



## **Senate Legal and Constitutional Affairs Committee Inquiry into legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff.**

The Independent Education Union of Australia (IEUA) welcomes the opportunity to highlight our grave concerns regarding the legislative exemptions covered within the Sex Discrimination Act 1984 and state-based legislation that allow faith based educational institutions to discriminate against students, teachers and staff.

The IEUA is the federally registered union that represents staff, including teachers, principals, and school support staff, in Catholic, other faith-based and community independent schools across all the states and territories of Australia. While the majority of members of the IEUA are teachers, the membership of the IEUA also consists of employees engaged as teacher aides, administrative staff, gardeners, cleaners and caterers.

### **Summary Statement**

1. The Independent Education Union of Australia (IEUA) opposes discrimination based on a person's sexuality, gender identity, marital or relationship status, pregnancy, disability and or any of the attributes set out in discrimination legislation.
2. The IEUA believes that the current exemptions should be removed and that discrimination laws operating in faith-based schools, and indeed in any endeavour conducted for the public by faith-based organisations, should reflect community standards and expectations.
3. The IEUA further believes that:
  - Many staff and students in faith-based schools fearing persecution have suppressed their sexual preference or gender identity and/or their marital status and have been and are being harmed as a result;
  - all staff and students in schools deserve safe workplaces/learning environments;
  - staff in schools should not be discriminated against on the basis of their private expression of their sexuality.
4. Faith-based schools have the capacity and resilience to continue to operate in the absence of discrimination exemptions and there is widespread community support for the principle that discrimination on the basis of the above attributes including sexuality or gender identity is wrong.
5. The IEUA notes that several state jurisdictions have more limited religious exemptions, for either staff or students. In these jurisdictions not having the right to discriminate has not undermined the capacity of faith-based schools to operate. Faith-based schools have still flourished and enrolments have continued to grow.
6. Our experience is that in the context of rapidly expanding diversity amongst students and staff in schools only a small and diminishing minority of employers in non-government schools utilise or seek to utilise the exemptions from discrimination legislation. The majority

of employers, perceiving a conflict of interest involving a breach of an employee's duty of fidelity, treat the issue as a contractual matter.

### **Case studies highlighting ethos/conduct actions against IEUA members**

In preparing this submission, the IEU has drawn upon the recent experiences of members who have contacted us with concerns in relation to discrimination. Some of these experiences are set out below.

Many members are reluctant to raise issues of discrimination and thus are forced to "suffer in silence" for fear of reprisals.

1. A male primary school principal who was contacted by Catholic Education Office to advise that they "had become aware" that his marriage had broken up and that he was reportedly in a new relationship, as was his wife. The view of the employer was that his current lifestyle was no longer compatible with his holding a position of leadership of a Catholic school and that he needed to move. (The principal denied that he was in a new relationship but acknowledged that in a country town there may be gossip any time he is seen speaking with a woman.)

It was proposed that the Principal move to another school in the diocese with salary maintenance to be negotiated. This matter has still to be resolved as the Principal is reluctant to leave town where his three children still live.

2. An Assistant Principal in regional Catholic diocese was called to a meeting with the Executive Director who said that "it had been brought to his attention" that the Assistant Principal was married to a woman whose first marriage had not been annulled. The Assistant Principal was therefore not in a genuine Catholic marriage and this was inconsistent with a leadership role in a Catholic school.

When the Executive Director asked if an annulment could be obtained, the Assistant Principal indicated that his wife was reluctant to pursue this option as her first husband would oppose it and she did not want to subject her two children to the demeaning annulment process.

The Assistant Principal was then demoted to a classroom teacher position with salary maintenance for a year. (It is noted that subsequently an annulment was obtained and the member, now correctly married in the view of the Church, obtained another Assistant Principal position.)

3. Two female teachers had been in a same sex relationship for over ten years. One was in a co-ordinator role in a metropolitan Catholic diocesan secondary school and the other worked in a Catholic independent school. They had a child and were subsequently reported to the Bishop after being seen with the baby at a shopping centre (not in the area of the school).

The Catholic Education Office advised that it had no other option than to move the employee to another school and remove her co-ordinator's allowance. She did not accept the offer and resigned and took a teaching position in the public sector.

No action was taken by the Catholic independent school which employed the other partner.

4. A Teacher at a Christian school had been associated with the school for over 25 years and three of her four children were also at the school.

