



Honourable Yvette D'Ath MP  
Attorney-General and Minister for Justice  
Leader of the House

In reply please quote: 578884/4; 4786243

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Mr Neil Laurie  
The Clerk of Parliament  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr <sup>Neil</sup>Laurie

I refer to e-Petition 3055-18 tabled in the Legislative Assembly on 30 April 2019 titled *Consistency in application of discrimination exemptions*, which was sponsored by yourself as the Clerk of the Parliament.

The petition says:

Queensland citizens draws to the attention of the House that the right of religiously-based schools to employ teaching staff who hold and demonstrate views in line with the founding principles behind the formation of the school is currently being questioned. However, some jurisdictions are also maintaining the right of political parties to only employ staff who hold to the party's particular political philosophy. Your petitioners believe these two propositions to be fundamentally inconsistent with each other and that the freedom of organisations formed specifically to promote a particular worldview to only employ staff also holding to that particular worldview ought to be maintained.

The petitioners in their petition 'request the House to affirm the above principle and commit to maintaining it in legal practice.'

Section 25 of the *Anti-Discrimination Act 1991* (Anti-Discrimination Act) currently allows a person to discriminate in advertising, deciding who should be offered work and in dismissing a worker if the worker is unable to meet the genuine occupational requirements of the position. Examples of genuine requirements for a position in the Anti-Discrimination Act include —

- *Example* - using membership of a particular political party as a criterion for a position as an adviser to a political party or a worker in the office of a member of Parliament.
- *Example* - employing persons of a particular religion to teach in a school established for students of the particular religion.

The current section 25 exemption also applies to work for a school or other educational institution that is under the direction or control of a body established for religious purposes. This exemption relates to the behaviour of a person, rather than a characteristic of a person such as gender, race, or sexuality.

(2)

There are limits on how far an employer can dictate how an employee can behave in their private life, and these limits prevail over contractual arrangements.

The exemption only applies where:

- it is a genuine occupational requirement that workers act in a way that is consistent with the religious beliefs of the school or educational institution;
- the worker or applicant openly acts in a way that is inconsistent with those religious beliefs during the course of work or doing something connected with work; and
- the discrimination action is not unreasonable.

Whether the discrimination is unreasonable depends on all of the circumstances, including:

- whether the action is harsh or unjust or disproportionate to the behaviour; and
- the consequences for both the worker or applicant, and the employer, if the discrimination happens or doesn't happen.

The exemption does not apply to discrimination on the basis of age, race or impairment. It also does not allow seeking information such as a person's age or sexuality, and whether or not they have children.

I note the Australian Law Reform Commission (ALRC) is currently undertaking a review into the Framework of Religious Exemptions in Anti-discrimination Legislation. The ALRC will be releasing a discussion paper on its inquiry on 2 September 2019. Submissions on the discussion paper will be accepted until 15 October 2019. The final report will be provided to the Federal Attorney General on 10 April 2020.

Further information or advice in relation to the operation of Queensland's anti-discrimination legislation can be obtained by contacting the Anti-discrimination Commissioner of Queensland.

I thank the petitioners for bringing their concerns to the attention of the House.

Yours sincerely



**YVETTE D'ATH MP**  
Attorney-General and Minister for Justice  
Leader of the House