

EQUAL OPPORTUNITY (LGBTIQ ANTI-DISCRIMINATION) AMENDMENT BILL 2018

Introduction and First Reading

Bill introduced, on motion by **Hon Alison Xamon**, and read a first time.

Second Reading

HON ALISON XAMON (North Metropolitan) [9.16 am]: I move —

That the bill be now read a second time.

In Western Australia, it is lawful for religious schools, including those receiving taxpayer dollars, to sack lesbian, gay, bisexual, transgender, intersex and queer staff, simply because of who they are. It is also lawful to expel LGBTIQ students and to refuse enrolment from students who come from rainbow families, such as those with same-sex parents. It is clearly unacceptable that in 2018 there are still gaps in legal protections for LGBTIQ members of our community that deny them access to basic rights such as freedom to choose where they can work and which school their child can attend. This discrimination has been in place since 1984 through a loophole in the state's Equal Opportunity Act. Section 73 of the act provides an exemption for religious schools that, amongst other attributes, allows them to discriminate on the basis of sexuality and/or gender history. The provision, which places religious schools above civil law, has been used many times and continues to be used today, with significant impacts on many people's lives and livelihoods. There is also considerable anecdotal evidence that LGBTIQ teachers and students continue to suffer from petty discrimination and disadvantage within some religious schools, such as being overlooked for promotion, having duties downgraded, or not being offered positions within the school structure, such as student councils or prefect ranks.

The Equal Opportunity (LGBTIQ Anti-Discrimination) Amendment Bill 2018 seeks to amend the Equal Opportunity Act 1984 by repealing and then replacing section 73. The repeal of section 73 serves to remove the ability of religious schools to lawfully discriminate against people on the basis of their sexuality and/or gender history. Repealing this section has the additional positive effect of preventing discrimination by religious schools on the basis of other attributes listed in the act, such as marital status or pregnancy, thereby upholding the human rights of many other members of our community and providing them a remedy if discrimination does occur. The insertion of a new section 73 creates an exemption that will allow religious schools to only discriminate on the basis of religion when choosing which students to enrol in the school. This means that religious schools will still be able to prioritise enrolment of students who adhere to their faith. For example, a Jewish school may choose to enrol only Jewish students. These amendments bring Western Australia in line with Tasmanian anti-discrimination legislation, which is considered by many to be the best in Australia.

Although the positive effects of removing this section are widespread, the impact on LGBTIQ people will be particularly profound. It is important to recognise that in 1984, when the act was drafted, homosexuality in Western Australia was a criminal offence. All gay men were regarded as criminals and faced up to 14 years in prison for engaging in consensual sex in private. There were no anti-discrimination protections for LGBTIQ people in employment, housing and the provision of goods and services, and no partnership recognition for same-sex couples. It was a very different era, a time of great ignorance and fear around LGBTIQ people. Chief among these fears was the myth that gay people abused children and that there was a correlation between homosexuality and paedophilia. Of course, this dreadful and hateful propaganda was untrue, but many people three decades ago believed there was a connection and anti-homosexual lobby groups played to this fear and tried to scare people into thinking that LGBTIQ people were a threat and danger to children. This was the social and political environment in which the act was drafted, and the provision in question allowed religious schools the opportunity to feed into this ignorance and fear by utterly rejecting LGBTIQ teachers and students. Needless to say, almost 35 years later, we now live in a very different world. Attitudes have changed hugely, the old myths and prejudices have been exposed as fraudulent, and LGBTIQ people are now treated equally under almost all our laws, including the right to marriage. Yet this outdated piece of Western Australian legislation remains on the statute book and is an ugly reminder of the dark days of the past, and is still being relied on today.

