

Darwin Christian Ministers' Association

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Director, Legal Policy
Department of the Attorney-General and Justice
GPO Box 1722
DARWIN NT 0801

Introduction

The Darwin Christian Ministers' Association is a group of 72 Christian ministers representing over 30 churches and 5 para-church ministries in the top end of the Northern Territory. We meet once a month for fellowship, encouragement and keeping each other informed of what's happening in Christian circles and events and issues that affect the wider Christian community.

We are convinced that the Bible ought to shape how we think and live in our community. So we take seriously the command "that petitions, prayers, intercession and thanksgiving be made for all people – for kings and all those in authority, that we may live peaceful and quiet lives in all godliness and holiness." (1 Timothy 2:1-2) Our prayers for you in government happen in private and in public, such as the day of prayer held on Sat 25 Feb this year at Parliament House hosted by Michael Gunner.

There has been much discussion about the Modernisation of the *Anti-Discrimination Act* discussion paper released in September. We are thankful for the work that has gone in to review it "to keep pace with contemporary standards and expectations". We hope and pray that many of these changes will improve the life and behaviour for all Territorians.

There are however, a number of areas of concern we would like to raise. Some of these are because our Christian convictions are challenged. Some are because of inconsistencies with other state, territory or commonwealth laws that you want to "keep pace" with. Some are because we believe they will make for a more discriminatory Northern Territory.

2. Gender identity

While it is true that "some people may identify as a different gender to their assigned biological birth sex and some people may identify as neither male nor female", this is not necessarily a good or healthy thing. We are greatly concerned about the distress and pain for those whose gender identity does not match their biological sex, commonly referred to as gender dysphoria. We want to care for people as whole individuals, and therefore it is unhelpful to encourage a separation between the body and soul, seen in comments like, "I'm a man in a woman's body." or vice versa. Christian writer Sam Alberry, puts it like this:

Our culture says: Your psychology is your sexual identity—let your body be conformed to it.
The Bible says: Your body is your sexual identity—let your mind be conformed to it.¹

¹ Quoted in Roberts, V., *Transgender*, p20. <https://www.amazon.com/Talking-Points-Transgender-Vaughan-Roberts/dp/1784981958/>

However, this is not solely a Christian concern. The American College of Pediatricians recently released a statement *Gender Ideology Harms Children*.² Their concern is about gender dysphoria and its impacts on children. They state:

1. Human sexuality is an objective biological binary trait: "XY" and "XX" are genetic markers of male and female, respectively – not genetic markers of a disorder. ...
2. No one is born with a gender. Everyone is born with a biological sex.
3. A person's belief that he or she is something they are not is, at best, a sign of confused thinking. When an otherwise healthy biological boy believes he is a girl, or an otherwise healthy biological girl believes she is a boy, an objective psychological problem exists that lies in the mind not the body, and it should be treated as such.

Their very strong conclusion is:

8. Conditioning children into believing a lifetime of chemical and surgical impersonation of the opposite sex is normal and healthful is child abuse.

We urge you not to change the laws that will normalize gender dysphoria.

4. Vilification

The discussion paper states that "There are no federal or Territory laws that protect against vilification on the basis of religious belief, disability, sexual orientation, gender identity or any other attribute under the Act."³

Then it proposes: "The Act could be amended to make it unlawful for a person to do an act, other than in private (for example at home), if the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and the act is done because of a characteristic of that person or they are a members of the group on the basis of race, disability, sexual orientation, religious belief, gender identity or intersex status."⁴

The proposal allows for "including appropriate exemptions to cover acts done 'reasonably and in good faith' to allow for free and fair speech". This allows exemptions "if it is a genuine belief held by the person making the comment".⁵

It suggests this will prevent "extreme or pervasive vilification that is essential for Territorian's [sic] to maintain the right to live their lives free from harassment, psychological distress, hurt, anger and anxiety that exists in society."⁶

We agree that it is good to curtail and legislate against extreme and pervasive vilification. However, there are a number of problems to include in the definition of vilification "offend" or "insult".

