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RELIGION, DEMOCRACY, AND EQUALITY

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Anti-Discrimination Legislation and the Appropriate Regulation of the Employment Decisions of Religious Schools

The appropriate regulation of the employment decisions of religious schools is an important issue considering the substantial impact that different approaches to regulating the area can have on important rights such as equality, religious liberty, freedom of association, and the rights of children, parents and minority groups. There is also extensive and ongoing government and community focus on the issue involving substantial government expense and contributing to significant community division. An approach to regulating the employment decisions of religious schools that appropriately respects the various rights involved in a manner acceptable to a wide range of individuals would make a valuable contribution to the common good.

The presentation focuses on the current approach adopted in the Australian State of New South Wales, which provides a general exception to 'private educational institutions' from the operation of the *Anti-Discrimination Act 1977* (NSW) in relation to employment decisions on all grounds except race, age and a person's responsibilities as a carer. The presentation discusses the merits of this approach and evaluates the suitability of alternative approaches that could be adopted especially an inherent requirement test and an opt-in model. An inherent requirement test, which has been implemented in other jurisdictions in Australia, allows religious schools to make an adverse employment decision against a person if conformity with the school's religion is an inherent requirement of the employment position and the person is unable to satisfy that inherent requirement due to a characteristic of the person such as their gender, race, sexuality or marital status. An opt-in model is a novel approach that the presentation will discuss, which involves religious schools registering with the government for the protection that they require under anti-discrimination legislation with the executive provided with an ongoing power to remove or modify the protections granted through registration.