

Respect at Work and Other Matters Amendment Bill 2024

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Submission to the Parliamentary Committee for the Respect at Work Bill

1. The Queensland Independent Education Union (**QIEU**) welcomes the opportunity to address the Parliamentary Committee for the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022 (Respect at Work Bill)*.
2. In particular, the QIEU wishes to bring to the attention of the committee the issue of religious exemptions to anti-discrimination law.
3. These exemptions are present in Commonwealth and some state anti-discrimination legislation, perhaps most relevantly section 351(2)(c) of the Fair Work Act 2009. In Queensland, the relevant provision is section 25(3) of the *Anti-Discrimination Act 1991 (Qld) (Anti-Discrimination Act)*.
4. It is relevant to note that the Northern Territory (NT) has recently removed religious discrimination exemptions from its Anti-Discrimination Act as part of broader law reforms. This change was aimed at fostering greater inclusion and protecting vulnerable staff and students. Historically, the NT had provisions allowing religious institutions some exemptions from anti-discrimination laws. However, with the recent amendments, these exemptions no longer exist, meaning that religious institutions must adhere to the same non-discrimination standards as other organisations. There have been no adverse outcomes resulting from this change of policy.
5. Our submission focuses on the matter of religious discrimination exemptions and the crucial importance of protections for staff in the non-government sector. In doing so, we also share our members' experiences of discrimination with the committee.

About the QIEU

6. The QIEU represents approximately 17,000 teachers, support staff and ancillary staff in non-government education institutions in Queensland and the Northern Territory. Catholic, religious and other independent schools employ in excess of 30,000 workers in Queensland and educate a substantial number of students in the Queensland education system.
7. With more than 100 years of experience, we consistently engage in debate concerning industrial and social issues through our Industrial and Equity Committees and through our national counterpart, the Independent Education Union of Australia (**IEU**), which receives input from more than 75,000 members across the country.
8. As a union of education professionals in the non-government sector, our interest in religious exemptions to anti-discrimination legislation relates to its implications for both school staff and students. However, for the purposes of this submission, we have focussed on the implications for school staff.

The QIEU's position

9. The outcome of any review of religious discrimination exemptions should result in the deletion of all references in the legislation (exceptions or exemptions) which permit religious discrimination.

10. To balance the importance of religion in some segments of the community, consideration could be given to specific exemptions permitting religious institutions to:
 - (a) Give more favourable treatment to applicants for employment and applicants for school enrolment who hold particular religious beliefs or who are practising members of a particular religion; and
 - (b) Require the teaching of religious studies in accordance with the tenets of the religion, as interpreted by the institution, and in accordance with the National Curriculum.

Submission as to the proper approach to religious discrimination

11. There is no legislative framework at present that prevents employers in faith-based schools from continuing to discriminate against their employees. This discrimination includes discrimination because of religious belief or not holding a religious belief.
12. Instead, permanent and relatively unfettered legislative exemptions such as section 25(3) of the Anti-Discrimination Act allow faith-based educational institutions to discriminate in employment and override the rights of many, without proper justification.
13. As an example of the broad reach of these legislated exemptions, the QIEU notes that the following individuals could be accused of acting in a way contrary to their employer's religious beliefs and their termination could be justified under section 25(3), despite them otherwise being lawful participants of society and not infringing on community standards:
 - (a) a person with a child to someone to whom they are not married;
 - (b) a divorced person;
 - (c) an unmarried pregnant woman;
 - (d) a person undergoing in vitro fertilisation (IVF) treatment; and/or
 - (e) a lesbian, gay, bisexual, transgender and intersex (**LGBTI**) person.
14. The QIEU notes that most employers in faith-based schools in Australia do not need and never explicitly utilise the provisions in legislation which enable them to discriminate against their employees. They rely instead on express and implied terms in contracts of employment and on associated policies.
15. In Queensland, this means that the section 25(3) exemption has not been formally tested despite it underpinning the very policies that faith-based employers rely on in these circumstances.
16. We note that in 2024, QIEU members still face warnings, loss of their salary and/or positions of leadership, suspension from their employment and/or dismissal solely for reasons directly associated with and attributable to their sex, sexual orientation, gender identity, marital or relationship status, or pregnancy.
17. Our members are often reluctant to challenge their employers' decisions, fearing the risk to their employment; and often, their only option to improve their job security is to change employers. The power imbalance between employees and employers leaves too much at stake for our members to advocate for themselves.
18. When these situations arise, our members often choose one of three paths: they leave their job, pursue the matter and end up in a settlement with a deed of confidentiality, or concede the issue and comply with the school's demands.

