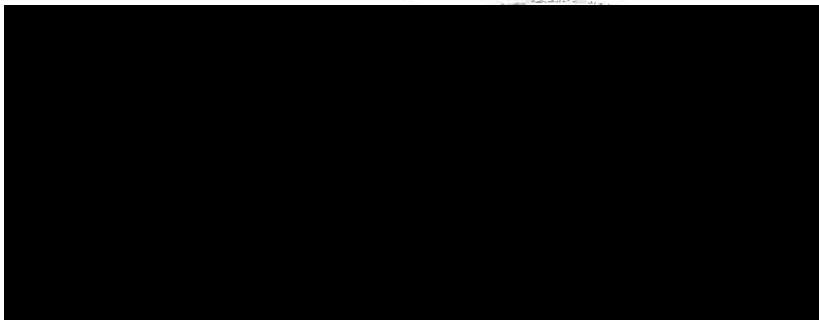




CATHOLIC DIOCESE OF DARWIN



**Response to the
Proposed Modernisation
of the Northern Territory
Anti-Discrimination Act 1993
by the
Catholic Diocese of Darwin**

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Grievous Concerns of the Catholic Community with regard to the proposed modernisation of the Northern Territory Anti-Discrimination Act 1993.

INTRODUCTION

The Northern Territory's *Anti-Discrimination Act 1993* was designed to protect the Territory's population from unfair treatment and discrimination based on their ethnic background, their age and their gender, in various aspects of life including education, work, accommodation and the provision of goods, services and facilities.

The Northern Territory (NT) Government is now proposing to review and update its *Anti-Discrimination Act* so that it reflects changes in our society and continues to meet the needs of the community. A Discussion Paper entitled **Modernisation of the Anti-Discrimination Act, September 2017** sets out to strengthen the *Anti-Discrimination Act* by the introduction of anti-vilification provisions prohibiting offensive conduct in relation to religious belief, disability or ethnic background, as well as sexual orientation and gender identity. As well, it is proposed to extend coverage of the sexual harassment provisions in the *Act* to include all areas of public life. It also proposes to introduce new protections under the *Act* in other areas such as domestic violence, homelessness, and socio-economic status and to remove some of the exemptions that currently apply in the *Act* for religious organisations.

CATHOLIC COMMUNITY'S RESPONSE

The Catholic Community of the Northern Territory appreciates the fact that the NT Government has released the *Discussion Paper* and is seeking feedback and comments from interest groups and from members of the public generally. The NT Government believes that all Territorians want and deserve to live in safe, vibrant and inclusive communities, and is urging stakeholders and special interest groups - such as the Catholic Church - to have their say about the proposed reforms to the *Anti-Discrimination Act 1993*.

In summary however, while recognising many of the proposals in the *Discussion Paper* as positive, the Catholic Community has far-reaching concerns about what amounts to an attack on Religious Freedom.

Thus, for the Catholic Community of the NT, some of the proposed changes are surprising, disappointing, confronting even, in terms of their foreseeable consequences.

THE NT CATHOLIC COMMUNITY'S SITUATION

Catholics make up twenty per cent of the Territory's population, according to the Census. Side by side with the provision of religious services and liturgical functions at the parish level for the very considerable number of church-going believers, the Catholic Community has been at the forefront of providing excellent educational opportunities for youngsters and support services for all and sundry, even in the most remote areas.

The Catholic Education System of the NT presently has responsibility for 18 schools with a total enrolment of approximately 5000 students. This means that something like 10,000 parents have chosen to educate their children in Catholic schools. The Catholic system employs about 900 staff and is therefore a significant contributor to the economic well-being of the Northern Territory.

CatholicCareNT operates in 18 locations around the Northern Territory, providing programmes for families, employment, housing support, alcohol and drug abuse, mental health and counselling. CatholicCareNT is the source and supporter of the very effective NO MORE programme, which now has received national attention. CatholicCare NT employs about 225 people and as such is a significant employer.

