

2023

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT AMENDMENT
TO THE
DISCRIMINATION AMENDMENT BILL 2022**

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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Minister for Human Rights**

DISCRIMINATION AMENDMENT BILL 2022

This supplementary explanatory statement relates to the Government amendment to the Discrimination Amendment Bill 2022 (**the Bill**). It has been prepared in order to assist the reader of the Bill and the amendments and to help inform debate. It does not form part of the Bill or the amendments.

The statement is to be read in conjunction with the Bill and the explanatory statement prepared in support of the Bill. It is not, and is not meant to be, a comprehensive description of the Bill or the amendments.

OVERVIEW OF THE GOVERNMENT AMENDMENTS

The Bill inserted new section 32 that provides the exceptions to unlawful discrimination. Subsections (1)(a) to (c) permit a religious body to discriminate on any ground in the ordination, training and education of clergy. These exceptions recognise that these activities are internal matters for a religious body and are at the centre of religious freedom. Subsections (2)(a) and (b) disapply the general exceptions for religious bodies in relation to the employment of a person or admission, treatment or continued enrolment of a student in an educational institution. The intention of this disapplication is to ensure religious educational institutions are required to rely on the existing exceptions in section 46 and not able to circumvent these requirements by accessing a broader exception.

As 'educational institution' is broadly defined to mean 'a school, college, university or other institution at which education or training is provide', it is noted that a seminary or other institution where clergy or religious leaders are trained could fall within this definition and consequently prevent religious bodies from being able to rely on subsections (1)(a) to (c) as intended.

To ensure the Bill gives appropriate effect to the policy intention, the amendments:

- clarify that the exceptions to unlawful discrimination for a religious body in the provision of goods, services and facilities to the public, employment and any other act or practice do not apply to discrimination in relation to the employment of a person or enrolment, treatment or continued enrolment of a person as a student at an educational institution; and
- make it clear that a religious body whose sole or main purpose is a commercial purpose cannot access any exceptions under subsection 32(1).

CONSULTATION ON THE PROPOSED APPROACH

Nil.

CONSISTENCY WITH HUMAN RIGHTS

No human rights are engaged by these amendments as they are only intended to give appropriate effect to the policy intent of the reforms. Detailed analysis on the impacts of the section 32 exceptions to unlawful discrimination for religious bodies on the right to equality and non-discrimination (section 8), the right to freedom of thought, conscience, religion and belief (section 14) and cultural rights of other minorities (section 27 (1)) is available in the explanatory statement for the Bill.

CLAUSE NOTES

Amendment 1

Clause 9, Proposed new section 32 (2), Page 9, line 1 –

This clause omits proposed new section 32 (2) and substitutes new subsections (2) and (2A).

Subsection (2) provides that subsections 32 (1) (d) to (f) do not apply to discrimination in relation to the employment of a person or the enrolment, treatment or continued enrolment of a student in a religious educational institution as these matters are covered by existing section 46.

Subsection (2A) makes it clear that religious bodies whose sole or main purpose is commercial cannot rely on the exceptions in subsection (1).