The member's marriage broke up due to associated family domestic violence issues which required time for medical, counselling and legal appointments for the member and her eldest daughter. The Principal spoke to the member about the responsibilities of Christian marriage with the implication being that the member's current marital status was no longer consistent with her role at the school and that she should consider moving on. A settlement was negotiated and the member is now teaching in a government school.

5. A teacher at a Brethren school was separated from their wife and in the process of getting divorce. They had commenced a relationship with another partner and were subsequently dismissed by the school.
6. A teacher at Catholic diocesan school was dismissed as a consequence of becoming pregnant via IVF.
7. A relief teacher at Baptist school, a former student of the school who had identified as gay, was subsequently removed from the relief teacher roster.
8. Transgender. Currently a member who is a physics teacher in a high-fee independent school has been on leave without pay for a year to tutor physics at university. Whilst on leave the member has transitioned, wishes to return to school employment and is concerned their employment may be terminated. Following the Union's approach to the school to discuss the matter, the school indicated that they opposed the teacher's return would be bringing their solicitor to the meeting with the union. Ongoing issue.
9. A member who is a lesbian was employed in a metropolitan Catholic Schools diocesan primary school. She was highly regarded as a teacher and was a practising Catholic. The Principal and the parish priest were aware that she was lesbian. Her partner had a 5 year old child and she lived with her partner and the child. When the partner sought to enrol the child in kindergarten at the school at which the teacher taught, the teacher's name was put by the partner on the enrolment papers as a carer/contact. Employer said it was not acceptable that the child attended the same school as the school at which the teacher taught and the teacher would need to be transferred. Enrolling the child at the same school 'unacceptably' highlighted the lesbian nature of the relationship between the teacher and the parent of the child. Ultimately, the teacher agreed to resign and received a substantial payment.
10. Marital status- a teacher in Catholic diocesan school was threatened with termination due to a 'non-recognised marriage' in that her husband had been previously married. The employer sought to have her husband have this previous marriage annulled. The employer originally threatened to terminate her employment but eventually agreed just to demote her provided her husband agreed to a schedule of counselling sessions re the Catholic faith.
11. Marital status- two teachers in two different Christian schools had an affair. Both teachers were threatened with termination if the affair continued.
12. Disability – regional Catholic diocese is currently requiring applicants for employment to fill in a form that the Union says would permit discrimination on the grounds of disability as a detailed medical history, not limited to issues relevant the requirements of the job, is required to be disclosed.
13. In a regional Christian school, a teacher was asked to sign a declaration that homosexuality is morally wrong. No issues regarding teaching performance had been identified. The teacher refused. Matter referred to the board, dismissal likely.
14. In a regional Catholic diocese: a male colleague's car was seen outside the member's (a divorced teacher) house. The member was formally warned and lost her position of

leadership. It should be noted that no consequential action was taken against the male colleague.

15. In an Islamic school, a lesbian teacher whose partner is pregnant, has been refused parental leave. The school has confirmed with the Union that dismissal will follow.
16. A male teacher applied for a promotional position but was advised that he wouldn't be considered as he had some years before been in a de facto relationship with a woman for 10 years and had children "out of wedlock".

## Enrolment trends in faith based schools

The IEUA notes that several jurisdictions have limited exemptions, for either staff or students, and in these States, faith-based schools have flourished and enrolments continue to grow. Not having the right to discriminate has not undermined the capacity of faith-based schools to operate. (Attachment A outlines the range of exemptions across jurisdictions.)

The following data outlines the enrolment of faith based schools over the period from 2000-2017.

### **Catholic Schools Student Growth 2000-2017**

	<b>NSW</b>	<b>Victoria</b>	<b>QLD</b>	<b>South Australia</b>	<b>Western Australia</b>	<b>Tasmania</b>	<b>Northern Territory</b>	<b>ACT</b>	<b>Australia</b>
Number	26339	29275	46028	4152	16006	2278	-117	12178	125239
% Growth	11.5%	16.35	45.85	10%	28.6%	17.9%	-2.3%	7.7%	19.5%

### **Independent Schools Student Growth 2000-2017**

	<b>NSW</b>	<b>Victoria</b>	<b>QLD</b>	<b>South Australia</b>	<b>Western Australia</b>	<b>Tasmania</b>	<b>Northern Territory</b>	<b>ACT</b>	<b>Australia</b>
Number	56512	45379	47117	13865	28794	1313	2829	4174	199983
% Growth	53.8%	48.2%	65.5%	41.4%	80.1%	16.5%	83.5%	75.2%	55.9%

### **Conclusion.**

The IEUA believes that the provisions of Section 38 of the *Sex Discrimination Act 1984* in relation to “*Educational Institutions Established for Religious Purposes*” is broad, subjective and wide ranging.