People in need in the Northern Territory have looked to the *St. Vincent de Paul Society* for help for almost as long as we have had people living here.

Every day, individuals and families are provided with support enabling them to live with reasonable dignity, such support services varying from food and drink, to showering and emergency housing.

In summary, the Catholic community, in its provision of practical support and pastoral care for the people of the Northern Territory for over one hundred years believes that it has been a model of best practice, even in remote locations and difficult situations.

PROPOSED RESTRICTIONS

Such a record would normally attract recognition and appreciation. Quite the opposite seems to be the case with the proposed changes. Without any reason, there is a heavy emphasis on further restricting the very limited 'exceptions' that presently prevail.

And so, our major concern, and the main focus of this submission, arises from the proposals in the Discussion Paper concerning "Religious Exemptions". If accepted by the Government and enacted by the Parliament, they would constitute an unprecedented attack both on the universal right to religious freedom and on a community which has served the people of the Northern Territory with devotion and without unjust discrimination for over 100 years.

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The proposals raise the alarming prospect that an anti-religious ideology will be given priority over **the Government's responsibility to foster a diverse and inclusive society**, where different groups can put into action their beliefs about social justice and care of those in need.

Enacting these proposals into law would have an immensely destructive impact on the capacity of the Catholic community to provide its services to all Territorians. They would make it extremely difficult to preserve and renew the religious inspiration which leads Catholics to undertake this work for others in the first place. **They would remove the right of religious organisations to exercise due discretion in selecting staff and prioritizing people who are committed to their mission.** They would in effect represent an attempt by the Government to forcibly secularise Catholic services and to silence the Catholic community from speaking about or acting on its beliefs.

Other political, social and civil society groups act on their beliefs and "recruit for mission" (i.e. they exercise a preference in selecting staff for people who share the organisation's fundamental convictions), so why make it illegal for religious groups to do so unless they apply for an "exemption"?

The question arises: Why is this now being proposed and on what basis?

One might be forgiven for believing that such proposals are driven much more by a narrow anti-religious 'agenda' rather than a genuine effort to protect vulnerable people from unjust discrimination.

The Catholic community wants to know why, after so many years of high quality service to the people of the Northern Territory, especially to the Indigenous, to the poor and the marginalised, it is deemed important to reduce the very limited 'exemptions' it presently has?

RELIGIOUS FREEDOM AND THE EXEMPTIONS

Religious freedom is a fundamental human right recognised in national and international law, including the United Nations' *Universal Declaration of Human Rights* (1948) and the *International Covenant on Civil and Political Rights* (1966). Australia is a signatory to these agreements, and freedom of religion and belief is recognised in Commonwealth legislation..

Despite this, the right to religious freedom has limited protection in Australian law. Practically speaking, the only recognition is in so-called "exemptions" and "exceptions" to anti-discrimination law. **The Catholic community strongly believes that the law should recognise religious freedom in a positive way as a basic, internationally-protected human right rather than through exemptions which provide only a grudging recognition of religious freedom, the exercise of which would be illegal but for an exemption from the general law.**

ANTICIPATED RESPONSE OF THE CATHOLIC COMMUNITY

If the proposals concerning religious exemptions move forward as amendments to the Act, there is a real danger that they would create conditions which make it impossible for Catholic services in education and social welfare to operate. Current and long-standing practices could become illegal unless a successful application is made to the Anti-Discrimination Commission for specific exemptions in each case. This would create an enormous and expensive legal and administrative burden for Catholic services and encourage the making of complaints without substance.

It would not be possible to preserve the identity of these agencies as works of the Catholic community under these conditions. It would be extremely difficult to ensure a continuing commitment to the particular mission the Catholic agencies serve. **We would seriously need to consider what the way forward might be for us.** I have no doubt the Catholic community of the Northern Territory would resist and raise their concerns frankly, clearly and directly with their parliamentary representatives. Whilst we have avoided canvassing these matters in the media, we would certainly feel compelled to take our position into the public forum.

