

Freedom in Education in Australia

Presentation at ECCEN 2023

'Understanding the times and knowing what to do - Standing as Christians in a diverse and pluriform society'

Mark Spencer FCA, FGIA, GAICD, B.Bus, M. Lab. Rel. & Law, Grad. Dip. Leg. Stud.
Director of Public Policy, [Christian Schools Australia](https://www.christianschools.org.au)

The Australian Education Context

Australia has a very unique education landscape, with more than a third of all students educated in non-government schools. In some metropolitan areas the majority of secondary students are educated in non-government schools.

The largest grouping of non-government schools are associated with the Catholic church which has educated

around 1 in 5 Australian students across many generations.¹ They have provided the backbone for non-government education, and the action of Catholic parents in the 1960s provided the impetus for the funding of non-government schools we enjoy today.²

The 'independent' school sector includes a very diverse range of schools, from high fee 'church' or 'grammar' schools to remote schools serving disadvantaged indigenous students charging no fees. Most schools in this sector have a religious basis.³

Recent data from the Australian Bureau of Statistics indicates that over the five years to 2022, while total student enrolments increased by 3.8%:

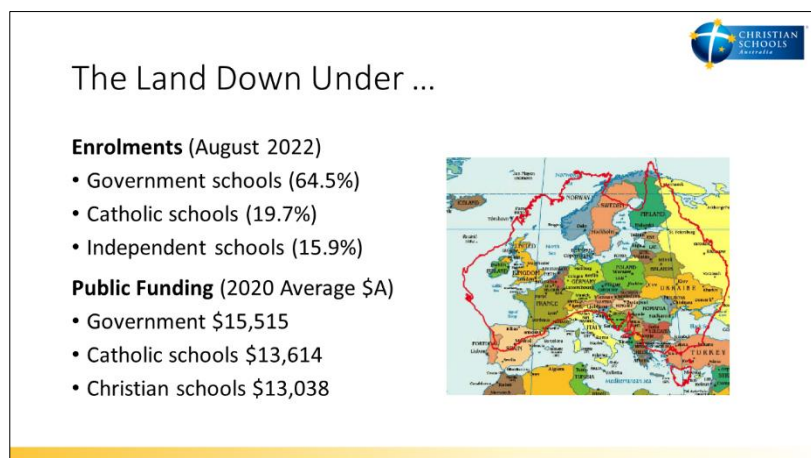
- Independent schools recorded the largest increase (12.5%),
- Catholic school enrolments largely matched this overall rate (3.9%), and
- Government school enrolments increased by less than the overall rate (1.9%).⁴

¹ See table at paragraph 99.6 in the Parliamentary Committee report *Commonwealth funding for schools* here: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_Employment_and_Workplace_Relations/Completed_inquiries/2002-04/schoolfunding/report/03ch1

² For a summary of the events surrounding the 'Goulburn Strike' see here: <https://digital-classroom.nma.gov.au/defining-moments/government-aid-non-government-schools-introduced>

³ For more information on the composition of independent schools see: <https://isa.edu.au/our-sector/about-independent-schools/characteristics-of-independent-schools/>

⁴ Schools Australia 2022, see <https://www.abs.gov.au/statistics/people/education/schools/latest-release>



The greatest growth in enrolments over recent decades has been in lower fee faith-based schools, predominantly Christian schools. This has driven the growth in the Independent schools sector.

Both major political parties in Australia support funding for non-government schools, reflected in comments prior to the most recent Federal election –

The Coalition and the ALP both say they value Independent schools as vital partners in the Australian education system, alongside government and Catholic schools.

Acting Education Minister Stuart Robert reiterated the Coalition's view recently, when he told a forum of Independent school principals that their work strengthens the national education sector by supporting diversity, choice and quality teaching. 'That's why,' Mr Robert said, 'the Commonwealth provides funding for all children, regardless of where they go to school. To support choice for parents.'