It should be noted that the state of Tasmania abandoned this discrimination 20 years ago. In that state, religious schools have been prohibited from discriminating against LGBTIQ staff and students for two decades. During this period, not one religious organisation and no political party has called for the reintroduction of discrimination. There is absolutely no evidence from Tasmania that the law inhibits any religious school from practising its religious tenets. On the mainland, all states have, to varying degrees, some form of special religious exemption for religious schools, but none is written as badly, as harshly or as open-endedly as the one we have in Western Australia. Schools, including religious schools, should only ever hire, fire and enrol based on merit, not on the sexual orientation, gender history or marital status of the employee or student. Of course, limited exemptions remain. It is understandable that a religious school may want a religious education teacher or chaplain, for

example, to be only of its direct faith and to live within its beliefs, but there is absolutely no excuse for a religious school to sack a gay geography teacher, a lesbian bursar or a transgender gardener, for example.

The ongoing discrimination also sends a terrible message to LGBTIQ students. There have been extraordinary strides in the civil rights and social acceptance of LGBTIQ people over the past two decades, and it is now very common for LGBTIQ students to come out at school or to be open about themselves in the school community. Such students need the love and support that they deserve and to be accepted and embraced. Some people may ask why an LGBTIQ teacher would want to work in a religious school or why a family would send an LGBTIQ student to a religious school. The answers are simple. Firstly, most religious schools in WA do not use this law and do not wish to, but often the danger for LGBTIQ students and staff is that school policy in this area is unclear and unknown and determined by the school hierarchy and principal. This can change suddenly when the principal does. A teacher may be safely employed one week and sacked the next. There is no consistent application or interpretation of this provision in the act. Secondly, many LGBTIQ staff and students identify as religious and see no inconsistency between their faith and their sexuality, an attitude adopted by many schools. Again, this can change suddenly without warning when school policy does. Thirdly, many staff and students may awaken to their sexuality or gender identity only after becoming part of the school community. It is manifestly unfair to sack a teacher or expel a student who had been a welcome part of the lifeblood of the school for several years but who then comes to terms with being LGBTIQ in later development or life. Fourthly, we now have the extraordinary situation in WA whereby LGBTIQ staff in religious schools can legally marry under commonwealth law and be fired for doing so under state law. Australia did not vote for this. This completely destroys the equality principle established by the passage of same-sex marriage legislation in 2018. Finally, schools are a large part of communities and families. Often they are an integral component of neighbourhood life, as families send several of their children to a particular school over many years. In this situation, it is truly appalling that one of these children could be denied the same access and education as their siblings simply because they are LGBTIQ. It is heartbreaking for any family or community to experience this after years of supporting the school.

In moving to end this discrimination, I point to the overwhelming opposition from the Australian community to this ongoing prejudice. In April this year, a YouGov Galaxy poll of more than 1 000 people across Australia found that 82 per cent of Australians opposed religious schools having the right to expel LGBTIQ students, 79 per cent opposed LGBTIQ teachers being sacked from religious schools if they get married under the new commonwealth marriage law passed this year, and 78 per cent of Australians said that religious schools should not be entitled to receive taxpayer funds if they discriminate against LGBTIQ teachers and students. It should be noted that support to end this discrimination was even higher than the yes vote resulting from the marriage equality postal survey held last year. The general community is very clear about this. It wants less discrimination against LGBTIQ people, not more, and it especially does not want taxpayer funds spent in religious schools that discriminate in this fashion. This bill ensures that the mere fact that a student, teacher or member of staff happens to be LGBTIQ is not in itself grounds for internal disadvantage, reprimand, poor treatment, dismissal or expulsion; nor is it grounds to refuse to hire someone whose job is not expressly religious in nature.

In summary, this bill ends the provision currently granted to religious schools allowing discrimination against LGBTIQ staff and students, amends the Equal Opportunity Act 1984 to stop this discrimination, allows religious schools to dismiss staff or expel students who advocate or teach against the faith or tenets of the school, allows religious schools to discriminate in the hiring of teaching staff whose role has a specific religious purpose only, and strikes the right balance between protecting religious freedoms and maintaining the human rights of the LGBTIQ community. The state government has repeatedly said that it wants to end all discrimination against LGBTIQ people. This bill helps deliver on that promise.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 1523.]

Debate adjourned, pursuant to standing orders.