The IEUA believes that current exemptions should be removed and that practices in faith-based schools, and indeed in any endeavour conducted for the public by faith-based organisations, should reflect community standards and expectations.

The IEUA believes that current requirement at common law requiring an employee to exhibit fidelity and good faith toward their employer is sufficient to address a situation where a staff member is alleged to have acted in a manner contrary to the ethos and fundamental principles of a school.

It is unarguable that, at Common Law, an employee owes their employer a duty of fidelity and good faith. Included in this is a duty not to act in a manner which is inconsistent with continuation of the employment contract and to not act in a manner which would harm the employer’s business

The IEUA believes that strong anti discrimination legislation is a mechanism of protecting human rights and that Australia’s current community standards would judge that discrimination on the basis of sexuality is unsustainable. The IEUA calls for the removal of all current exemptions from the Act.

If IEUA can assist further in the Committee deliberations on this matter, please do not hesitate to contact :Chris Watt, IEUA Federal Secretary, 0419 259 143

## **Appendix A**

### **Anti-discrimination Laws in Australia - Employment in Private Education**

This paper provides a brief summary of 13 of the Federal, State and Territory anti-discrimination laws and, more specifically, to the sections that refer to employment in education and if there are any exceptions or exemptions granted to employers in the non-government education sector.

The summary shows that the Commonwealth and each state and territory has exceptions or exemptions relating to discrimination in employment in some or all non-government schools.

These exemptions/exceptions range from the New South Wales law where private educational institutions are exempt from discrimination for a number of attributes through to the South Australian law where discrimination is permitted for certain attributes if a number of conditions and steps are followed such as having a written policy that is freely accessible to all.

Although the wording of the laws in each state and territory is different the majority of exemptions and exceptions are allowed because an educational institution has been established for religious purposes and the discrimination has taken place in good faith to protect the religious susceptibilities or adherents of that religion.

### **Summary**

#### 1) Commonwealth – *Age Discrimination Act 2004*

- a) The *Age Discrimination Act 2004* makes it unlawful to discriminate, directly or indirectly, on the ground of age in relation to work; education; access to premises; provision of goods, services and facilities; provision of accommodation; disposal of land; administration of Commonwealth laws and programs; and, requests for information on which age discrimination might be based.
- b) There is a general exemption for religious bodies. 'This Part does not affect an act or practice of a body established for religious purposes that:
  - i) conforms to the doctrines, tenets or beliefs of that religion; or
  - ii) is necessary to avoid injury to the religious sensitivities of adherents of that religion'(Section 35).

<http://www.comlaw.gov.au/Details/C2014C00435>

#### 2) Commonwealth – *Disability Discrimination Act 1992*

- a) The *Disability Discrimination Act 1992* aims to eliminate, as far as possible, discrimination against persons on the grounds of disability in the areas of:
  - i) Work, accommodation, education, access to premises, clubs and sport; and
  - ii) The provision of goods, facilities, services and land; and
  - iii) Existing laws; and
  - iv) The administration of Commonwealth laws and programs.
- b) Section 22 outlines that it is unlawful for educational authorities to discriminate against a person on the ground of a person's disability.
- c) Section 22(3) says it is not unlawful for an educational authority to discriminate against a person on the ground of a person's disability in respect to admission to an educational institution if that institution has been established primarily for students who have a particular disability and the person does not have that particular disability.
- d) No exemptions apply for religious bodies.

<http://www.comlaw.gov.au/Details/C2015C00147>

3) Commonwealth – *Racial Discrimination Act 1975*

- a) The *Racial Discrimination Act 1975* makes it ‘unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life’.
- b) There are no listed exemptions or exceptions for religious bodies.

<http://www.comlaw.gov.au/Details/C2014C00014>

4) Commonwealth – *Sex Discrimination Act 1984*

- a) The *Sex Discrimination Act 1984* makes it unlawful to discriminate on the ground of sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy, potential pregnancy, breastfeeding or family responsibilities in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs.
- b) There is an exemption (section 38) for educational institutions established for religious purposes where it is not unlawful for a person to discriminate against another person on the ground of the other person’s sex, sexual orientation, gender identity, marital or relationship status or pregnancy in connection with:
  - i) employment or dismissal as a staff member;
  - ii) a position of contract work;
  - iii) the provision of education or training;by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

[http://www.comlaw.gov.au/Details/C2014C00002/Html/Text#\\_Toc375315822](http://www.comlaw.gov.au/Details/C2014C00002/Html/Text#_Toc375315822)

5) Commonwealth – *Australian Human Rights Commission Act 1986*

- a) The *Australian Human Rights Commission Act 1986* is an act to establish the Australian Human Rights Commission, to make provision in relation to equal opportunity in employment, and for related purposes. It outlines the duties functions and powers of the Commission and regulates the processes for making and resolving complaints under the above four acts.