His Opposition counterpart, Ms Tanya Plibersek, took a broadly similar position at the same forum. Her comments reflect the ALP policy platform which says: 'Labor believes parents have a right to choose non-government schooling – this is consistent with a diverse and inclusive society. Non-government schools should be supported by public funding that reflects need.'⁵

It was the 'centre-left' Australian Labor Party which in Government instigated the current student focussed, sector-blind needs based funding model.⁶ The subsequent 'centre-right' Coalition Government has retained the fundamentals of that model, although adjustments have been made to some aspects, particularly in determining the capacity of a non-government school community to contribute resources to their school, which results in a 'discount' of base funding per student. This is now derived from the taxable income of parents at that school.

The current funding model determines a target amount of funding for all schools, government and non-government based around the characteristics of students in that school. Funding is enshrined in legislation, the *Australian Education Act 2013*.⁷ The funding for an individual school includes:

- Base funding per student, discounted by the determined 'capacity to contribute' of non-government school communities.
- Four student-based loadings designed to address individual student need factors:
 - students with disability loading
 - Aboriginal and Torres Strait Islander loading
 - socio-educational disadvantage loading
 - low-English proficiency loading.
- Two school-based loadings for:
 - School size

⁵ As reported here: <https://is.vic.edu.au/blog/politics-principles-and-the-vital-role-of-independent-schools/>

⁶ Following an extensive review which delivered its final report in 2011, Review of Funding for Schooling Final Report December 2011, available here: <https://www.education.gov.au/school-funding/resources/review-funding-schooling-final-report-december-2011>

⁷ Available online here: <https://www.legislation.gov.au/Details/C2020C00142>

- School location.

A student may attract funding under more than one loading.⁸

As the funding is based on the specific characteristics of a school community there are non-government schools serving particularly needy areas who may receive more public funding than government schools elsewhere.

All schools within Australia must teach an Australian Curriculum,⁹ supplemented by additional State or Territory requirements and must be registered by State or Territory government agencies. Within these broad requirements there remains significant scope to teach from an authentically Biblical perspective.

The Australian Legal Framework

The framework for the protection of religious freedom in Australia is far less accommodating for Christian schools.



Legal Framework for religious freedom ...

- No constitutional protections for religious freedom
- No 'Bill of Rights' (some limited state law)
- Signatory to ICCPR etc but limited domestic application
- 'Equality' protected by broad anti-discrimination laws (exemptions 'protect' freedoms)
- 'Sexual orientation' and 'gender identity' protected, some protection for religion (personal)



While the Australian Constitution includes,¹⁰ in section 116, a form of protection for religious freedom it:

- Only applies to laws made by the Commonwealth government, actions by State governments are unaffected,
- Does not confer an individual right to religious freedom, and
- Has been interpreted very narrowly to, effectively, only apply to laws with a purpose of constraining religious freedom.

⁸ For details of loadings and their calculations see here: <https://www.education.gov.au/recurrent-funding-schools/schooling-resource-standard>

⁹ See the current Version 9 here: <https://v9.australiancurriculum.edu.au/>

¹⁰ Available online here: <https://www.legislation.gov.au/Details/C2013Q00005>

Unlike many other nations, Australia has strongly resisted the introduction of a 'Bill of Rights' type instrument. While two States, and one Territory, have introduced legislation along these lines they are all deficient in their protection of religious freedom. None of this legislation includes an equivalent of Article 18(4) of the International Covenant on Civil and Political Rights ("ICCPR") and all allow the derogation of religious freedom on a much lower standard than is acceptable under the ICCPR.¹¹

While Australia is a signatory to the ICCPR our High Court has, over many decisions, determined that it has little direct impact within Australia. It is only where provisions of the ICCPR, and other international treaties, are directly incorporated into Australian domestic law that they will be given legal force. This further constrains the protections for religious freedom.

Rights to 'equality' or 'non-discrimination' are the most common form of protected human rights in Australia with extensive Commonwealth (Federal) and State/Territory laws. At present these are generally very broad in scope but focussing on formal equality, ie equality of opportunity, although there are increasing attempts to shift the focus to seek to provide 'substantive' equality, equal outcomes. In any event, the objects of these laws are generally along the lines of removing discrimination as far as possible and are interpreted by courts accordingly, with any exemptions read very narrowly. This is highly problematic for religious freedoms which are effectively protected by means of exemptions in legislation of this kind.

