

IEUA-QNT SUBMISSION

[22 March 2024]

Submission: Exposure Draft of the *Anti-Discrimination Bill 2024*

The Independent Education Union – Queensland and Northern Territory Branch (IEUA-QNT) welcomes the opportunity to provide feedback regarding the Exposure Draft of the *Anti-Discrimination Bill 2024* [1].

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.

Our federal union has participated in the Australian Law Reform Commission's Inquiry into Religious Educational Institutions and Anti-Discrimination Laws [2, 3] and we note that there is an expectation that a draft Bill will be introduced into federal parliament in the near future. Our feedback in relation to the Queensland Bill is consistent with the submissions of our federal office.

We would also indicate that, on the broader and more technical matters of amendment, our union supports the submissions of the Queensland Council of Unions.

As a union of education professionals in the non-government sector, our primary interest in the application of the existing Anti-Discrimination Act (1991) [4] and the exposure draft of the new Bill [1] relates to their implications for school staff and students and we offer commentary around potential changes to the Act from both perspectives.

Our union made a submission in response to the earlier Discussion Paper [5] prepared by the Queensland Human Rights Commission as part of the review stage. In that submission, we made a series of broad statements regarding thematic changes that we believed would contemporise the Act, consistent with changing societal norms and expectations. We note that the draft Bill has largely incorporated these changes.

Our earlier submission also applied more 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.

We note that the Exposure Draft is a more contemporary document than the existing Act, but we remain concerned that anything less than a complete deletion of the provisions that allow for religious exemptions is insufficient. We repeat our reasoning in response to the Consultation Questions from the Exceptions for Religious Bodies Discussion Paper [6], below.

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Genuine occupational requirements for religious bodies (clause 29)

Questions for consultation:

1. Do you agree with the proposed exception in relation to work for religious bodies as set out in clause 29 of the draft Bill?

1. Given our status as a union of education professionals in the non-government sector, we have a particular interest in the provisions that exempt religious educational institutions from the requirements of the Act.
2. We note that the operative section of the existing Act is section 25, 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.*
3. We also note that the operative section of the draft Bill is the new Section 29, subsection (1):

(1) A person may discriminate against another person on the basis of the other person's religious belief or religious activity in relation to work for a religious body if –

 - (a) participation in the teaching, observance or practice of the religion concerned is a genuine occupational requirement of the work; and*
 - (b) the other person cannot satisfy the genuine occupational requirement because of the other person's religious belief or religious activity; and*
 - (c) the discrimination is reasonable and proportionate in the circumstances.*
4. While we acknowledge that the new section narrows the circumstances in which an employer may discriminate on the basis of religious belief, or religious activity, we maintain that 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

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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.
5. A permanent legislative exemption to allow faith-based educational institutions to discriminate in employment overrides the rights of many, without proper justification.
6. The provision has a disproportionate impact on lesbian, gay, bisexual, transgender and intersex (LGBTI) workers, but the effect of the exemption is much more broad reaching.
7. 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 29 exemption can be used to justify a decision to terminate that person's employment.
8. Any retention of provisions that allow discrimination is problematic.
9. It is, for example, common in religious schools for all teachers to be perceived, if not formally designated, as teachers of religion.
10. This brings false legitimacy to employer claims that a staff member's failure to adhere to the doctrines, tenets and beliefs of the religion in question is problematic, even where the divergence from those doctrines, tenets or beliefs was overlooked at the point of engagement or where there is variability in individuals' perceptions of what it means to observe or practice the religion in question.
11. The exemption unnecessarily amplifies an already unbalanced power dynamic between employees and employers, who already have the power to preference particular candidates on the basis of religious practice or observance, at the point of engagement.
12. The only way to prevent misuse of religious exemptions is to remove provisions that enable discrimination.

2. Should the exception include examples to demonstrate that the exception does not permit discrimination against employees who are not involved in the teaching, observance or practice of a religion? If yes, what examples should be included?

13. Our core position is that provisions that exempt religious educational institutions from the requirements of the Act are unnecessary and should be deleted.
14. Nonetheless, if the exemptions are retained, examples demonstrating that the exemptions do not permit discrimination against employees who are performing work that does not involve the teaching, observance or practice of a religion should be included.

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15. While we accept that a faith-based employer may retain the right to preference a particular candidate on the basis of faith-related activities at the point of engagement, we would suggest that:
 - a. the preference should only apply to religious faith;
 - b. no other attribute should be considered and;
 - c. the preference should be reasonable, proportionate and relevant to the role.
16. Examples aligned with these three requirements would help clarify when employers would be in breach of the Act.

