

Religious Discrimination Bill 2019

Religious Discrimination (Consequential Amendments) Bill 2019

Human Rights Legislation Amendment (Freedom of Religion) Bill 2019

INDEPENDENT EDUCATION UNION SUBMISSION TO THE ATTORNEY-GENERAL'S DEPARTMENT

IEU

The Independent Education Union of Australia (**IEU**) represents members in non-government education in all states and territories throughout Australia. The union's coverage spans early childhood education, schools and colleges, non-government educational institutions and post-secondary education.

At the time this submission was prepared the IEU had 73082 members. The IEU is the only union with coverage of principals, educational leaders and teachers in non-government schools and maintains a density in excess of 55% in respect of these members.

Support for Religious Freedom Legislation

The IEU supports legislation adding religion as an attribute to federal anti-discrimination legislation. Such legislation is necessary to prevent discrimination and is consistent with the promotion of individual freedom, equality and fairness. It also assists Australia in meeting its long-held international obligations, including its obligations as a signatory to the International Covenant on Civil and Political Rights (ICCPR), to legislate where necessary to give effect to the rights recognised in the Covenant and to provide an effective legal remedy for any violation of those rights.¹ Relevantly that covenant provides that:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice.²

¹ ICCP, Article 2.2,2.3

² ICCP, Article 18

ACTU Submissions

We have had the opportunity to read a draft of the submissions prepared by the ACTU on behalf of all affiliate unions and strongly support those submissions, particularly as they address the need for a comprehensive and consistent approach to anti-discrimination legislation. We agree with the ACTU that:

“ It does not make sense to introduce new protections against discrimination on the grounds of religion without first reviewing the adequacy and effectiveness of existing protections.”

Religious Discrimination Bill - Exemptions

The Bill should not be introduced prior to the finalisation of the Australian Law Reform Commission’s (ALRC) *Inquiry into the Framework of Religious Exemptions in Anti-Discrimination Legislation*. Nor should the Bill, or in fact the issue of religion as a protected attribute, have been excluded from the scope of that inquiry. Enacting the Bill in its current form will, as a consequence of that exclusion, significantly compromise the capacity of the ALRC to recommend reforms to existing legislation which would effectively remove unnecessary religious exemptions to prohibitions on discrimination.

The proposed provisions of s 10 would operate as an effective exemption from the provisions of the Bill for religious educational institutions and in so doing deny freedom of religion and religious expression to the employees of those institutions. This is both unnecessary and a direct negation of human rights to freedom of religion and freedom of expression.

Exemptions are provided for faith-based schools and educational institutions in all Commonwealth and state anti-discrimination legislation. Attached to this submission and marked as ‘Attachment 1’ is a summary of those exemptions compiled in 2015. As at the time of preparation of this submission these exemptions exist in the same or a similar form.

The exemption in the Religious Discrimination Bill is couched in the same or similar terms to many of these exemptions in Commonwealth and state legislation, most relevantly s351(2)(c) of the *Fair Work Act 2009*. In that resemblance it treats all educational institutions established by religious bodies as though they were alike. The definition of “*religious body*” as an, “*educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion*”,³ fails to take into account substantial differences between faith-based schools. In doing so it unfairly extinguishes the rights and protections provided in the Bill to employees of schools where, inter alia:

³ Religious Discrimination Bill s 10(2)(a)

- a school is established by a religious community, yet the current faith basis of the school is essentially historical and/or nominal;
- no religious instruction is provided to students;
- the school does not advertise for principals or teachers with a particular religious background or belief system;
- a majority or all of the teaching staff are not adherents of the religion in whose name the school is conducted.

The considerable majority of employers in faith-based schools in Australia do not need and never utilise provisions in legislation enabling them to discriminate against their employees. They rely instead on express and implied terms in contracts of employment and on associated policy to ensure that employees meet their duty of fidelity.

This Bill will do nothing however to prevent a small minority of employers in faith-based schools from continuing to discriminate against their employees. This discrimination includes discrimination on the basis of religious belief or not holding a religious belief. Recent examples of matters relevant to these attributes referred to the IEU by members include:

- Following the referendum and subsequently the passage of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* refusals by members, in a number of schools and in more than one state, to sign declarations presented to them that amend school charters and statements of faith to include terms stating that homosexuality and state-sanctioned same sex unions were morally wrong;
- The threatened dismissal of a member based on his alleged failure to meet his obligation to “attend service twice weekly”;
- A member being placed on a performance management program which listed in the areas required for improvement, “a continued failure to profess Old Testament teachings and values”.

In this respect, of particular concern to the IEU is the number of complaints from members following criticism of the draft Religious Freedoms Bills in IEU publications, that they were directed by their employer to contact the union to ask that this content be removed, informed by their employer in various terms that they owed a primary duty to their employer to do so, and threatened with disciplinary action by their employer if they did not.

IEU members are still receiving warnings, losing salary and/or positions of leadership, being suspended from their employment and being dismissed solely for reasons directly associated with and attributable to their sex, sexual orientation, gender identity, marital or relationship status or pregnancy. Attached to this submission and marked as ‘Attachment 2’ is a list of examples of matters relevant to these attributes (as provided to the federal office of the IEU by branches) referred to the IEU by members within the last three years.