Included among the protected attributes within these laws are sexual orientation and gender identity. These terms are variously described, but their breadth can be seen in the following definitions from the *Sex Discrimination Act 1984 (Cth)*¹² –

***gender identity** means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.*

***sexual orientation** means a person's sexual orientation towards:*

(a) persons of the same sex; or

(b) persons of a different sex; or

(c) persons of the same sex and persons of a different sex.

In some legislation 'intersex status' is also protected and Christian schools do not, and have not sought, exemptions in relation to people with those medical conditions.

Discrimination against individuals on the basis of their religious belief is subject to some protections around the country under this form of legislation, but not universally and, many would argue, not effectively. Those protections certainly do not extend to any corporate entities established by people of faith or to people of faith engaged in commercial activities where other non-discrimination laws would apply.¹³

¹¹ In brief, the Australian legislation only applies a test of 'reasonableness' and not 'necessity' as required under the ICCPR.

¹² Available online here: <https://www.legislation.gov.au/Details/C2023C00003>. Note that some State/Territory law has even broader definitions.

¹³ These limited protections would not, for example, provide a protection for the Christian baker or florist in the same way as has been found in the US and UK.

The Australian Social Context

After 22 attempts over 13 years, 'same sex marriage' was made lawful in Australia in 2017 following a non-compulsory postal survey. This was a unique event in Australia, with only 79.5% of the population being involved, as opposed to our usual compulsory voting. Of

those who participated 61.6% expressed support for the question 'Should the law be changed to allow same-sex couples to marry?'.¹⁴

In the same year the Royal Commission into Institutional Responses to Child Sexual Abuse released its final report.¹⁵ While critical of many institutions the church and its institutions, being the largest provider of services to children historically, was highlighted for criticism. The 'moral authority' of the church in public discourse was affected accordingly.

The influence of the church has also been affected by the steady decline in those identifying as 'Christian' in our regular national census. According to official data, those identifying as Christians has fallen over the last half century from 86.2% in 1971 to 43.9% in 2021.¹⁶ Despite this drop, Christian remains the dominant response:

- Christianity (43.9%)
- No religion (38.9%)
- Islam (3.2%)
- Hinduism (2.7%)
- Buddhism (2.4%)

This is despite a very active campaign in favour of 'No religion' over the last decade.¹⁷ The data from the National Church Life Survey indicates that this drop is not reflected in the data on church attendance, which has dipped but shows signs of recovery.¹⁸



Social context ...

- 'Christians' less than 50% in Australian Census 2021
- Royal Commission Child Sex Abuse 2017
- Same-Sex 'Marriage' Legalised 2017
- Genders (not sex) on passports 2013
- Self-ID on Birth Certificates (various)
- Aggressive bans on 'conversion practices' in some jurisdictions



¹⁴ Full results available online from the Australian Bureau of Statistics here:

<https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1800.0~2017~Main%20Features~Results~1>

¹⁵ Details of the Royal Commission and the Final Report are available here:

<https://www.childabuseroyalcommission.gov.au/>

¹⁶ See online here: <https://www.abs.gov.au/articles/religious-affiliation-australia>

¹⁷ See campaign page for the last census here: <https://censurenoreligion.org.au/>

¹⁸ See details here: <https://www.ncls.org.au/articles/changes-in-church-attendance-in-australia/>

Since 2013, the Australian Government Guidelines on the Recognition of Sex and Gender have recognised that:

*'... individuals may identify and be recognised within the community as a gender other than the sex they were assigned at birth or during infancy, or as a gender which is not exclusively male or female.'*¹⁹

and accordingly:

*'This should be recognised and reflected in their personal records held by Australian Government departments and agencies.'*²⁰

This is presumably on the basis that:

