laws currently exists to allow private schools to expel students on the basis of their sexual orientation or gender identity – and no such exemption should ever be introduced, according to the Law Council of Australia.

Significant political and public debate has occurred this week about the right of private schools to expel students on the basis of their sexuality, following leaks of the recommendations from the Ruddock Religious Freedom Review.

The Law Council of Australia's President-elect, Arthur Moses SC, said while specific exemptions to anti-discrimination laws existed in certain jurisdictions, no blanket exception applied.

"The starting point under the *Sex Discrimination Act 1984* (Cth) (**SDA**) is that it is unlawful for a school to expel a student because of a student's sexuality or sexual orientation," Mr Moses said.

"All schools have to comply with both the SDA and relevant state or territory laws. From a practical perspective, schools use the SDA as a benchmark.

"Section 38(3) is an exemption for religious schools, but the exemption only applies under specific circumstances, including that the school expelling a student is doing so for the purpose of 'avoiding injury to the religious susceptibilities of adherents of the religion.

"The school must also be conducted in accordance with the specific doctrines, tenets, belief or teachings of a religion/creed and the school can only expel the student because of his/her sexual orientation in good faith.

"A private school exemption was introduced in New South Wales in 1981, but this is complex and controversial.

"What is true is that there is no blanket exemption to the Sex Discrimination Act for Australian private schools," Mr Moses said.

Mr Moses SC said the Law Council welcomed the PM Scott Morrison's comments last night, in which Mr Morrison indicated 'we do not think that children should be discriminated against'.

"A society should be judged by how it treats its children. We should treat our children compassionately, fairly and with care. We should never have laws that would traumatise or stigmatise our children – no humane society does that. Australians are fair and compassionate, they would not agree with such proposals.

"The Prime Minister is right to dismiss this as a law worth considering. All children in Australia should be treated equally and with care," Mr Moses said.

You can read the Law Council's submission to the [Religious Freedom Review here](#).

[Fairfax has today released all twenty recommendations](#) from the Review which the Law Council will carefully consider.

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