

## SECOND READING SPEECH – HON. JEREMY ROCKLIFF MP

### *Anti-Discrimination Amendment Bill 2015*

Madam Speaker, I move that the Bill be read a second time.

This Bill makes amendments to the *Anti-Discrimination Act 1998* to assist religious and faith-based schools to manage the admission of students to their schools. The amendments allow religious-based schools to decline admission to students who do not share the same religious beliefs, principles or tenets as the school.

As members would appreciate, the Anti-Discrimination Act prohibits discrimination and other wrongful conduct such as intimidation and bullying. Specifically, the Act makes it unlawful to discriminate against a person on the basis of any of the 22 attributes set out in section 16. Further, the Act prohibits behaviour which offends, humiliates, intimidates, insults or ridicules another person on the basis of a select number of attributes.

The Act sets out the process for the making and handling of complaints of discrimination. Where a complaint of discrimination is found to be substantiated, there are a number of orders that can be made including re-employment, redress for any loss, injury or humiliation suffered by the complainant, and compensation.

Currently it is unlawful to discriminate against a person on the basis of his or her religious beliefs, affiliations or activities. Effectively this means that religious-based schools are unable to decline admission to a school if a student is not of the same religion as the school. Schools are able to apply for exemptions under the Act but this can be a cumbersome and uncertain process as it is difficult to predict whether the preconditions for an exemption will be met – that is, whether a year group may be oversubscribed with students seeking admission.

Madam Speaker, the Act currently recognises that some forms of discrimination, such as positive discrimination or excluding certain types of people from some positions or organisations, are appropriate. For example, it may be appropriate to restrict particular employment positions in a women's shelter to females or to prevent people with criminal records from being able to work in volunteer positions with children. The Act, therefore, provides for a number of exceptions and exemptions in relation to the general prohibition on discrimination. Some of the exceptions set out in the Act, relate to such things as admission to single gender schools, special sporting activities restricted to participants who have a disability, or membership of clubs for persons of a particular age group.

Madam Speaker, the Bill we are discussing today introduces a general exception in relation to the admission of students to religious-based schools. The intent behind these amendments is to allow religious-based schools to give preference in admission to students who have religious beliefs, affiliations and activities consistent with those of the school. These amendments will also remove administrative burden and red tape associated with the current exemption process.

The current exemption process was the subject of extensive debate in this House in 2012 and the other place in 2013 during the passage of a Bill to streamline the complaints handling process.

The amendments that were passed in 2013 can best be described as a compromise. They allow religious-based schools (e.g., an individual school such as Friends) or schools systems (e.g., the Catholic Education Office) to apply to the Anti-Discrimination Commissioner for an exemption in relation to the admission of students in very limited circumstances. To apply for this type of exemption, a school must provide evidence of the following, namely that:

- the school is an educational institution that is conducted in accordance with the tenets, beliefs, teachings, principles or practices of a particular religion; and
- the school's policy for the admission of students demonstrates that the criteria for admission do not include any consideration of the attributes referred to in section 16 other than religious affiliation; and
- the test for religious affiliation used by the school relates to the affiliation of a person, a person's parents or grandparents and is demonstrated through objective measures; and
- the school is oversubscribed for admission to a particular year group in a particular school year or school years (in effect, there must be a waiting list).

There are similar requirements where a schools system applies for an exemption.

There are concerns that these tests are onerous for schools, particularly given that an exemption can only be granted for a maximum period of three years and then schools have to reapply.

Madam Speaker, it is also important to note that not all religious-based schools can apply for such an exemption. Some schools are rarely or never oversubscribed and will therefore not meet this precondition.

This creates inconsistency and inequity between religious-based schools with some schools able to restrict admission on the basis of adherence to religious principles and others not.

There is concern amongst some religious organisations that the current provisions of the Act restrict the ability of religious-based schools to carry out the purpose for which they were established – that is the provision of education to members of their religion in accordance with the tenets and practices of that religion.