*'The Australian Government is primarily concerned with a person's identity and social footprint. As such, the preferred approach is for Australian Government departments and agencies to collect gender information. Information regarding a person's sex would not ordinarily be required.'*²¹

A consequence of these guidelines is that passports, as Australian Government issued documents, can be changed to reflect a chosen gender on the basis of 'a statement from a registered medical practitioner or psychologist on a [B14 - Declaration sex gender of passport applicant \(PDF 754.22 KB\)](#) confirming your gender'.²² This can be despite other primary identification documents, such as birth certificates issued by State or Territories, not being able to be changed on the same basis – although in many jurisdictions this is changing with the same 'low-bar' test applied.

The Dominant Political/Public Narrative in Australia

Against this broader background a powerful political narrative has been repeatedly consistently for decades, and has become almost unquestionably accepted by the media and many in politics.

This narrative is captured in the slide to the right and is accepted despite legitimate

questions being raised in relation to every assertion therein. The paucity of genuine evidence and



The story being told ...

- Horrific **mental health outcomes** for LGBT youth
- **Discrimination** is the major cause of adverse mental health outcomes
- Anything less than '**affirmation**' is discrimination
- Religious belief is a **significant cause** of discrimination
- Religious belief is therefore **harmful**
- **Action must be taken** against schools [and churches and increasingly parents] who harm their children


¹⁹ The Australian Government Guidelines on the Recognition of Sex and Gender can be found online here: <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/australian-government-guidelines-recognition-sex-and-gender>

²⁰ For schools these means that all data on staff and students is reported with options for 'female', 'male', and 'other'.

²¹ There has been some questioning of this assertion, particularly in relation to medical records but without significant impact on Government policy.

²² See here for more details: <https://www.passports.gov.au/getting-passport-how-it-works/documents-you-need/sex-and-gender-diverse-passport-applicants>

significant problems with the methodology of the data on which these claims are founded is lost in media soundbites and very aggressive, bullying, advocacy approaches. The 'debate' is cast in black and white terms with those who question the dominant narrative often subject to vicious personal attacks.



Within our communities ...

- Parents actively choose our schools for **values**
- Many parents are **not committed** to the beliefs
- Parents expect **schools to resolve** any conflict around beliefs
- Enrolment **intakes at secondary level** are increasing
- **Activism** amongst senior years students is small but increasing
- **Younger staff** may not be as committed to traditional orthodox beliefs

Despite, or possibly because, of this prevailing narrative, Christian schools in Australia are flourishing – the greatest limitation on growth now being capacity constraints.

Most Christian schools in Australia were established with a 'covenantal' approach, seeking to support families of church attendees in a deeply grounded Christian community. Many of these schools

have now shifted to taking a more 'missional' approach, serving those families who are seeking a Christian education, regardless of any current church affiliation or otherwise. Indeed, some Christian schools have commenced with this approach in mind in recent years.

As a result, there are large number of families within Christian schools of no faith background and many with a non-Christian faith background. The strong morals and values of Christian schools is appealing to devout followers of Islam and many Sikh communities who do not have access to a school of their own faith tradition. Our research over many years has shown a strong commitment to the values espoused by a schools with a lesser degree of alignment with the underlying beliefs that shape those values.

For financial reasons many parents are also choosing to send their children to government primary schools and then seek to enrol them in a Christian secondary school.²³ This creates a significant cultural challenge for a school wither those new students lacking the grounding in a Biblical world view of students who received their primary education in a Christian school environment.

Reflecting the experience in countries overseas,²⁴ there are generational changes to views on orthodox Christian morality and understandings of gender and sexuality. This is starting to be shown in the behaviour of some younger staff,²⁵ and an emerging activism by students and former students.²⁶

How are Christian Schools Responding?

A review into the protections for the religious freedom of Christian schools currently being undertaken at a Federal level has included within its terms of reference that faith based schools *'can continue to build a community of faith by giving preference, in good faith, to persons of the same religion as the*

²³ The structure of education in Australia largely consists of primary schools providing education for the first seven years of compulsory schooling and secondary schools providing the final six years. Christian schools, and many other independent schools, generally over education across the whole 13 years.