<http://www.comlaw.gov.au/Details/C2014C00684>

6) **New South Wales** – *Anti-Discrimination Act 1977*

- a) The *Anti-Discrimination Act 1977* is an act to render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons. Direct and indirect discrimination are against the law. The types of discrimination and harassment listed as being unlawful are disability, sex, race, age, carer’s responsibility, marital or domestic status, homosexual, transgender, discrimination because of who you are related to or associate with, harassment and sexual harassment.
- b) A ‘private educational authority’ is exempt from many of the types of discrimination regarding employment.

- i) Race is not exempt
  - ii) Sex, but not in relation to pregnancy, childbirth or breastfeeding (Section 35), is exempt - Section 25(3)(c)
  - iii) Transgender is exempt – Section 38(3)(c)
  - iv) Marital or domestic status is exempt – Section 40(3)(c)
  - v) Disability is exempt – Section 49D(3)(c)
  - vi) Carer’s responsibility is not exempt
  - vii) Homosexuality is exempt – Section 49ZH(3)(c)
  - viii) Compulsory retirement on the ground of age is not exempt
  - ix) Age is not exempt
  - x) Harassment and vilification are not exempt.
- c) ‘Private educational authority’ is defined as ‘a person or body administering a school, college, university or other institution at which education or training is provided, not being:
- i) a school, college, university or other institution established under the *Education Reform Act 1990* (by the Minister administering that Act), the *Technical and Further Education Commission Act 1990* or an Act of incorporation of a university, or
  - ii) an agricultural college administered by the Minister for Agriculture’.

[http://www.austlii.edu.au/cgi-bin/download.cgi/au/legis/nsw/consol\\_act/aa1977204](http://www.austlii.edu.au/cgi-bin/download.cgi/au/legis/nsw/consol_act/aa1977204)

## 7) Queensland – *Anti-Discrimination Act 1991*

- a) The *Anti-Discrimination Act 1991* is an Act to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct. The Act prohibits the direct or indirect discrimination on the basis of sex, relationship status, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality, family responsibilities and association with, or relation to, a person identified on the basis of any the aforementioned attributes.
- b) Section 25 subsections 2-8 refer to exemptions for educational institutions under the direction or control of a body established for religious purposes. It says an employer is able to discriminate in a way that is not unreasonable against a person if:
- i) ‘The person openly acts in a way that the person knows or ought reasonably to know is contrary to the employer’s religious beliefs-
    - (1) During a selection process; or
    - (2) In the course of a person’s work; or
    - (3) In doing something connected with the person’s work; and
  - ii) ‘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.’
  - iii) The seeking of information is not authorised contrary to Section 124 (Unnecessary information).
  - iv) Whether the discrimination is not unreasonable depends on all the circumstances of the case including:
    - (1) whether the action taken or proposed to be taken by the employer is harsh or unjust or disproportionate to the person’s actions
    - (2) the consequences for both the person and the employer should the discrimination happen or not happen.
  - v) The exemption does not apply for age, race or impairment factors.
  - vi) If an employer has agreed not to discriminate in respect to other factors then the exemption does not apply for these factors.
- c) Sexual harassment and vilification are also covered in the Act.

<http://www.legislation.qld.gov.au>

#### **8) Victoria – *Equal Opportunity Act 2010***

- a) The *Equal Opportunity Act 2010* prohibits direct and indirect discrimination on the basis of the following attributes: age, breastfeeding, employment activity, gender identity, disability, industrial activity, lawful sexual activity, marital status, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation and personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the aforementioned attributes.
- b) Section 83, referring to religious schools, allows exemptions of a person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity. It needs to be established that exemption applies because of the doctrines, beliefs or principles of the educational institution or that it was reasonably necessary to avoid injury to the religious sensitivities of adherents of the religion.
- c) Section 25 provides an exception to employers allowing discrimination on the grounds of employment against job applicants or employees if the employment involves the care, instruction or supervision of children and the discrimination is reasonably necessary to protect the physical, psychological or emotional wellbeing of the children. This exception does not apply to employment by a post-secondary education provider within the meaning of the *Education and Training Reform Act 2006*.
- d) The *Equal Opportunity Act 2010* also prohibits sexual harassment.
- e) Vilification is mentioned in the *Racial and Religious Tolerance Act 2001*.