Firstly, they are broad because this is a much lower standard than extreme vilification. How can a satirist write an article without the freedom to offend? How can a comedian mock being politically

² <https://www.acped.org/the-college-speaks/position-statements/gender-ideology-harms-children> Retrieved 9th Nov, 2017)

³ Modernisation of the *Anti-Discrimination Act*, p. 11.

⁴ *Ibid*, 11.

⁵ *Ibid*, 11.

⁶ *Ibid*, 12.

correct if it will offend those who want political correctness? How can a preach teach the Bible with integrity if some in the congregation might be offended?

Secondly, they are subjective because they rely on an assessment of the person who feels vilified. It is impossible to deny or reject someone's emotional response to any situation. So how can a person accused of vilifying another defend themselves against how that person responded?

Thirdly, how is it possible to decide between one person who is offended and the other person expressing a genuinely held belief? As Christian ministers we do genuinely believe what we teach from the Bible. We recognise that the exclusive claims within Christianity are at odds with Islam, Buddhism, Hinduism and secular society.

Fourthly, the broad and low standard of "offend" and "insult" could result in many frivolous cases being brought to the anti-discrimination commissioner. This has already been seen in Tasmania with the case against the Catholic Church distributing a pamphlet to Catholics that contained Catholic teaching about marriage. Though this high profile case has since been dropped, there are still at least two others outstanding.⁷

Fifthly, the low standard could stifle free speech as people might be afraid to voice their opinion because they might become the subject of a complaint. How will this allow us to "live in a free and democratic society with a right to voice opinions in a respectful manner"?

Sixthly, could politicians who are offended or insulted by things said or done in the community bring a case to the commissioner? And if so, could this lead to a state of censorship or control from the government?

Preventing "excessive and pervasive vilification" is a commendable goal for anti-discrimination. To include "offend" and "insult" as a legitimate description of vilification is an over-reaction. We want to defend the right for everyone to voice their opinion in a respectful manner, even when we don't agree with what they say, that all Territorians may live peaceful and quiet lives. Freedom of speech might mean some people are offended, but respectful discussion should mean offense or insult doesn't result in "harassment, psychological distress, hurt, anger and anxiety".

We would encourage you to reconsider the inclusion of "offend" and "insult" as part of the definition of vilification.

We also request that exemptions for free and fair speech be extended beyond "academic, artistic or scientific purpose or in the public interest" to specifically include religious organisations being allowed to teach what is consistent with their beliefs.

14. Religious exemptions

The discussion paper states that religious or cultural "exemptions apply automatically for religious organisations and do not require any justification by the religious organisation as to why the exemption should apply."

⁷ Details are in the blog post "Review of NT discrimination law – guest blog".

<https://lawandreligionaustralia.blog/2017/10/05/review-of-nt-discrimination-law-guest-blog/> Retrieved 9th November, 2017.

It suggests that to “promote equality of opportunity for all Territorians, the removal of some of these exemptions be considered.”

This raises a number of concerns.

Firstly, this goes against the very idea of anti-discrimination, and will result in discriminatory rulings in various situations. Consider the example of prospective students. Why suggest the removal of the exemption permitting “religious schools to exclude prospective students who are not of that religion”? The current exemption is for an “educational authority that operates, or proposes to operate, an educational institution in accordance with the doctrine of a particular religion.”

Or to be consistent, why not also remove exemptions 30(1) and 30(3) relating to “students of a particular sex” or “students who have a general or specific impairment” in order to promote equality of opportunity? These two exemptions aren’t necessarily for exclusive enrolment of “particular sex” or “impairment”, as both say an “educational institution wholly *or mainly* for ...” (emphasis added).

Likewise, the suggestion to only remove exemptions 40(2A) and 40(3) in the area of accommodation.

The proposal to only remove religious exemptions is discriminatory against religious expression, as it continues to enshrine exemptions for race, age, sex, minority cultures, and disability.

