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**KEZIA  
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MEMBER for  
**GOYDER**

3<sup>rd</sup> March 2018

Hon Natasha Fyles  
Attorney General  
GPO Box 3146  
Darwin NT 0801

Dear Minister,

Thank you for the opportunity to provide comment on the discussion paper, Modernising of the Anti-Discrimination Act September 2018.

At the outset, I support the notion that all legislation should be reviewed as a matter of course to ensure it is contemporary, legislatively consistent with other Northern Territory (Territory) and Commonwealth legislation and in tune with community expectations and by this latter item, I mean all of community not just sections of a community. Having said that while this piece of legislation is 25 years since commencement it should not be assumed that the legislation is completely outdated unworkable or unresponsive to the current community expectations. Many pieces of legislation have been drafted well and stand the test of time, but may need amendments to ensure it continues to achieve its stated objectives.

My second overall comment is it is disappointing that the Government did not place a supportive "Have your say" survey for this paper. Most if not all discussion papers are released with an accompanying survey and I query why this did not happen or, perhaps it is to happen in the near future?

My third overall comment is the lack of evidence to support the proposed changes. The scope and complexity of some of the issues requires careful consideration and it is disappointing that the discussion paper did not provide any analysis of the evidence to support the changes. I would like to receive advice on any analysis undertaken and if not, how can some of the changes be justified?

I turn now to the questions of note to my constituency contained in the discussion paper.

1. Question 1: In changing the term sexuality to sexual orientation to have safe guards included such that the term "sexual orientation" can be used or interpreted to include illegal activities and acts.
2. Question 4: As the Territory is the only jurisdiction not to have protection measures against vilification, it is appropriate to include protective measures based on the Commonwealth's Racial Discrimination Act 1975, however, balance is needed in the actual wording to ensure there is a balance with the individual's right to free speech.
3. Question 9: Agree, the amendments to include coverage of all assistance animals and not be restricted to dogs used by visually impaired people. Increasingly dogs in particular, are being used for sight, hearing, movement impairment along with detection of illnesses and imminent medial conditions. The definition should include also, animals undergoing training and not just animals that have 'passed" and been "accredited".
4. Question 11: I am at a loss as to why a club holding a liquor licence is even referenced in the Act. A licenced premises operator has rights and obligations under their liquor licence and actions are generally undertaken in the best interests of patrons and the community as a whole for example, refusal of service to an intoxicated person.
5. Question 14: My electorate has two Christian schools and four churches and temples and I have engagement with the people involved on a regular basis. I express high concern at the lack of analysis (as expressed previously) in this area and the fact that removal of religious exemptions on a broad scale is not in the best interests of individuals, families and the community. Moreover, the recent United Nations Human Rights Committee Report (which can be located on the Office of High Commissioner Human Rights) raised concerns about Australia's anti-discrimination laws, including the lack of direct protection against discrimination based on religious beliefs. The last thing legislators want to happen is to introduce a law that overtly discriminates against a group of people and is in conflict with basic human rights. The other aspect to this area of concern is the fact the Commonwealth Government is currently under taking a review of religious freedom and the report is due at the end of March 2018. I suggest strongly that there be no changes to this aspect of the Act until at least tis Commonwealth report is delivered, reviewed and where it may be applicable to territory laws or not as the case may be.

I do not support changing the exemptions based on the strong views of many in my electorate. I have attached a comment from [REDACTED] (Attachment 1), which best summaries the view of many people. As I stated previously, the discussion paper has no analysis in many areas and has not shown where the religious exemptions have presented an issue of problem. I have read no public statements or stories in local media as to problems and suggest that this area and suggestion for change is but a 'flight of fancy' on some one's behalf and is unreasonable and unacceptable.

6. Question 20: This section implies that the words 'man' and 'woman' are offensive – to whom? Show me the evidence? I am not offended and nor are many of my constituents. Besides, what are the new definitions proposed? If an individual seeks to change aspects of their personal life and being so be it, however, why the need to enshrine this in law? In society there will be always people who are not main stream and that is acknowledged and acceptable to many, however, I do not believe the Government has sought the views properly across the Territory via a Have your Say Survey would have been a good start.

Given the paper has provided no evidence to its generalisation, I will provide a real life case study for consideration.

*A person is born a female, however, all through her life she experiences difficulties, mental anguish and unhappiness as she truly believes and wants to be male. While her life is comfortable, she has a good family and she experience much that many young people do, she is not at a place she really wants to be and is not the person she wants to be and that is a male – not a person, not a non-descript thing rather, a male. By taking away the title man from the Act, you are discriminating against this person and their rights to be what they want to be and will be and that is a man.*

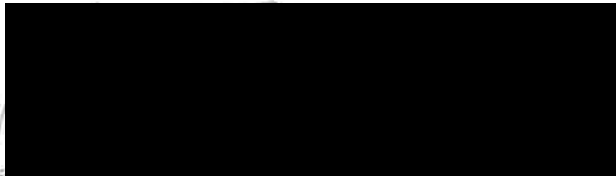
If it is intended to just take away "irrespective of age" that is acceptable, but not complete removal of the terms woman and man.

