

Director, Legal Policy
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7th December, 2017

Dear Director

This submission is made on behalf of NT Christian Schools and endorsed by the NT Christian Schools Board in response to the Discussion Paper 'Modernisation of the Anti-Discrimination Act', published as part of a review of the Anti-Discrimination Act (1993) to ensure it continues to meet the needs of the community.

The Discussion Paper frames the proposed changes as positive. However, it is important to recognise that there are things that may be lost. In particular, some of the proposed changes would reduce religious freedom and the freedom of parents to choose the kind of education given to their children. We humbly request that due consideration be given to the thoughts below, given in response to some of the questions posed by the Discussion Paper.

1. Should any exemptions for religious or cultural bodies be removed?

The current Act contains a permanent exemption which protects religious freedom and allows educational institutions to operate in accordance with religious doctrine. This is good and right:

37A Exemption – religious educational institutions

An educational authority that operates or proposes to operate an educational institution in accordance with a doctrine of a particular religion may discriminate against a person in the area of work in the institution if the discrimination:

- a) is on the grounds of
 - i. religious belief or activity; or
 - ii. sexuality; and
- b) is in good faith to avoid offending the religious sensitivities of people of the particular religion.

NT Christian Schools' vision is for our schools "To be Christian communities, learning together to live life as God intended, offering hope for the world." The purposes of the company are to deliver and promote education, training and care based on Christian principles and from a distinctively Christian worldview. Christian is defined by the NT Christian Schools 'Statement of Faith: What We Believe'. Therefore, we are an organisation that is both educational and religious in nature, established with the understanding that freedom of religion is a fundamental principle in Australian society.

Religious freedom is a fundamental human right and must be protected. Freedom of religion has been a long-held freedom and practice in Australian law.

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom ... to manifest his religion or belief in worship, observance, practice and teaching.”

International Covenant on Civil and Political Rights - Article 18.1

Christian schools are good social citizens and conduct themselves in responsible and reasonable ways. There is no evidence that the existing permanent exemption has created discrimination. Far from enshrining discrimination, the permanent exemption balances the protection of religious freedom with other protected attributes. The permanent exemption enables diversity of schooling options, which enriches our pluralistic and tolerant Australian society.

Parents have a human right to choose the kind of education their children receive. NT Christian Schools was founded in 1974 by Christian parents who desired a distinctive education for their children, shaped by the Bible and the gospel of Christ. Christian schools seek to provide an authentically Christian educational expression of the Christian faith in all aspects of the school community. Therefore, Christian schools are different to state or even church schools, in that the whole school community contributes to the spiritual development of the child. Parental choice is made on the basis of such difference.

“Parents have a prior right to choose the kind of education that shall be given to their children.”

UN Universal Declaration of Human Rights - Article 26.3

If this ‘point of difference’ is diminished, parental choice and diversity are also diminished. The right of parents to send their children to school where they will be educated within a Christian community is a freedom consistent with a democratic, tolerant and pluralistic society. Removing the permanent exemption for educational institutions to operate in accordance with doctrine will limit the application of religious freedom for a Christian school and discriminate against parents who wish to choose a Christian education for their children.

All other states and the Commonwealth provide exemptions to protect religious freedom. This is consistent with the Australian Constitution which states, “The Commonwealth shall not make any law... for prohibiting the free exercise of any religion.” (Section 116). For example, the *Sex Discrimination Act 1984 (Cth)* section 38 provides exemptions to protect religious freedom in employment, contract work and provision of education and training for educational institutions established for religious purposes, with regard to sex, sexual orientation, gender identity, marital or relationship status or pregnancy. Permanent exemptions are important to achieve balance where protected attributes are incompatible with one another.

Educational institutions should not need to justify the need for an exemption. Foundational to a Christian worldview is a religious belief that all of life is sacred; that the gospel of Jesus Christ transforms everything. The ability to employ Christian staff, who are in step with the religious values and beliefs of the school community, goes to the very heart of why Christian schools exist. All staff, no matter their role, must share a common set of beliefs and practices to contribute to the vision and mission of the Christian school. This is what makes our schools distinctive.

Christian schools seek to reflect the beliefs of the Christian faith in all that they do, and clearly state their beliefs and their values. The teachings of the Bible and the gospel of Jesus Christ are deeply embedded in everything they do. While some agree with this faith, many don't. Those who disagree can choose another option. They are not required to be a part of a faith-based community. But for those who do agree, faith affects every decision about life, learning and morality.

The Discussion Paper lacks detail about a process for applying for exemptions. Any process of justifying the need for an exemption will involve the state making decisions based on what it understands to be 'religious'. For a Christian school, every aspect of every task within the school community is inherently religious. If faith-based schools are required to justify the need for an exemption to a secular body that does not share their worldview understandings, freedom of religion will be compromised. Further, to require educational institutions established for religious purposes to justify the need for an exemption discriminates against faith-based schools.