<http://www.legislation.vic.gov.au>

#### **9) South Australia – *Equal Opportunity Act 1984***

- a) The *Equal Opportunity Act 1984* prohibits discrimination on the grounds of sex, chosen gender or identity, race, disability, age, marital or domestic partnership status, identity of a spouse or domestic partner, pregnancy, association with a child, caring responsibilities and religious appearance or dress.
- b) Exemptions apply on the ground of chosen gender or sexuality for educational institutions (Section 34(3)) if all the following conditions are met.
  - i) The educational institution is administered as a religious school and the discrimination is founded on the precepts of the religion
  - ii) There is a written policy stating the position
  - iii) A copy of the policy is given to the person
  - iv) A copy of the policy is provided on request, free of charge, to employees, contractors, prospective employees, students, prospective students, parents, guardians and other members of the public
- c) A further exemption (section 85Z(2)) applies to discrimination against same sex domestic partners on the ground of marital or domestic partnership status in relation to employment or engagement for the purposes of an educational institution administered in accordance with the precepts of a particular religion if section 34(3) doesn't apply.
- d) The *Equal Opportunity Act 1984* also prohibits sexual harassment.

<http://www.legislation.sa.gov.au/LZ/C/A/EQUAL%20OPPORTUNITY%20ACT%201984.aspx>

## 10) Western Australia – *Equal Opportunity Act 1984*

- a) The *Equal Opportunity Act 1984* is designed to eliminate discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age, publication of relevant details on the Fines Enforcement Registrar's website and gender history.
- b) An exception to the Act (Section 73(1)) applies for educational institutions established for religious purposes where it is not 'unlawful for a person to discriminate against another person on any one or more of the grounds of discrimination referred to in this Act in connection with employment as a member of the staff of an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed'.
- c) The same applies for contract workers involved in working in an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed (Section 73(2)).
- d) An exception (Section 66(1)) to Sections 54, 55 and 56 of the Act applies to a private educational authority. Nothing in section 54, 55 or 56 renders unlawful discrimination by an employer, principal or person where the employer or principal is a private educational authority if the duties of the employment or work are for the purposes of, or in connection with, or otherwise involve or relate to the participation of the employee in any religious observance or practice.
- e) Section 54 refers to discrimination in work against applicants and employees on the ground of a person's religious or political belief.
- f) Section 55 refers to discrimination in work against commission agents on the ground of a person's religious or political conviction.
- g) Section 56 refers to discrimination in work against contract workers on the ground of a person's religious or political conviction.
- h) Private educational authority means a person or body administering and educational institution, not being a school, college, university or other institution established under the *School Education Act 1999*, the *Vocational Education and Training Act 1996*, or an Act of incorporation of a university or institute of technology.
- i) The Act also prohibits sexual and racial harassment.

[http://www.slp.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_305\\_homepage.html](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_305_homepage.html)

## 11) Tasmania – *Anti-Discrimination Act 1998*

- a) The *Anti-Discrimination Act 1998* applies to direct or indirect discrimination on the ground of any of the following attributes: race, age, sexual orientation, lawful sexual activity, gender, gender identity, intersex, marital status, relationship status, pregnancy, breastfeeding, parental status, family responsibilities, disability, industrial activity, political belief or affiliation, political activity, religious belief or affiliation, religious activity, irrelevant criminal record, irrelevant medical record and association with a person who has, or is believed to have, any of these attributes.
- b) An exception to the Act (Section 51(2)) allows a person to 'discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to employment in an educational institution that is or is to be conducted in accordance with the tenets, beliefs, teachings, principles or practices of a particular religion if the discrimination is in order to enable, or better enable, the educational institution to be conducted in accordance with those tenets, beliefs, teachings, principles or practices'.
- c) An exception to the Act (Section 50) allows a 'person to discriminate against another person on the ground of irrelevant criminal record in relation to the education, training or care of children if it is reasonably necessary to do so in order to protect the physical,

psychological or emotional wellbeing of children having regard to the relevant circumstances’.

- d) The Act also prohibits sexual harassment and inciting hatred.