Question 21: There is no explanation as to why change the definition "parenthood". Have you asked the parents across the community if they want their status changed? I suggest not and don't support this proposed change. However, I can support a "and/or" and recommend that both parenthood and carer responsibility.

7. Question 22: The statement in this section, "the term relationship status is more likely to be understood by people seeking to rely on the rights the Act provides". What exactly does this mean? Who are these people referred to and where is the evidence – again - to support such a claim?

In closing, everyone seeks to eliminate discrimination as we do crime and abuse in our community. This discussion paper, while having some aspects that are relevant and appropriate such as, ensuing consistency with Commonwealth legislation, there is insufficient evidence to support other aspects for change. I do not believe that some of the changes proposed will benefit our community and until a real benefit analysis is undertaken, the discussion paper should be overhauled and take into consideration the real views and sentiments of all the community.

Yours sincerely



Member for Goyder

## Question 14

Firstly, in general, religious or cultural organisations exist to perpetuate, teach and encourage that religion or culture. Secondly, religious and cultural organisations exist to enact upon the teachings, beliefs or social tendencies of that religion or culture. In the first instance, religion and culture often need to be taught or demonstrated explicitly in order for that religion or culture to be clearly passed on to the next generation. Furthermore, religion and culture are taught implicitly through environments that allow that religion or culture to permeate actions, decisions, contents and activities. (Many people believe that religion or culture is best passed on by that religion or culture permeating and influencing every aspect of life in an organisation or place.) Hence, it is essential that people who are employed by religious or cultural organisations have in-depth knowledge of and subscribe to the particular religion or culture of the organisation they are working for. Quoting from the discussion paper regarding the removal of religious or cultural exemptions - "To promote the equality of opportunity for all Territorians, the removal of some of these exemptions is being considered". This statement implies that religious or cultural organisations somehow contribute to unjust inequality in society. I find that statement quite unreasonable because there are often secular organisations that provide similar services and have similar goals that people can work at or receive services from. For example, there are a small number of religious schools that actually use the exception given under the Act to only employ staff that prescribe to that religion. However, there are a large number of secular schools where people can work at or receive services from that do not enforce any religious exemptions. The same applies for charitable organisations, there are many secular counter-parts to religiously motivated charities. Regarding organisations that exist to enact upon their teachings, beliefs and cultural tendencies, instead of existing for the reason to teach the beliefs, values and tendencies, it makes no sense that someone would work for such an organisation if they did not subscribe to that religion or culture. At the very least, a employee's personal beliefs need to be in agreeance with the core beliefs and values that drive the existence of an organisation.

In regard to religious schools;

According to the International Covenant on Civil and Political Rights (ICCPR)<sup>1</sup> (which Australia agreed to be bound by on 13 August 1980<sup>2</sup>); Article 18, paragraph 1 - "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, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

And in Article 18, paragraph 4 "The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

Hence, organisations that teach and perpetuate religious beliefs and practices could be a valid form of public manifestation and expression of religious practice and teaching. Furthermore, religious schools would allow parents to "ensure the religious and moral education of their children in conformity with their own convictions", which is in accordance with the Covenant. In order for religious schools to properly impart, convey and teach the beliefs, knowledge and values of that religion, it is imperative that people working for the organisation (In the very least, the people specifically employed to teach) need to subscribe to the religion promoted by the school. Parents often pay substantive amounts of money to send their children to a religious school because they trust the school to not only develop their child academically but also spiritually. Parents trust religious schools to consistently teach and uphold the values

<sup>1</sup> <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>2</sup> <https://www.humanrights.gov.au/human-rights-explained-fact-sheet-5the-international-bill-rights>

and beliefs of the religion and this can only be done when the majority of the staff with significant influence (like teachers) hold beliefs and values that are in line with the religion promoted by the school.

Consequently, if an organisation is penalised for not employing people (particularly people of significant influence, such as teachers) who subscribed to the religion that the organisation promotes, is this not a form of religious obstruction or persecution toward the group of people that make up the organisation?

In regard to the removal of the exemption that permits religious schools to exclude prospective students who are not of that religion; since I believe that religious schools exist to perpetuate and pass-on the values and teachings of the religion they promote, the law that excludes students from attending a religious school of a religion they do not belong to seems counter-productive. If a parent would like their child to learn in an environment that teaches and encourages a particular religion (even though the family does not subscribe to that religion), that should be permitted. However, in the case where there are too many applicants and not enough places in a religious school, preference should be given to the families who belong to and practice that religion (which would be in line with the paragraph stated above from the ICCPR regarding parents and guardians).

Difference is a part of life in a democratic society and the differences of religious and cultural groups should be allowed to be expressed through organisations, companies and workplaces. If we as a society truly value difference and diversity we need to allow organisations to be different and to operate in ways that line up with their religious or cultural convictions.