Educational institutions for students of a particular sex or religion (clauses 35 and 36)

Question for consultation:

3. Do you agree with the proposed exceptions for religious and single-sex educational institutions as set out in clauses 35 and 36 of the draft Bill?

17. We note the new Division 3, Education Area prohibits discrimination in a broad sense, but subdivision 2 provides for exceptions in the case of institutions for students of a particular religion, as per section 36, subsection (1):

(1) An educational authority that operates, or proposes to operate, an educational institution wholly, or mainly for students of a particular religion may discriminate on the basis of religious belief or religious activity by refusing to admit as students persons who are not of the particular religion
18. Given the vulnerability of school age students, it is simply not appropriate to create circumstances where they can be legally ostracised from their school community on the basis of others' perceptions of them, and/or their adherence to religious doctrines that may have been chosen by others, but are incompatible with their emergent self-identity.
19. We note the recent report of the Review of the Accreditation Framework for Non-state Schools lists, as a first recommendation for immediate action, the creation of a new student wellbeing standard that includes a positive duty to eliminate discrimination [7] and that the government response indicates in-principle agreement [8].
20. In this context, there is no justification for the inclusion of a clause in the Anti-Discrimination Act that enables discrimination against children and young people.

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Roles in religious bodies (clause 61)

Question for consultation:

4. Do you agree with the proposed exception in relation to roles in religious bodies as set out in clause 61 of the draft Bill?

21. Our union's concerns regarding exemptions from the requirements of the Act relate primarily to applications that are out of step with modern community expectations and disproportionately affect the very sectors of society discrimination legislation is intended to protect.
22. In relation to adult individuals who choose to observe and practice a particular religion, and undertake work that is confined to the observance and practice of that religion, it is not inappropriate that employers should be able to preference these individuals at the point of engagement.
23. We would caution however, that the exemption should be limited to activities that are directly related to the observance or practice of the religion and not, for example, the provision of education to minors or counselling members of the congregation who may find themselves challenged by the doctrines, tenets or beliefs of the religion.
24. That is, holding the role of priest, minister, or another religious role should not enable an individual to engage in behaviours that discriminate against those who are unable to exercise autonomy (e.g. because of their age, or a power-imbalance in their relationship with the other party) in relation to their adherence to the doctrines, tenets or beliefs of the religion concerned.

Acts by religious bodies (clause 62)

Question for consultation:

5. Do you agree with the proposed general exception for religious bodies, which applies in areas of activity other than work and education, as set out in clause 62 of the draft Bill?

25. As noted in our response to Consultation Question 4 (above) our union's concerns regarding exemptions from the requirements of the Act relate primarily to applications that are out of step with modern community expectations and disproportionately affect the very sectors of society discrimination legislation is intended to protect.
26. As indicated in our submission to the earlier QHRC review, this is particularly problematic where a religious organisation is in receipt of public funding to deliver particular goods and/or services.
27. We note that the draft *Section 62 Acts by religious bodies* clause places no limits on the type of activity where a religious body may discriminate, other than requiring that:
 - (a) *The act constituting the discrimination conforms to the doctrines, tenets or beliefs of the religious body; and*

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(b) *The discrimination is reasonable and proportionate in the circumstances.*

28. We would suggest that the Act makes it explicit that public funding should not be used to support discrimination.

Concluding Comments

Our union thanks the Department of Justice and Attorney General for the opportunity to provide feedback on the Working draft of the *Anti-Discrimination Bill 2024*.

We recognise that many of the revisions update and contemporise the legislation in terms of its alignment with contemporary community expectations.

As indicated during the earlier review stage however, we maintain a view that exemptions for faith-based education institutions are inappropriate and should be deleted, noting that the Northern Territory parliament has removed religious exemptions from its Act [9].

We also acknowledge that the federal anti-discrimination legislation has also recently undergone review by the Australian Law Reform Commission [2, 3, 10] and a new federal Bill is expected in the very near future.

We look forward to the opportunity to comment further when the Queensland Bill is progressed to parliament.



Terry Burke
Branch Secretary
Independent Education Union of Australia -Queensland and Northern Territory Branch
Friday 22 March 2024

References

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3. Australian_Law_Reform_Commission. *Religious Educational Institutions and Anti-Discrimination Laws*. 2023 [cited 2023 30 January]; Available from: <https://www.alrc.gov.au/inquiry/anti-discrimination-laws/>.
4. *Anti-Discrimination Act 1991*. 2020.
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7. Vardon, C., *Queensland non-state schools accreditation framework review Final Report*. 2023, Commissioned by the Queensland Government: Brisbane.
8. *Non-State Schools Accreditation Framework Review Queensland Government Response*. 2024, Queensland Government, Department of Education: Brisbane.
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