²⁴ See, for example, the research by Barna in the United States here: <https://www.barna.com/research/what-americans-believe-about-sex/>

²⁵ A former teacher in a Christian school who left her marriage to form a relationship with another woman will shortly be publishing a book telling her perspective: <https://www.harpercollins.com.au/9780733342974/inout/>

²⁶ A high profile example within Australia is provided by this group: <https://www.educatelgbt.org/>

Building 'community of faith' ...



- **Encompassing** statements of doctrines and beliefs
- Employment documentation encompassing **ministry** nature of roles (contracts, role descriptions)
- Enrolment documentation requiring **acknowledgement** of doctrines and beliefs
- Educational outcomes **encompassing faith** and character elements
- Marketing materials reflecting **religious nature**

*educational institution in the selection of staff.*²⁷ This language of a 'community of faith' reflects the efforts of Christian school bodies to ensure the acknowledgment of the fundamentally religious nature of Christian schools and that, in our form of school, this is achieved through an immersive approach within a religious community.

Christian schools have been working hard to ensure that their documentation reflects the true nature of their organisations. Many have updated their doctrinal statements/statements of beliefs/creedal basis to encompass more contemporary 'heresies' than those addressed through the historical creeds and confessions.

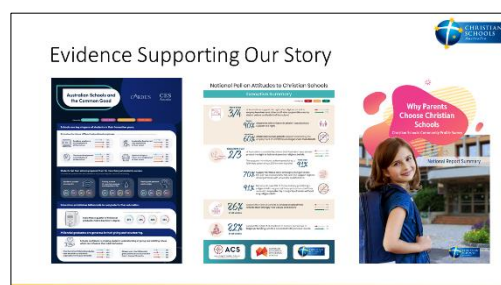
Employment documentation has also been updated across many schools to capture the 'ministry' nature of roles within Christian schools. While more commonly accepted by those outside our schools as being applicable to [certain] teaching staff, the documentation of most Christian schools ensures that this is reflected across all staff. Both individual employment contracts and collective agreements assert that it is an 'inherent requirement' or 'genuine occupational requirement', terms used in employment and discrimination law, that staff hold and live consistently with the religious beliefs of the school.

Role or position descriptions have also been reviewed across schools to ensure that they accurately and comprehensively reflect the expectations of staff and the duties expected of them. In many cases it was found that essential duties of a 'religious' nature had tended to be so foundational that they were not considered necessary to document – which creates an obvious challenge to demonstrate their necessity if schools are subject to legal challenge.

The increasing prominence of 'progressive' theological positions on matters of gender and sexuality in mainstream public discourse, has also been the impetus for many schools to be far more explicit in their enrolment documentation. The general approach has been to require parents to acknowledge the religious beliefs, expressly those in relation to gender and sexuality in some cases, of the school and that the school will teach and act in accordance with those beliefs. In some cases schools have sought to go beyond this, expecting parents and students to share those beliefs. This resulted in considerable public controversy in relation to a school in 2021 in the lead up to consideration of a proposed Federal religious discrimination bill.²⁸

Supporting an alternative narrative

While there is only weak evidence supporting the dominant political narrative, Christian schools understood that any alternative claims would be subject to significant scrutiny. A base of reliable and robust research is being established to support the value of



²⁷ Australian Law Reform Commission Religious Educational Institutions and Anti-Discrimination Laws Inquiry, details online here: <https://www.alrc.gov.au/inquiry/anti-discrimination-laws/>

²⁸ For an overview of some of the issues and discussion see: <https://www.abc.net.au/news/2022-10-31/faith-versus-freedom-consequences-of-a-clash-of-values/101293004>

Christian schools and the level of support for our freedoms.

The first plank of this research was the Cardus Education Survey Australia.²⁹ This involved a nationally representative sample of 4,913 adults ages 25 to 39 who graduated secondary school in Australia. It included graduates from all school sectors, allowing them to reflect, with the wisdom of some distance from their schooling, on their perceptions of their school experiences and how those experiences shaped their post school life.