Secondly, this also goes against the stated aim of keeping pace with other legislation in Australia. For example, the discussion paper states:

“Another exemption that could be removed is section 37A that permits religious schools to discriminate against employees on the grounds of religious beliefs, activity or sexuality if done in good faith to avoid offending the religious sensitivities of people of the particular religion. For example, under this exemption 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.”⁸

To remove this exemption is to contradict the Sex Discrimination Act 1984 (Commonwealth) Division 4 (Exemptions), 38 (Educational institutions established for religious purposes) which allows that nothing “renders it unlawful for a person to discriminate against another person on the ground of the other person’s sex, sexual orientation, gender identity, marital or relationship status or pregnancy in connection with” “employment as a member of staff of” (1), “a position as a contract worker that involves the doing of work in” (2), or “the provision of education or training by” (3) “an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed”.⁹

Also, since the discussion paper cites the example of Tasmania and the ACT, it’s worth remembering that they still have these exemptions in place.

Tasmanian legislation still provides an exemption for religious educational institution employment practices.

“A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to employment in an educational institution that is

⁸ Modernisation of the *Anti-Discrimination Act*, 21.

⁹ Sex Discrimination Act 1984 (Commonwealth), Division 4. Section 38.

or is to be conducted in accordance with the tenets, beliefs, teachings, principles or practices of a particular religion if the discrimination is in order to enable, or better enable, the educational institution to be conducted in accordance with those tenets, beliefs, teachings, principles or practices.”¹⁰

And also student enrolment practices.

“A person may discriminate against another person on the ground of religious belief or affiliation or religious activity in relation to admission of that other person as a student to an educational institution that is or is to be conducted in accordance with the tenets, beliefs, teachings, principles or practices of a particular religion.”¹¹

Similarly, the ACT provides exemptions for employment practices for educational institutions.

“Section 10 or 13 does not make it unlawful for a person (the first person) to discriminate against someone else in relation to—
 (a) employment as a member of the staff of an educational institution; or
 (b) a position as a contract worker that involves doing work in an educational institution;
 if the institution is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, and the first person so discriminates in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed.”¹²

It also provides an exemption for student enrolment practices relating to religion.

“Section 18 does not make unlawful discrimination on the ground of religious conviction in relation to a failure to accept a person’s application for admission as a student at an educational institution that is conducted solely for students having a religious conviction other than that of the applicant.”¹³

Thirdly, this is a matter of freedom of religion, and relates to concerns already raised in the section on vilification. The current situation is that parents and carers, whether religious or not, have the choice to send their children to a government school, Catholic school, or independent school. A contributing factor in this decision is the expectation that the “educational authority operates or proposes to operate an educational institution in accordance with the doctrine of a particular religion.” We are not saying this is the only deciding factor for parents or carers. However, the removal of these exemptions, or the need to apply for an exemption, impacts the freedom of religious choice we currently enjoy in the Territory.

Other parents and carers who don’t consider this an important factor might send their children to a government school. Those who are religious don’t expect a similar experience to a religious school, but still expect their child to be welcomed and included regardless of religious belief.

The suggestion to remove the exemption restriction access to cultural or religious sites is another restriction to freedom of religion. For some Christian ministries, various events are conducted for a particular sex only due to the sensitivity of the content or suitability of teaching it. To remove this exemption opens the possibility of abuse by others trying to make a point about anti-discrimination.

¹⁰ Anti-Discrimination Act 1988 (Tasmania), Division 8. 51 (2).

¹¹ Anti-Discrimination Act 1988 (Tasmania), Division 8. 51A (1).

¹² Discrimination Act 1991 (ACT), Part 4. Division 4.1. 33.

¹³ Discrimination Act 1991 (ACT), Part 4. Division 4.4. 46.

An extreme example, which would be legal if this exemption is removed, relates to the celebration of a same sex couples' union or marriage (if/when the law changes). Imagine a church which regularly hires out its buildings for events and was known to be against same sex marriage. If they are approached by a member of the public to host an event, namely a same sex marriage celebration, will they have any legal grounds to refuse? If they politely suggested a community centre next door, or another publicly available function space, what's to stop a case being brought against them to the anti-discrimination commissioner?