"Providing appropriate exemptions recognises that we live in a free and democratic society with a right to voice opinions in a respectful manner." (Discussion Paper, p. 12). Therefore, at the very least, the current automatic exemptions, which provide protection for educational institutions to practice in accord with their beliefs and values in every aspect of their operation, must be preserved.

We would like to see a more positive expression for the protection of freedom of conscience and religion, rather than the current approach of including negatively expressed 'exemptions from' anti-discrimination requirements. There is scope to strengthen the legislation to affirm the right of people to hold a contrary opinion respectfully without fear of legal repercussions, to ensure that:

- people who do not agree with homosexuality can speak freely and publicly about this belief;
- people who believe that marriage is between a man and a woman can speak freely and publicly to defend that belief;
- parents can choose an education where their children are taught that gender is biologically determined rather than something children can choose, and where homosexuality is not encouraged as an equally valid choice; and
- educational institutions established for religious purposes can hold and practice their beliefs free without penalties or persecution.

2. Should the attribute of gender identity be included in the Act?

Christian schools hold a religious belief that gender is determined biologically, similar to age and ethnicity. Until recently, this was the ordinary meaning of 'gender' in Australian society. As the Discussion Paper notes, gender identity is included in the *Sex Discrimination Act 1984 (Cth)*, however this Act also includes exemptions for educational institutions established for religious purposes to discriminate in good faith, for particular reasons, in relation to sex, sexual orientation, gender identity, marital status and pregnancy.

If gender identity and intersex status are to be included as protected attributes in the Anti-Discrimination Act (NT), they will immediately be in conflict with freedom of religion. It is therefore essential to protect the freedom for faith-based schools to operate in accordance with their religious beliefs, including beliefs about sexuality and gender identity. This may be achieved, for example, by including the words "gender identity and intersex status" within 37A.

3. Should vilification provisions be included in the Act?

The words "offend" and "insult" set too low a threshold and could cause people to bring forward a complaint without much basis, limiting freedom of speech. Words like "extreme or pervasive" are helpful, but "hurt, anger and anxiety" are also too subjective. It is essential to protect the freedom to express religious views, including views about traditional marriage, sexuality and gender.

4. Should a representative complaint model process be introduced into the Act?

We are deeply concerned that a representative complaint model will open the door for multiple vexatious complaints against those whose opinions the interest group finds offensive. While some individuals may experience some limitations in their capacity to pursue a claim through the Anti-Discrimination Commissioner, genuine claims of discrimination already have a fair and just process by which they can be addressed. It is likely to result in unfounded claims from people offended by religious beliefs, resulting in a need to defend claims and creating an unnecessary administrative burden.

We support leaving the individual complaint system in place and fail to see that protected attributes are further protected through the introduction of a representative complaint model.

5. Should the term "parenthood" be replaced with "carer responsibilities"?

Removing the term 'parenthood' diminishes the value of the unique relationship between parent and child. The responsibilities of a parent go far beyond those of being a 'carer'. In particular, Christian parents hold a religious belief that they have a duty to 'train up a child in the way they should go' (Proverbs 22:6). It would be better to add the words 'carer responsibilities' without removing the word 'parenthood'.

6. Should the definitions of 'man' and 'woman' be repealed?

The practice of referring to people as either a 'man' or a 'woman' is in accord with Christian beliefs. Christian schools hold a religious belief that people are either biologically male or female.

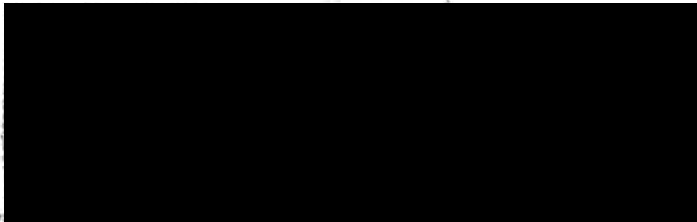
This does not deny the reality of, or discriminate against transgender people. Although the definitions in the *Sex Discrimination Act 1984 (Cth)* have been repealed, it is unnecessary for the Northern Territory to follow suit and redefine the meaning of 'man' and 'woman' so that it takes on the 'ordinary meaning'. The idea that biological sex and gender are independent, or that we should all choose whether we are male or female based on how we feel, is not an 'ordinary meaning' to which Christian schools subscribe.

Thank you for the opportunity to provide input as part of the review process. We hope that through this process, the government will see fit to maintain and strengthen exemptions that currently permit educational institutions established for religious purposes to employ staff who share and seek to live a life consistent with those beliefs.

This is not only an issue for NT Christian Schools, but for all faith-based educational institutions. The issue is not one of Christian belief, but of freedom of conscience and religion, guaranteed in the Australian constitution and supported by decades of Commonwealth, state and territory law.

We also request that a report on the public consultation be released in the interests of transparency.

Sincerely,



Mal Farnsworth
NT Christian Schools
Board Chair