In a world swimming with claims of an increasing epidemic of mental health issues arising from despair and a lack of hope, the Survey found *'Christian school graduates are far more likely than Government school graduates to believe their school prepared them to find a sense of meaning, purpose and direction in life (74% cf. 51%) and prepared them to deal with personal relationships (67% cf. 53%).'* Christian school graduates are also more likely to join a union or be involved in a political party than those of other schools.

While this research did seek to address spiritual dimensions, it has predominantly been used publicly in relation to factors such as those above to appeal more broadly, especially to politicians and the media.

Another plank demonstrating the widespread community support for the current freedoms supporting Christian schools is regular polling.³⁰ This is undertaken by an independent polling company following industry standard approaches and reflects a nationally representative sample of Australian voters. Where a particular State or Territory has been considering legislative changes, this national polling has been supplemented with results at that State/Territory level. The polling results are widely distributed to parliamentarians, and we have generally been able to secure national media coverage.³¹

This polling has consistently shown that more than three-quarters of Australians support the right of a religious school to employ teachers and other staff who support the clearly stated values and beliefs of the school. This support is held by the majority of voters across the political spectrum, and sends a powerful message to members of parliament.

More recently, CSA has undertaken extensive research involving more than 100 member schools and over 8,500 parents seeking to understand why parents are choosing Christian schools and what impact they are hoping the school will have on their children. While yet to be published and publicly available the Report indicates that:

'The dominant reason why parents are choosing CSA schools was for the distinctly Christian values and teaching, with 54% of parents selecting 'values that align with my own' as the primary determinant and when asked what practices should be most important at a Christian school, 74% of parents indicated teaching of traditional Christian values and beliefs was extremely, or very important. Parents desire a school where they perceive their

²⁹ For full details of the research see: <https://carduseducationsurvey.com.au/>

³⁰ See a summary of the latest polling results online here: https://www.csa.edu.au/CSA/Resources-and-Media/Briefings/Articles/2022/11-November/Latest_Polling_Supports_Religious_Freedom_Protections.aspx?WebsiteKey=cec2be79-aaf2-4db5-bce7-6cf7294c08e9

³¹ Plea for action as support grows for religious freedom laws, The Australian, 10 November 2022, see here: <https://www.theaustralian.com.au/nation/politics/plea-for-action-as-support-grows-for-religious-freedom-laws/news-story/b6836ca815981e1715ff53d13919c1bc>

*personal beliefs are reinforced and perpetuated by the school community they select for their children.*³²

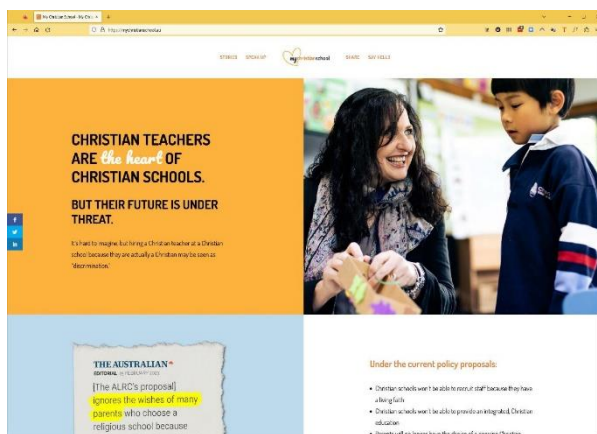
The Report also reinforces the importance of both the care and support within the schools and the importance of spiritual and character formation, with parents indicating:

'... when parents were asked about the purposes of education and what they hope their children would obtain and achieve through their schooling journey. Rather than financial success or increased social status, parents overwhelmingly identified Christian values and virtues, 'strong character and Christian values' and 'love for God and others' being selected in nearly three-quarters of all responses.'

