

# FACT SHEET

## *Anti-Discrimination Amendment Bill 2015*

The Anti-Discrimination Amendment Bill 2015 (the Bill) makes amendments to the *Anti-Discrimination Act 1998* (the Act) to assist religious-based schools to manage the admission of students to their schools.

Section 16 of the Act prohibits discrimination on the grounds of any of the attributes specified in that provision, including religious belief or affiliation or religious activity.

The Act provides a number of exceptions to the prohibition on discrimination and also allows for the granting of exemptions in certain circumstances.

Under section 51(2) of the Act, there is an exception in relation to employment in religious-based educational institutions. The exception provides that:

*A person may 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.*

There is no equivalent exception in relation to the admission of students in religious-based schools. The Act does, however, allow religious-based schools to apply to the Anti-Discrimination Commissioner for an exemption in relation to admission in limited circumstances (sections 55A and 55B). An exemption can only be sought for any years where there are more children seeking admission to a particular year group than places available.

Some religious-based schools are rarely, if ever, over-subscribed and are therefore unable to apply for these exemptions. This may lead to inconsistency and disparity between schools. In addition, the process for obtaining an exemption may be (or may be perceived as being) burdensome and complex. The current provisions could also be seen as interfering in the religious freedom and decision making processes of religious-based schools.

With the exception of New South Wales and South Australia, all other States and Territories provide a general exception allowing religious-based schools to refuse admissions on the basis of religious beliefs or affiliations. New South Wales and South Australia do not specifically prohibit discrimination on the grounds of religious belief, affiliation or activity, therefore no exemption or exception is required.

The amendments proposed by the Bill will repeal the current exemption provisions and replace them with a general exception effectively allowing religious-based schools to give preference in admission to students who have religious beliefs, affiliations and the like aligned to those of the school. There will be no need for schools to make application to the Anti-Discrimination Commissioner as the exception will apply to all religious-based schools.

In summary the Bill provides that:

- religious based schools can give preferential treatment during the admission process to students who share the religious beliefs of the school;
- the exception to the Anti-Discrimination Act only applies to the admission of students to the school and will not affect the enrolment of existing students; and
- the changes to the Anti-Discrimination Act will not permit discrimination based on other attributes such as sexual orientation, relationship status etc, and the rights to make a complaint based on discrimination once a student is part of the school community remain in place.