19. The limited protections in legislation do not deter employers who wish to impose their beliefs on their staff, as these employers know that employees will be reluctant to challenge them. Employers in these situations want those who disagree with them to leave, and they apply pressure to encourage this outcome. The QIEU has seen this occur on many occasions.
20. In the QIEU's experience, this exemption has a disproportionate effect on women.
21. For example, an unmarried pregnant woman may be accused of acting "openly" in a way that contradicts her employer's religious beliefs due to her visible pregnancy. This could be said to be the same for a pregnant woman who conceived via IVF.
22. In contrast, there are no consequences for the father of the child, as he is not perceived to have acted "openly" against the school's religious beliefs. The physical and visible nature of pregnancy places women at a higher risk of being judged and discriminated against by their employers; men do not face equivalent scrutiny or consequences.
23. It is the QIEU's view that these exemptions are:
 - (a) inherently unfair;
 - (b) out of step with modern community expectations; and
 - (c) disproportionately affecting the very sectors of society that anti-discrimination legislation intends to protect.
24. Further, it is the QIEU's position that employers in faith-based schools do not need to rely on religious exemptions to manage their workforce. We believe that staff in schools should not be discriminated against due to their inherent characteristics.
25. 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.
26. Faith-based schools have the capacity and resilience to continue to operate in the absence of discrimination exceptions or exemptions.
27. Attached to this submission at **Attachment 1** is a list of matters which have been referred to the IEU by our members that bar the exemption for faith-based schools, would constitute discrimination.

Attachment 1

The QIEU provides the following examples of action taken against IEU members by their employers, all of whom implicitly relied upon exemptions in anti-discrimination legislation:

Issue	Details and Outcome
Discrimination on the basis of marital status	<p>An IEU member acted in a manner consistent with the ethos of the school and was in a long-term de facto relationship, where she lived and acted for all purposes as if they were married to their partner. When they decided to marry, she confided her news to one of her colleagues, who then immediately reported this to her Principal.</p> <p>The Principal then set about investigating the matter, found that the teacher had been living in a manner that was inconsistent with the ethos of the school, and disciplined her accordingly on two fronts:</p> <ol style="list-style-type: none"> (1) that she had not been meeting the requirements of the school ethos; and (2) that she had deceived the school in her attempt to “meet” these requirements. <p>The teacher was dismissed as a result. Whilst the matter settled at conciliation, the teacher did not return to her workplace.</p>
Discrimination on the basis of sexuality	<p>An IEU member was targeted and made redundant due to being openly gay. They did not wish to pursue the matter and accepted a redundancy subject to a Deed of Release and Settlement.</p>
Discrimination on the basis of pregnancy	<p>An IEU member found out that she was pregnant and disclosed this to her employer. Her employer commenced a show cause process and dismissed her. Our member sought to access leave without pay, but her employer refused and proceeded with the dismissal.</p> <p>Ultimately, her employer agreed to settle provided she resign.</p>
Discrimination on the basis of pregnancy	<p>An IEU member advised her employer that she was pregnant outside of marriage. She was dismissed as a result.</p> <p>Whilst the member initially chose to challenge her employer’s action, the matter eventually settled and our member left her workplace.</p>
Discrimination on the basis of marital status and pregnancy	<p>There was a complaint made from grapevine gossip that two colleagues were in a relationship and living together. Shortly after, the female colleague fell pregnant.</p> <p>The two colleagues signed an agreement by their employer to be separated at work so as to maintain appearances.</p>
Discrimination on the basis of undergoing IVF, sexuality, marital status and pregnancy	<p>An IEU member met with her employer. Her employer considered that our member breached the statement of principles in her contract of employment as she was currently pregnant and unmarried, living in a same-sex relationship and underwent IVF.</p> <p>As a result, the employment was severed and our member entered into a Deed of Settlement.</p>

<p>Discrimination on the basis of perceived sexuality</p>	<p>An IEU member was terminated during their probationary period due to their appearance in an online but privately stored video (discovered by resourceful students) that depicted the teacher in a same sex relationship.</p> <p>Our member negotiated a settlement with their employer.</p>
<p>Discrimination on the basis of marital status</p>	<p>An IEU member who was an Assistant Principal role in a regional Diocese was called in to a meeting with his employer, who informed him of a parent’s complaint that he was planning on getting married. This was because of a public comment on their Facebook page asking about the teacher’s <i>‘lovely partner’</i>. Our member responded to the comment on Facebook and indicated that their partner was going well.</p> <p>The employer enquired as to the status of the employee’s previous marriage and whether it had been annulled. They also enquired whether they were already living with their soon-to-be married spouse. They advised that if either was true, they had concern that he would be in/entering into an irregular marriage. Our member had not had his previous marriage annulled and was living with his partner.</p> <p>The employer stated that such positions were held to a higher standard and needed to be demonstrating the values of the church. However, the employer also noted that the same scenario could also apply to a classroom teacher.</p> <p>When questioned about the impact of such a process on classroom teachers, the employer confirmed that it could also apply to a teacher.</p> <p>Our member reached an agreement with his employer where he signed a Deed, was transferred to another school and demoted back to classroom teaching duties with salary maintenance for a year. Later, an annulment was obtained and the member obtained another Assistant Principal position.</p>