[http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc\\_id=46%2B%2B1998%2BAT%40EN%2B2015041700000;hison=;prompt=;rec=;term=](http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=46%2B%2B1998%2BAT%40EN%2B2015041700000;hison=;prompt=;rec=;term=)

### **12) Northern Territory – *Anti Discrimination Act***

- a) The *Anti Discrimination Act* prohibits discrimination against a person on the ground of the following attributes: race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, impairment, trade union or employer association activity, religious belief or activity, political opinion, affiliation or activity, irrelevant medical record, irrelevant criminal record and association with a person who has, or is believed to have, an attribute previously referred.
- b) An exemption in Section 37A applies for religious educational institutions in the area of work in the institution if the discrimination:
  - i) is on the grounds of religious belief or activity, or sexuality; and
  - ii) is in good faith to avoid offending the religious sensitivities of people of that particular religion.
- c) An exemption in Section 37 applies for a person to discriminate against another person on the grounds of irrelevant criminal record in the area of work if the work principally involves the care, instruction or supervision of vulnerable persons and the discrimination is reasonably necessary to protect the physical, psychological or emotional well-being of those vulnerable persons, having regard to all of the relevant circumstances of the case including the person’s actions.
- d) The Act also prohibits sexual harassment.

[http://dcm.nt.gov.au/strong\\_service\\_delivery/supporting\\_government/current\\_northern\\_territory\\_legislation\\_database](http://dcm.nt.gov.au/strong_service_delivery/supporting_government/current_northern_territory_legislation_database)

### **13) Australian Capital Territory – *Discrimination Act 1991***

- a) The *Discrimination Act 1991* applies to discrimination on the ground of any of the following attributes: sex, sexuality, gender identity, relationship status, status as a parent or carer, pregnancy, breastfeeding, race, religious or political conviction, disability, industrial activity, age, profession, trade occupation or calling, association (whether as a relative or otherwise) with a person identified by reference to an attribute previously referred and spent convictions within the *Spent Convictions Act 2000*.
- b) A general exception (Section 33(1)) states it is not unlawful for a person to discriminate against someone else in relation to employment as a staff member or as a contract worker in an educational institution if the institution is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, and the person acts in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed.
- c) An exception at Section 44(a) does not make unlawful discrimination on the ground of religious conviction by an educational authority in relation to employment or work in an educational institution conducted by the authority if the duties of the employment or work involve, or would involve, the participation by the employee or worker in the teaching, observance or practice of the relevant religion.
- d) Sexual harassment; racial, sexuality and HIV/AIDS vilification; victimisation; and unlawful advertising are also covered in the Act.

<http://www.legislation.act.gov.au>

## Further Notes

- There are a number of exceptions and exemptions in the education of students in religious educational institutions in each of the state and territory anti-discrimination laws.
  - In NSW private educational authorities are exempt from discrimination on the basis of sex, marital or domestic status, disability, transgender or homosexuality.
  - In Victoria, Queensland, Northern Territory and the ACT schools that exist to teach students of a particular religion may exclude students who are not of that religion.
  - In Western Australia it is not unlawful to discriminate against students on any basis except race, impairment or age.
  - In South Australia religious schools are exempt from discrimination on the basis of a person's religious appearance or dress.
  - In Tasmania religious schools are required to apply for an exemption before they are able to discriminate against students on the basis of religious affiliation. There are four criteria the school/system must meet before the exemption will be granted. (An amendment to this law has been passed in the Tasmanian lower house which would allow schools to discriminate on the basis of religious belief without applying for an exemption.)
- Each of the Commonwealth laws has sections that make reference to how the law interacts with other Commonwealth, State and Territory laws. This ensures that the Commonwealth and state/territory laws can work alongside each other and also to avoid some of the incompatibility and inconsistency features of the laws.
- Complaints of discrimination can be made to the Australian Human Rights Commission or the equivalent body in each state and territory. Once a person has made a complaint or initiated proceedings under State or Territory anti-discrimination laws they are unable to make a complaint or initiate proceedings under Commonwealth laws.
- On the Anti Discrimination Commission Queensland website it states, 'the Commonwealth laws, like our state laws, do not prohibit all types of discrimination. If both the Commonwealth and State laws apply, you can choose which law you want to lodge your complaint under. You cannot lodge your complaint under both Commonwealth and State law. If you start your complaint under the State law you cannot decide later to move your complaint under a Commonwealth law. But you can start under the Commonwealth law and later decide to move to State law'. <http://www.adcq.qld.gov.au/resources/faqs>
- The South Australian Equal Opportunity Commission website says that complaints may be lodged with either the state or federal body but not both. <http://www.eoc.sa.gov.au/eo-you/discrimination-laws/where-do-i-complain-state-or-federal>