

# Legal developments From HREOC & the EOT

## Human Rights & Equal Opportunity Commission

### Griffin v Catholic Education Office

#### Homosexual discrimination in employment

Date of report: March 1998

Ms Griffin's application to the Catholic Education Office (CEO) for classification as a teacher in Catholic schools in the Sydney diocese was unsuccessful. She alleged that the decision was discriminatory on the grounds of sexual preference under s 32(1)(b) of the Human Rights and Equal Opportunity Act 1986. The CEO agreed that the decision to refuse the complainant's application was based on her sexual preference. However, it argued that the decision did not amount to unlawful discrimination as the exceptions contained in s 3(1) applied. The Commissioner found that neither exception contained in s 3(1) of the Act applied.

#### Inherent requirements of the job

The Commissioner found that there was no evidence that Ms Griffin was unable to comply with the inherent requirements of being a teacher in the Catholic education system — that teachers support the official teachings of the Catholic Church and demonstrate that support by their known or public behaviour.

The CEO argued that the complainant's association with GaLTas (an organisation which worked to eradicate homophobia within the education system) and her position as an office holder in GaLTas gave her a 'known or public lifestyle' at variance with the teaching of the Catholic Church and that the complainant advocated for a gay or lesbian lifestyle.

The Commissioner found that the complainant did not advocate in

favour of a gay and lesbian lifestyle, but rather, for the eradication of homophobia and violence against gay and lesbian teachers and students.

The Commissioner reviewed the official teachings of the Catholic Church and noted that it drew a distinction between being homosexual and engaging in sexual activity with a person of the same sex. Official Catholic teaching also expresses pastoral concern for homosexual persons and condemns discrimination and violence against them.

Accordingly, the Commissioner found that the position publicly and consistently advocated by the complainant was fully consistent with the Catholic Church's official teaching against discrimination and violence against homosexuals.

#### Religious susceptibilities

The CEO also argued the religious institutions exception in the Act. The CEO submitted that its Catholic schools are institutions 'conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed'. The complainant did not contest this.

The CEO argued that approving the complainant to teach in the Catholic school system would cause injury to the religious susceptibilities of adherents of Catholic Christianity. The Commissioner stated (at 21-22):

'If the employment of Ms Griffin would cause injury to adherents of Catholic Christianity, that injury could not stem from any actual conflict between Ms Griffin's public advocacy and Catholic teachings. It could arise only from an assumption in the minds of adherents that, because Ms Griffin has publicly acknowledged her homosexuality and is a public advocate against discrimination and violence against homosexuals, she is

advocating and engaging in homosexual activity. Yet there is nothing in the facts of this case to justify this assumption...

To assume that a person who acknowledges his or her homosexual orientation is sexually active, as the CEO has done in relation to Ms Griffin, is contrary to Catholic teaching... If the employment of Ms Griffin would injure the religious susceptibilities of these students and their parents, the injury would be founded on a misconception. Indeed it would be not an injury to their religious susceptibilities but an injury to their prejudices. These injuries do not come within the terms of exception and are not a permissible reason for discriminating on the ground of sexual preference.'

In conclusion the Commissioner stated (at 23):

'Religious institutions can claim quite properly a margin of appreciation or discretion in making distinctions under this exception. Religious believers have the right to determine what are or are not the doctrines, tenets, beliefs or teachings of their religion. The state and state institutions have no entitlement or authority in human rights law or domestic law to define those... In this case I have received and accepted evidence of the Catholic Church's relevant doctrines, tenets, beliefs and teachings. I have found that the CEO's action in rejecting Ms Griffin's application was not founded on those doctrines, tenets, beliefs and teachings but that it was in fact inconsistent with them. I have found that it depended upon unproven assumptions about Ms Griffin. Therefore the distinction cannot have been made 'in order to avoid injury to the religious susceptibilities of adherents of that religion or that creed.'