

Balancing protections from Discrimination with Religious Freedoms – Religious schools

In general terms, the *Anti-Discrimination Act 1992* (the Act) seeks to prevent discrimination in certain areas of life such as education, employment and the provision of goods and services.

The protection from discrimination applies to protected attributes that are set out in section 19 of the Act. These protected attributes include:

- race
- sex
- age
- relationship status,
- religious belief or activity.

The Act provides protection against discrimination, which means that people who hold an attribute should not be treated less favourably than another because of that attribute.

There are some exemptions to the Act. This means that in certain circumstances it is not unlawful to discriminate on the basis of an attribute.

In matters of religion, the Act has a number of exemptions that state certain conduct of religious bodies is not unlawful. This means that the protections from discrimination that would otherwise apply are not applicable. The Act provides a general exemption to allow for 'religious belief or activity', along with a number of more limited exemptions in certain areas.

General exemption for religious bodies – section 51

Section 51 of the Act means the requirement to not discriminate against a person on the basis of an attribute does not apply to religious bodies for acts of religious purposes, such as:

- the ordination of priests or ministers,
- the training or education of people for ordination,
- the training of people as leaders of a religious body,
- selecting people for performance of religious observance or practice, or
- acts for religious observance or practice.

This exemption allows religious bodies to undertake acts for religious purposes.

Limited exemption in area of education – section 30(2)

Section 30(2) provides an exemption for a religious school to exclude applicants (students) who are not of that religion. This exemption is proposed to be removed in the Anti-Discrimination Amendment Bill 2022 (the Bill).

What impact will removing section 30(2) have?

No religious schools in the Northern Territory will be able to require potential students to be of the same faith in order to attend the school.

It is understood that the exemption is not used and this has not prevented religious schools from operating in accordance with a doctrine of a particular religion (or in accordance with religious identity and ethos).

Limited exemption in area of work – section 37A

Section 37A provides an exemption for religious schools to permit discrimination in employment on the grounds of sexuality or religious belief or activity where the discrimination is in good faith to avoid offending the religious sensitivities of people of a particular religion. The exemption applies only to employment in religious schools and does not apply to any other employment.

This exemption is proposed to be removed in the Bill.

What impact will removing section 37A have?

Religious schools will no longer be permitted to discriminate when employing staff on the basis of the employee's or job applicant's sexuality, or their religious belief or activity.

The removal of s 37A does not mean that a religious school cannot continue to operate in a way that maintains religious identity and ethos. Religious schools can continue to require teachers as part of their job description to, for example, perform a religious duty such as leading prayer or deliver pastoral care.

The removal of the exemption means that employees in religious schools will be given the same rights and protections as employees in other schools and employees in all other workplaces.

What about positions that are important for a religious school to operate in accordance with the doctrine of a particular religion?

Section 35 of the Act provides an exemption that allows for discrimination based on a 'genuine occupational qualification' that the applicant is required to fill. This exemption applies to all employers. A religious school may require, for example, a Principal, religious education teacher or chaplain to be of the same faith as positions that lead religious belief in a religious school. These types of positions could therefore be positions where religious belief or activity is a genuine occupational qualification that permits preferencing a person holding a particular religious belief.

Does section 37A regulate the operation of a religious school in accordance with the doctrine of a particular religion?

No. The operation and establishment of a religious school is not regulated by the Act. The Act operates to prohibit discrimination. Religious schools are prohibited from discriminating and unfavourably treating a person if they hold a protected attribute, in the areas of education and work as provided by the Act.

The Act otherwise does not apply to a religious school as an educational authority operating in accordance with a doctrine of a particular religion.

All schools, whether religious or not, are regulated by the *Education Act 2015* as educational authorities. Part 7 of the Education Act regulates an educational authority operating in accordance with a doctrine of a particular religion as a non-government school.

Limited exemption in area of accommodation – section 40(2A)

Section 40(2A) of the Act provides an exemption for religious schools to allow for accommodation for students who are of that religion. This exemption is proposed to be removed in the Bill.

What impact will removing section 30(2) have?

No religious schools in the Northern Territory providing accommodation for students will be able to require students to be of the same faith for the accommodation to be provided.

This aligns with the removal of section 30(2) and will not prevent religious schools from operating in accordance with a doctrine of a particular religion (or in accordance with religious identity and ethos).