

IEUA-QNT SUBMISSION

[28 February 2022]

Submission: Queensland Human Rights Commission – Review of the Anti-Discrimination Act

The Independent Education Union – Queensland and Northern Territory Branch (IEUA-QNT) welcomes the opportunity to provide feedback regarding the Queensland Human Rights Commission’s Discussion Paper [1] relating to the Review of the Anti-Discrimination Act [2].

About IEUA-QNT

IEUA-QNT represents ~16,000 teachers, support staff and ancillary staff in non-government education institutions in Queensland and the Northern Territory and consistently engages in debate concerning industrial and social issues through its Industrial and Equity Committees and through its national counterpart, the Independent Education Union of Australia, which receives input from teachers in all States and Territories.

As a union of education professionals in the non-government sector, our interest in the application of the Anti-Discrimination Act (1991)[2] relates to its implications for both school staff and students and we offer commentary around potential changes to the Act from both perspectives.

In terms of structuring our response to the discussion paper, rather than providing a written response to each of the 56 discussion questions, we elect to make a series of broad statements regarding thematic changes that we believe will contemporise the Act, consistent with changing societal norms and expectations, before applying specific, focussed attention to the matter of religious discrimination exemptions and the crucial importance of protections for staff and students in the non-government sector.

Responses to Key Elements of the Discussion Paper

1. Our union strongly supports changes that will make the Queensland Act more consistent with legislative provisions in other jurisdictions, particularly where these enhance the emphasis on prevention of discrimination in the first instance.
2. We are also supportive of changes that reduce barriers for those bringing a complaint and would consider the acceptance on non-written requests, and complaints brought by trade unions, as integral to that process.
3. Similarly, we believe an expansion of the list of protected attributes is an essential element of a contemporary Anti-Discrimination Act and would strongly support the inclusion of provisions for gender and sexual diversity, and for those affected by

We are #IEUnionStrong

Submission: Review of the Anti-Discrimination Act

mental health issues, psychosocial disabilities (including addiction) and domestic violence.

4. We would also argue that the Act should incorporate a reverse onus obligation for employers to provide reasonable adjustment for impairments, to ensure consistency with Section 5 of the *Disability Discrimination Act 1992*.
5. In relation to the degree of specificity required to accommodate provisions like those advocated in the above paragraphs, we would refer the Review to the submission made by the Queensland Council of Unions (QCU), which has been developed through the collaborative efforts of its affiliates, including IEU-QNT.

Discussion Question 44

6. Given our status as a union of education professionals in the non-government sector, we offer more detailed commentary in relation to the religious educational institutions and other bodies exemption, currently covered by Section 25 of the Act.
7. This question is dealt with in Discussion question 44 under the topic of *Work Exemptions: Genuine occupational requirement – religious schools and other bodies*.
8. The primary question for the Review to consider is the extent to which the provisions of *Anti-Discrimination Act 1991 (Qld) ss 25(2)-(8)* should be amended.
9. The operative part of section 25 is subsection (3):

(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

(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.

10. The Section has never been formally tested in operation.
11. However, we have had experience of an employer developing extensive technical processes to fulfil apparent justification for dismissal of an employee under this Section.
12. A permanent and relatively unfettered legislative exemption to allow faith-based educational institutions to discriminate in employment overrides the rights of many, without proper justification.

Submission: Review of the Anti-Discrimination Act

13. The provision is generally thought to have a disproportionate impact on lesbian, gay, bisexual, transgender and intersex (LGBTI) workers, but the effect of the exemption is much more broad reaching.
14. An unmarried pregnant woman or a divorced person or a person with a child to someone they are not married to is a lawful participant of society and is widely accepted as not infringing on community standards. However, the section 25 exemption may be used to justify a decision to terminate that person's employment.
15. Our Union has encountered examples where the exemption has a disproportionate effect on women.
16. An unmarried pregnant woman may be accused of acting "openly" in a way contrary to the employer's religious beliefs, due to an obvious pregnancy, while there is no consequence for the father of the child as he has not acted "openly" given he does not carry the pregnancy.
17. These exemptions are inherently unfair. They are out of step with modern community expectations. They disproportionately affect the very sectors of society discrimination legislation is intended to protect.
18. Our Union's position remains that employers in faith-based schools should not need to rely on religious exemptions when managing their workforce because:
 - a. All staff and students in schools deserve safe workplaces/learning environments; and staff in schools should not be discriminated against on the basis of their personal lives.
 - b. Practices in faith-based schools, and indeed in any endeavour conducted for the public by faith-based organisations, should reflect community standards and expectations. This is especially the case when such organisations are in receipt of public funds.
 - c. Faith-based schools have the capacity and resilience to continue to operate in the absence of discrimination exemptions.
19. Section 25 of the Act is no longer appropriate and should be deleted.

Concluding Comments

Our union believes this review provides a timely opportunity to update and contemporise Queensland's Anti-Discrimination Act. Judicious modification of existing provisions, and the incorporation of new elements consistent with contemporary expectations should be a key aim of any redrafting process.

With respect to the specification of circumstances where non-government schools might be granted exemptions, we believe that Section 25 of the current Act is inappropriate and should be deleted.

We are #IEUnionStrong

Submission: Review of the Anti-Discrimination Act

We look forward to the opportunity to participate in further consultations as the review of the Act progresses to the drafting stage.



Terry Burke
Branch Secretary
Independent Education Union of Australia -Queensland and Northern Territory Branch
Monday 28 February 2022

References

1. Queensland_Human_Rights_Commission, *Review of Queensland's Anti-Discrimination Act: Discussion Paper*. 2022, Queensland Human Rights Commission: Brisbane.
2. *Anti-Discrimination Act 1991*. Queensland Parliament, 2020.