A similar list was provided to the Senate Legal and Constitutional Affairs References Committee late last year in respect of its inquiry into legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff.

Religious Discrimination Bill – other provisions

Although the exemptions make the Bill a nullity insofar as IEU members are concerned, we object to several of its further provisions.

In respect of the employer conduct provisions of the Bill, if the religious freedom proposed by the bill can be made intelligible and if it is necessary, we do not understand the basis for then limiting the application of the provisions to large employers. Nevertheless, in any context the limitations⁴ the Bill places on the content of statements of belief, are insufficient. A statement need not be malicious, vilify or incite hatred or violence to be deeply and/or deliberately insulting or offensive.

We also object to s 41(1)(b) of the Bill which specifically overrides s17(1) of Tasmania's *Anti-Discrimination Act 1998*. That Act provides both a more appropriate level of protection from discriminatory conduct and that employers seeking to discriminate must make application for an exemption. In this latter respect the Tasmanian legislation should not be bypassed as it operates more transparently and efficiently. Instead of seeking to circumvent and undermine it when providing for exemptions from federal anti-discrimination legislation the government should consider replicating the architecture of the Tasmanian legislation.

⁴ Religious Discrimination Bill s 8(4)

ATTACHMENT 1

SUMMARY OF EXEMPTIONS FROM ANTI-DISCRIMINATION LEGISLATION FOR FAITH-BASED SCHOOLS AND EDUCATIONAL INSTITUTIONS

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

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

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

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%2B20150417000000;histon=;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

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.)

ATTACHMENT 2

RECENT EXAMPLES PROVIDED BY IEU BRANCHES OF ACTION TAKEN AGAINST MEMBERS WHERE EMPLOYERS RELIED UPON EXEMPTIONS FROM ANTI-DISCRIMINATION LEGISLATION

1. A male primary school principal in western NSW was contacted by the 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 that 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.

3. An Assistant Principal in regional Diocese was called to a meeting with the Executive Director who said that "it had been brought to his attention" that the AP was married to a woman whose first marriage had not been annulled. The AP 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 AP 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 AP was then demoted to a classroom teacher position with salary maintenance for a year. (It is noted that later an annulment was obtained and the member, now correctly married in the view of the Church, obtained another AP position.)

4. Two women teachers had been in a same sex relationship for over ten years. One was in a co-ordinator role in a metropolitan Diocese secondary school and the other worked in a Catholic independent school. They decided to have a baby and were subsequently reported

to the Diocese Bishop after being seen with the baby at a shopping centre (not in area of the school).

CEO said that it had no other option than to move their employee to another school and remove her co-ordinator's allowance. She did not accept the offer and resigned and took up a role with the DET. 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. When her marriage broke up, with some associated FDV 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. The implication was 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 DET school.
5. A teacher at a Brethren school in WA was separated from his wife and in the process of obtaining a divorce. He commenced a relationship with another partner. He was dismissed by the school.
6. A teacher employed by a Catholic diocesan school was dismissed as a consequence of becoming pregnant via IVF.
7. A teacher at Baptist school who went there as a student and 'came out' as a student, was subsequently employed as a relief teacher but didn't 'keep quiet' about their relationship and was subsequently removed from the relief teacher roster.
8. Transgender- we had a member who was a physics teacher in an elite independent school who had been on LWOP for a year to tutor physics at university. Whilst on leave the member had transitioned and wished to return to school but was concerned her employment may be terminated. We advised the member that the exemption for transgender discrimination by private educational authorities under the NSW Anti- Discrimination Act meant there was no realistic prospect of success in the event that she sought to challenge the employer's decision to dismiss. Following our approach to the school to discuss their position, the union met with them and their solicitor

but was obliged on the member's behalf to agree on term of separation.

9. Lesbian- a member who identified as lesbian is 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 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. The 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. The employer maintained that enrolling the child at the same school would unacceptably highlight 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. There is an exemption for homosexual discrimination by private educational authorities under the NSW Anti - discrimination Act.
10. Marital status: - a teacher in a western NSW Catholic diocesan school was threatened with termination due to 'non-recognised marriage'. The teacher's husband had been previously married. The employer was insisting that the husband had his marriage annulled- if this didn't occur the teacher could not marry him in a Catholic Church, so they travelled overseas to get married. The employer originally threatened to terminate employment but eventually agreed to demote her, provided her husband agreed to a schedule of counselling sessions re the Catholic faith. There is an exemption for marital status discrimination by private educational authorities under the NSW Anti – discrimination Act.
11. Marital status:- two teachers in two different Christian schools, had an affair. Both teachers were threatened with termination if the affair continued. The teacher who was seen as the weaker teacher, was particularly at risk.
12. Disability – regional 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. Private educational authorities are not covered by disability law in NSW. NB this means as the behaviour is lawful in NSW, you cannot run an adverse action case under the Fair Work Act - see s 351 (2)

14. Regional diocese. Divorced teacher. A male colleague's car was seen outside her house. The member was formally warned and lost her position of leadership. There were no consequences for the male colleague.
15. In an Islamic school, an issue arose concerning a lesbian teacher whose partner is pregnant. The employer advised her that she could not claim leave. In the event that she does seek leave she has confirmed with school 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 defacto relationship with a woman for 10 years and had children "out of wedlock"