THE CHANGES BEING PROPOSED IN DETAIL

The Discussion Paper, in the section headed "Removing Content that enshrines discrimination", proposes the removal of all exemptions from the *Anti-Discrimination Act* for "...religious educational institutions, accommodation under the direction or control of a body established for religious purposes and access to religious ties". It asserts that this is necessary to "promote equality of opportunity for all Territorians" and **"ensure that cultural and religious bodies are more accountable for their actions and more inclusive."**

As Bishop of the Diocese of Darwin, I personally regard this as seriously unsatisfactory and offensive: those I have spoken with are likewise appalled by this section.

The paper states that under the current exemptions ***"a religious school could justify not employing a prospective employee on the basis that they identify as LGBTI, if the religious doctrine does not support LGBTI relationships"***.

In fact, Catholic schools hold that all school staff should be assessed for employment on the same basis. **Staff in a Catholic school or agency are expected to support Catholic beliefs and teachings and not work against them, and to act as role models in a way that broadly reflects these beliefs and teachings, as demanded by the parents and clients.** Catholic schools and Catholic agencies would not refuse to employ a staff member simply on the

basis that they identify as LGBTI. **The issue is not how staff applicants classify themselves but how they will impact on the school or agency's ethos.**

Non-Catholic students are more than welcome at Catholic schools in the Territory as the facts show. And Catholic schools and agencies have a right to place religious symbols in their buildings and not be forced to remove them because someone claims to be offended; our students can be invited to attend Mass, Retreats and Religious Education classes. Our Staff can be expected to participate in professional development programs that provide formation in the school or agency's ethos.

RELATED CONCERNS: VILIFICATION AND "SYSTEMIC DISCRIMINATION"

It is telling that the Discussion Paper uses the sub-heading "***Removing Content that Enshrines Discrimination***" ahead of its suggestion about religious exemptions. While the paper recognises the important right to equality, it does not acknowledge or appear to be aware of the fundamental right to freedom of religion and belief. It does not mention this right or reflect a consistent approach. Instead **religious freedom is treated as something exceptional, a form of discrimination that should only be permitted under licence.** This reflects a fundamental misunderstanding by the authors of the paper of the nature and importance of religious freedom as a human right. It would be an embarrassment to the Northern Territory's traditions of fairness and equality for such an ill-informed proposal to be enshrined in law.

This gives rise to concerns about two other related proposals in the Discussion Paper. Firstly, the paper proposes to amend the Act to protect against Vilification, and specifically to make it unlawful to do anything which is reasonably likely in the circumstances to "***offend, humiliate, intimidate, insult or ridicule another person or a group of people***" on the basis of some of the protected attributes under the Act, including sexual orientation and gender identity.

Appropriate protections against vilification and incitement to hatred or violence are important, but they need to be carefully drawn, with close attention to possible consequences.

THE TASMANIAN TEMPLATE: THE ARCHBISHOP JULIAN PORTEOUS CASE.

The language proposed in the Discussion Paper as grounds for a complaint of vilification is similar to that of section 17(1) of Tasmania's *Anti-Discrimination Act 1998*. It was under this provision that a complaint was made against Archbishop Julian Porteous, the Catholic Archbishop of Hobart, for distributing a pastoral letter produced by the Australian Catholic Bishops Conference explaining the church's teaching on marriage and its opposition to same-sex

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marriage. This pastoral letter was a model of respectful, reasoned and evidence-based argument. It neither vilified nor disparaged anyone. Despite this Archbishop Julian Porteous was forced to defend the dissemination of Catholic teaching to Catholic schools in a protracted and expensive process before the Tasmanian Anti-Discrimination Commission, before the complaint was ultimately withdrawn. The safeguards proposed in the Discussion Paper are similar to those in section 55 of the Tasmanian Act, and they would provide no protection to Archbishop Julian Porteous or to any other Catholic Bishop. Similar situations could be expected to arise in the Northern Territory if the proposal for protection against vilification in the Discussion Paper went forward in its current form. In such a form, as the Tasmanian experience shows, it would be used to prevent religious groups from speaking and teaching publicly about their beliefs, even in their own institutions.