'The caring and supportive nature of Christian schools was evidenced by parents identifying 'Supportive', 'Christ centred' and 'Safe' as the top three words to describe their schools, closely followed by 'Respectful' and 'Nurturing'.³³

Further research involving current students is being planned with the aim of gathering evidence on wellbeing and development across a broad and well accepted range of indicators.

Helping to change the narrative.



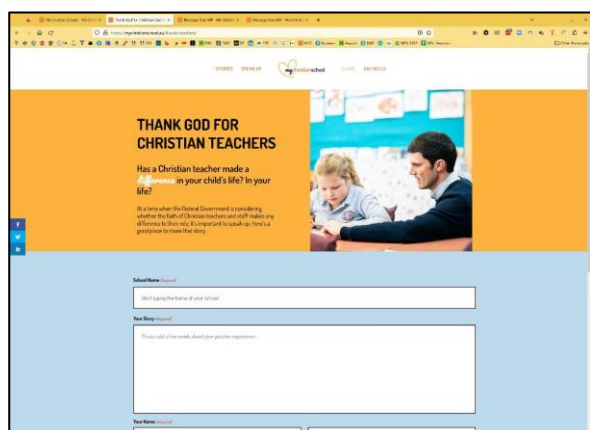
Christian school groups in Australia, including CSA, have recently collaborated to launch a new public website, www.mychristianschool.au.³⁴

The site will be prompted across member schools in the participating associations to provide a focal point for staff and parent engagement on issues affecting Christian schools broadly.

A key element of the site, and the broader campaign, is to capture stories, as stories are increasingly the currency of the media and parliamentarians.

The site includes a page dedicated to the capture of stories from parents regarding the impact of Christian school teachers on their children, <https://mychristianschool.au/thanks-teachers/>.

These stories and then used both on social media, <https://www.instagram.com/mychristianschool/>, and the website itself, <https://mychristianschool.au/your-stories/>, to reinforce the value of Christian schools and reflect the impact they are having.