Under the International Covenant on Civil and Political Rights, everyone is guaranteed the right to freedom of thought, conscience and religion. This right includes freedom to have or adopt a religion or belief of his or her choice including, in community with others, to manifest their religion in worship, observance, practice and teaching. The State Parties to the Convention, including Australia, undertook to respect the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.

Madam Speaker, religious freedom is at the heart of these amendments. Clearly a key reason for the existence of religious-based schools is to provide education to members of their own religion in accordance with the principles, tenets and beliefs of that particular religion. This is consistent with the freedom of religion rights enshrined in the International Convention on Civil and Political Rights. I am sure that most members of the community would consider it reasonable and indeed may expect that religious-based schools admit students of their own religious community first before accepting those from outside of their religion.

Certainly, the right of religious-based schools to offer preference in admissions to students of the same religion is recognised in most other States and Territories of Australia. With the exception of New South Wales and South Australia, all other States and Territories provide a general exception to their anti-discrimination laws to allow religious-based schools to positively discriminate in favour of members of their own religion in relation to admission. The details of the provisions vary in each State and Territory, but their general effect is the same. New South Wales and South Australia do not specifically prohibit discrimination on the ground of religious belief, affiliation or activity, so no exception is required.

Madam Speaker, the Government is bringing this Bill to the Parliament to ensure that religious-based schools are able to make decisions about the admission of students without undue influence from the State and with certainty.

The amendments proposed by this Bill will repeal the exemption provisions and replace them with a more general exception along the lines of the exception in relation to employment in religious-based schools. Consequently there will be no need for schools to make application to the Anti-Discrimination Commissioner and there will no longer be an oversubscription requirement – the exception will apply to all religious-based schools. This is more equitable for the schools and will protect them from technical breaches of the Act when operating a preferential admission policy.

There is already precedent for allowing religious-based schools to manage their affairs in this way. The Act already provides a general exception in relation to the employment of staff in religious schools. Section 51 subsection (2) 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.

Madam Speaker, I would like to point out a couple of important elements of these amendments.

Firstly, the proposed new exception specifically states that it does not permit discrimination on the basis of any other attribute. This is an important point to note because one of the claims made in relation to this type of exception is that it will open the door to discrimination based on other attributes which may conflict with the tenets

of a religion, for example sexual orientation or the relationship status of the student's parents.

The way in which the amendment is drafted is intended to prevent this from occurring. Discrimination on the basis of these other attributes is unlawful under section 16 of the Act and if a parent or student believes that the school is discriminating against him or her on the grounds of one of these attributes, he or she is able to make a complaint.

I can also advise members that when the Bill was sent out for consultation, this feature of the amendments was emphasised to and generally supported by stakeholders, including religious education organisations.

The other thing that I think is important to bear in mind is that whilst the exception proposed by these amendments may afford some comfort to religious-based schools in relation to their admission policies, it does not prevent complaints being made in accordance with the Act if, in fact, a student has undergone discrimination.

The amendments provide a defence if a complaint is made and the school can demonstrate that it has only refused admission on the basis that the student did not have the requisite religious faith.

The amendments do not remove rights to complain. Effectively, this means that if a person feels he or she has been discriminated against by the school in the admission process, that person can make a claim to the Office of the Anti-Discrimination Commissioner. The onus will be on the school to establish on the balance of probabilities that the exception properly applies in that instance - that is, that the person was excluded from admission on the basis of religious belief or activity or religious affiliation and not due to any other reason.

Another key element of the proposed new exception is that it only applies at the point of admission of a student to the school. Once a student is already admitted to the school, the exception cannot be used to remove that student. For example, if, after already being admitted to a religious-based school, a student subsequently changes his or her religious beliefs or affiliations, this proposed exception cannot be used to then oust that student from the school. Obviously to do so would cause disruption and distress to the student, the family and, potentially, to other siblings at the school.

I emphasise that once a student is admitted to the school they have the protections of the Anti-Discrimination Act and the school does not have a right to discriminate on any attribute.

Madam Speaker, these amendments will ensure that all religious-based schools are subject to the same provisions and can offer preference in admission of students to members of their own religion.

I commend the Bill to the House.