

Changes to the *Discrimination Act 1991* – Information for Religious Educational Institutions.

Changes to the ACT *Discrimination Act* will come into effect from 29 April 2019.

These changes will affect exceptions applying to religious educational institutions in the ACT. From 29 April 2019, it will not be lawful for religious educational institutions to discriminate against students or staff on the basis of sexuality, gender identity, marital status, relationship status and other protected attributes.

For many organisations, these changes will not make a difference in day to day practice.

However, for some organisations, it will be important to consider whether changes may be needed to policies and other information provided to students and staff about enrolment and employment.

What is a religious educational institution?

A religious educational institution is an educational institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed.

An educational institution is defined to mean a school, college, university or other institution at which education or training is provided.

Schools, colleges, universities and training institutions (including Registered Training Organisations), that are conducted in accordance with a particular religion will fall within this definition.

What are the changes to the law?

From 29 April 2019 the *Discrimination Act* will:

- prohibit discrimination against students on any ground, except the religious conviction of a student, and then only in decisions about admission of the student.
- prohibit discrimination against employees and contractors by religious educational institutions on any ground, except the religious conviction of the employee or contractor. Discrimination against staff on the ground of religious conviction will be allowed where it is intended to enable, or better enable the religious educational institution to be conducted in accordance with its religious doctrines, tenets, beliefs or teachings.
- require that religious educational institutions that wish to rely on the limited exceptions publish policies about their admission criteria for students, or about their employment practices.

These new requirements will be set out in section 46 of the *Discrimination Act* from 29 April 2019.

How will the changes protect students and staff?

Students:

The only area in which a religious educational institution will be authorised to discriminate against a student will be in the admission process, and only on the ground of the religious conviction of the student. This is intended to allow religious educational institutions to discriminate in favour of students who share the religious conviction of institution (for example an Islamic training college may make it a criteria of admission that a student is of Muslim faith).

For a religious educational institution to rely on the exception, it must have a clear policy about criteria of religious conviction applied to admissions and make sure the policy is readily accessible by both current and prospective students.

Staff:

The changes remove the broad exception that may currently allow discrimination against staff and contractors in religious educational institutions in relation to sexuality, gender identity and range of other protected attributes.

From 29 April 2019, religious educational institutions will only be permitted to discriminate against an employee or contractor on the ground of the religious conviction of that employee or contractor, and not on any other ground.

To rely on this narrow exception, the religious educational institution would have to show that discrimination was intended to enable, or better enable the institution to be conducted in accordance with its religious doctrines.

To rely on this exception the religious educational institutions must also have published policies about the way that any religious conviction requirements apply to staff.

What changes are required to Policies and Information?

Enrolment policies and information

If a religious educational institution intends to discriminate in the enrolment of students to only accept students of a particular religious faith, this information must be available to current and prospective students and their families.

For example, a policy for a Christian training provider may state that the educational institution will only accept enrolment applications from students who share the Christian faith, in order to create a Christian community within the educational institution.

It would not be lawful for policies to suggest that the educational institution will discriminate against students on the grounds of religious conviction (or any other grounds) after enrolment.

Employment policies and information

If a religious educational institution intends to discriminate against employees and contractors at the educational institution, based on the religious conviction of the employee or contractor, this must be clearly set out in the policies of the educational institution, and made available to current and prospective staff.

For example, the policy of a Catholic tertiary college might state that the college is conducted in accordance with the tenets of the Catholic faith and that it is the policy of the college to give preference in employment to teaching staff of the Catholic faith. The policy might state that certain positions within the college may only be available to staff of a Catholic faith.

It would not be lawful for a religious educational institution to state in its policies that the educational institution will not employ people who are homosexual or transgender. This would be discrimination on the grounds of sexuality or gender identity, rather than religious conviction.

Do these changes affect what we can teach students?

These changes are not intended to affect the ability of religious educational institutions to teach students about the tenets and doctrines of their faith. However, it will be important to ensure that individual students are not treated unfavourably in the way that the information is provided.

What about exemptions under the Discrimination Act?

When the changes come into effect it will still be possible to apply to the ACT Human Rights Commission for an exemption under the Discrimination Act to allow particular conduct or practices that would otherwise amount to unlawful discrimination. In considering such applications the Commission will have regard to human rights, including the right to religious freedom, as well as the objectives of the Discrimination Act.

Getting more information and assistance with the changes

There is a range of information about discrimination on the ACT Human Rights Commission website at www.hrc.act.gov.au

You can contact the ACT Human Rights Commission on 6205 2222.

This information sheet is intended to provide general information about the changes introduced by the *Discrimination Amendment Act 2018*. It does not constitute, and should not be taken to be legal advice. You may wish to seek private legal advice about the way in which these changes might apply to the specific circumstances or practices of your organisation.