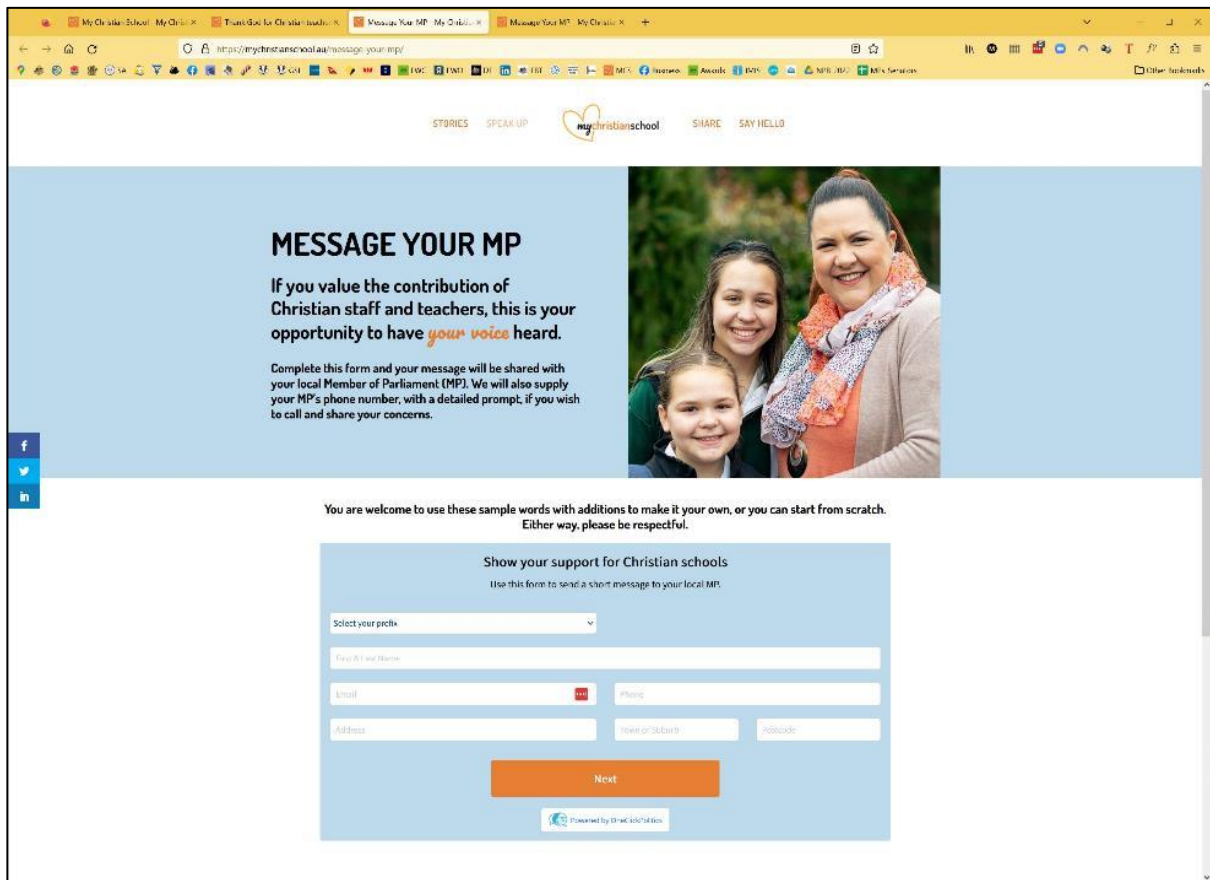


³² Iselin, D. (2022). *Why parents choose Christian schools: Christian schools community profile survey*. National report. Canberra, Australia: Christian Schools Australia, 2. (yet to be published)

³³ Ibid, 5.

³⁴ Launched under the Australian Christian Schools Alliance branding, the site and associated activities are a joint activity of Associated Christian Schools, Australian Association of Christian Schools and CSA.

The site also makes it very easy for parents to email their local parliamentarians to express their support for their local Christian school, parliamentarian details are automatically populated from the address details provided –



Teachers are also encouraged to share their stories, <https://mychristianschool.au/teachers-story/>, and an extensive survey of nearly 5,000 staff in Christian schools has been completely recently completed seeking data on discrimination in schools and their views of possible changes to legislation regarding employment practices in Christian schools. Both the stories and the survey will prove invaluable in future advocacy.

All of these efforts are aimed at equipping and supporting our story-tellers. These are primarily our school leaders as they seek to pass on the stories we want told about Christian schools to:

- **staff**, who should be our greatest advocates
- **parents**, already inclined to support us, but needing further language and encouragement
- **students**, the next wave of advocates
- **MPs and community leaders**, key decision makers
- **the media**, attempting to overcome the enormous religious illiteracy

While in its early stages we are committed to changing the narrative accepted by Parliamentarians and creating a new, more positive, language and vocabulary around Christian schools.

Christian schools, in Australia at least, can no longer 'fly under the radar', we need to be proactively engaging in the public discourse or others will determine the political and legislative outcomes.

In sharing our story and initiatives we are not seeking to provide a direction for what other schools or school associations must do. Rather, we are hoping that we might give you inspiration from our story as to how you, in your cultural context, can determine the appropriate stories that need to be told to protect religious freedom.

Legislation and legal frameworks are determined politically, and politics is downstream of culture. Even if your legal framework protects religious freedom our assertion is that you cannot simply rely upon these protections and not engage in the broader cultural debate. We are, after all, called to be salt and light to our communities.

Please reflect on these questions and thoughts –

What story is fuelling societal changes in your context?

What stories do your schools need to tell to counter this narrative?

As you consider your school community:

- Who is the 'chief story teller'?
- Do your parents understand and share the beliefs that drive your values?
- What do the enrolment practices, marketing materials, school websites and annual reports say about your school?
- Are your staff champions of your cause and advocates for your freedoms as a school?
- What stories do your students and graduates tell?

Finally, what steps can we take now to ensure that we can share the truth of our story, the Gospel story, into the future?

Praying God's blessings on you all

Mark Spencer
Director of Public Policy
Christian Schools Australia
March 2023.