Fourthly, there is inconsistency in providing religious exemptions for Aboriginal sacred sites. How is it consistent that Aboriginal spirituality is still rightly recognised in sacred sites, while other religious sites aren't? This is positive discrimination toward one category of religious expression against others. Are we to expect the anti-discrimination commissioner to become an expert in various religions to make rulings about what is a valid religious or sacred site?

20. Modernising language

The discussion paper proposes "that the language in the Act be modernised generally to be gender neutral and remove offensive language. In particular it is proposed that the g [sic, presumably gender] terms 'man' and 'woman' be amended as follows." We again commend the principle to modernise the Act, though find the implication that the words 'man' and 'woman' are offensive.

The terms man and woman are no less offensive than male and female. These terms are natural biological terms descriptive of a person similar to race and age, other terms used throughout the document.

21. Carer responsibilities

The discussion paper acknowledges that the act "fails to take into account that many people have caring relationships outside this paradigm [of parenthood] that impacts on their ability to participate equally in life. Examples include caring for a spouse or parent."

It rightly goes on to say, "Carers perform an important role for the community and it is important that they are protected under the Act."

We thoroughly agree that it is good to eliminate discrimination on the grounds of carer responsibilities. However, we think the specific term parent, as currently defined, is more than just a type of carer.

We would like to suggest that instead of replacing "parenthood" with "carer responsibilities" the act:

- Defines the term "carer responsibilities", and
- Inserts "(ga) carer responsibilities;" into Part 3 Division 1 19 (1), and
- Inserts "carer responsibilities, " after "parenthood, " in Part 1.3.b.

22. Relationship status

The discussion paper points out that "Marital status includes a range of relationships beyond married couples and includes who you are or have been married to and if you are single."

We are not convinced that "The term marital status is misleading as it does not reflect the true extent of this provision." We are concerned that to replace marital status with relationship status will result in a similarly misleading situation.

As we've already noted, we commend the desire to keep pace with other Australian legislation.

So we suggest that you follow the amendments to the Sex Discrimination Amendment Act 2013 (Commonwealth) that replaced "marital status" with "marital or relationship status" throughout the Sex Discrimination Act 1984 (Commonwealth). Their interpretation of marital or relationship status could also be adopted to match.

Conclusion

Thank you for taking the time to prepare the discussion paper on the modernisation of the Anti-Discrimination Act. We are grateful also for your consideration of our response to it.

We would like to request that the report of this consultation process be made public, for the sake of transparency and feedback for our faith communities.

As we said at the outset, it is our hope and prayer that the laws of our land enable us to continue to enjoy peaceful and quiet lives, without discrimination. Some of our concerns are raised because we fear that Christian churches, schools, organisations and people, could be discriminated against as a result of the proposed changes.

There are times when our perception is that religions are being portrayed as a quaint minority who do not need to be recognised. It is helpful to see the recent ABS census survey results for Darwin that paint a very contrary picture. "In Darwin (Statistical Area Level 4), Christianity was the largest religious group reported overall (52.6%) (this figure excludes not stated responses)."¹⁴

Whether this percentage goes up or down in the future, as a group of Christian ministers, we hope Darwin and the Territory continues to be a community where nobody faces discrimination "on the ground of race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, impairment, trade union or employer association, religious belief or activity, political opinion, affiliation or activity, irrelevant medical record or irrelevant criminal record in the area of work, accommodation or education or in the provision of goods, services and facilities, in the activities of clubs or in insurance and superannuation."¹⁵

Please be assured of our prayers as you review all the feedback, and prepare draft legislation.

¹⁴ 2016 Census Quickstats, Darwin.

http://www.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/701?opendocument
Retrieved 9th November, 2017.

¹⁵ Anti-Discrimination Act (Northern Territory), Part 1. 3. B.