The Catholic community would strongly oppose such a change to the law.

SYSTEMIC DISCRIMINATION

The second suggestion which gives rise to concern is the Discussion Paper's proposal to introduce representative complaints "*about acts of systemic discrimination*". The paper outlines that the "*requirements for a valid complaint could include an allegation of one or more acts, practices, policies, programs, or processes that may be unlawful discrimination under the Act*".

There are some who would hold – wrongly – that the teachings of the Catholic Church, especially in controversial areas such as abortion, marriage, sexuality and gender, constitute "acts, practices, policies, programs, or processes" of systemic discrimination against people with attributes protected under the Act. There is nothing in the Discussion Paper to indicate that consideration has been given to the possibility that the beliefs and teachings of religious communities (and possibly other political and social groups) could be captured under such an amendment to the Act covering "acts of systemic discrimination". **The point is that in its effort to eliminate anything minority groups may not appreciate, the Proposed Amendment does not hesitate to discriminate against much larger segments of the population.**

UNDERSTANDING RELIGIOUS FREEDOM

It is not unusual for religious freedom to be treated as nothing more than freedom of worship or freedom to exercise religious ministry, with a concerted effort being made by some to confine it to this area or restrict it entirely to private life. The Discussion Paper, however, does not seem even to accept this narrowed-down idea of religious freedom, proposing also that protection for religious and cultural sites under section 43 of the Act also be removed. The

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assurance that Aboriginal sacred sites will be protected under the *Northern Territory Aboriginal Sacred Sites Act* provides no comfort to Indigenous Territorians.

Religious freedom is a much larger freedom which enables individuals and communities to live out their beliefs as full members of society. Religious freedom means being free to believe or not to believe, to adopt, reject or change beliefs as people decide for themselves. **It also protects freedom by ensuring that people do not have the beliefs of others – religious, secular or political – imposed on them.**

It is important to understand that religious belief is not just personal opinion. It is a considered and deeply-held conviction about the truth, which makes it compelling for those who hold to it, not something that can be easily put to one side when it is not required or inconvenient. Religious conviction drives people to act on their beliefs with integrity, and for this reason it powerfully shapes the way believers live, the actions they take, and the shape of communities. Non-religious beliefs (e.g. about justice, freedom, equality, or the environment) work in the same way, but sometimes the two types of belief are not treated equally. For Catholics, it is precisely our religious beliefs which inspire and sustain our services to the community, including education, health and social services. As emphasized above, this has served the Territory wonderfully for over a hundred years. The law should recognise and protect this. Demanding that religious people quarantine their beliefs from how they provide services is unfair and discriminatory, because it allows everyone except religious people to act on their beliefs. **Restricting religious freedom in the name of anti-discrimination creates new forms of discrimination.** The Catholic community find it offensive and hurtful to now be seen in such an orchestrated negative paradigm.

A WAY FORWARD

The Northern Territory Government has the opportunity to develop a new way of recognising fundamental rights like religious freedom in anti-discrimination law. The Territory could set a new benchmark in Australia for the protection and advancement of human rights. A reformist initiative along these lines would have the additional benefit of bringing Australian laws into closer alignment with international standards.

CONCLUSION

It would be an extraordinary step for the Territory Government to impose the restrictive and mistrustful regime the Discussion Paper proposes for religious

communities. Religious freedom must be recognised as a positive right – not as a form of discrimination “exempted” from anti-discrimination law.

It is basic fairness to let people live out their beliefs and not force them to act against their convictions, while always respecting the dignity and freedom of others. This is what religious freedom stands for. It protects not only individual believers and religious communities but the contribution they make to building up a democratic society. This is something that the Northern Territory should continue to foster and support.

Bishop Eugene Hurley,
Bishop of Darwin,
25.01.2018

