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Public Submission: Modernisation of the Anti-Discrimination Act.

## Introduction:

The NT government must be commended for conducting this review of the Anti-Discrimination Act. We should aim for a society that is free from discrimination and where the law does not show favour or prejudice. Freedom from discrimination, and equality before the law, are basic principles for all contemporary societies to aim toward - however, not all jurisdictions achieve this fully, including the NT.

Anti-Discrimination law is meant to prevent discrimination - however, **in certain circumstances (detailed below), current Anti-Discrimination legislation actually permits and endorses discrimination.**

It was alarming that until 2014 the NT Anti-Discrimination Act allowed legal discrimination on the grounds of sexuality for all employment with children. This unjust and harmful exemption meant that LGBTI people could be selectively targeted, plus it allowed prejudiced members of society to perpetrate the false belief that LGBTI people are a risk to children.

Even in 2018, in certain circumstances, Anti-Discrimination law still allows taxpayer-funded public services to legally selectively sack, and refuse service to, the very citizens who's taxes pay to fund them. This can only be seen as government-sanctioned discrimination against citizens. It is truly absurd that this is allowed to happen in a first-world country with a secular democratic system of government.

In many circumstance Lesbian Gay Bisexual Transgender and Intersex (LGBTI) people are, or can be, disproportionately harmed by flaws in current Anti-Discrimination law, which in some cases can be used as a weapon against LGBTI people. For this reason my submission will focus on how current Anti-Discrimination law impacts on LGBTI people.

## Responses To Discussion Paper Questions:

**Q 1. Is updating the term sexuality to sexual orientation without labels appropriate? Are there any alternative suggestions?**

Yes.

The term sexual orientation should be used (rather than "sexuality").

Sexual orientation incorporates a person's sexual orientation towards persons of the same sex, persons of a different sex, or both persons of the same sex and persons of a different sex. This broader and more encompassing term is to be commended, plus it moves away from narrow labels which may not capture all people.

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

Yes.

A person's sexuality and their gender identity - or how they self-identify with regard to their own gender - are two distinctly different aspects of human identity.

Gender dysphoria is a medically recognised phenomenon which leads to some people identifying other than their birth gender. These people, known as transgender, must be afforded the same civic protections as all other citizens. It's totally appropriate that a person's gender identity is a protected attribute under law.

**Q 3. Should intersex status be included as an attribute under the Act?**

Yes.

Intersex is a medically recognised phenomenon whereby some people are born with a biological variation that is neither 100% female nor 100% male. Intersex people may not fit the traditional binary view of gender and as such, are potentially at greater risk of being misunderstood or discriminated against. Incorporating intersex status in the NT Anti-Discrimination Act, will mean the NT Act is consistent with the federal Sex Discrimination Act 1984.

**Q 4. Should vilification provisions be included in the Act? Should vilification be prohibited for attributes other than on the basis of race, such as disability, sexual orientation, religious belief, gender identity or intersex status?**

Yes.

Vilification protections should be extended to include the attributes of race, religious belief, disability, sexual orientation, gender identity, plus also sex characteristics, and HIV/AIDS status.

**Q 14. Should any exemptions for religious or cultural bodies be removed?**

Yes.

I refer to the following sections of the Act:

**Section 30(2)** that permits religious schools to exclude prospective students who are not of that religion.

Religious schools that receive nil taxpayer funding should be allowed to choose which students they exclude. However, **if a religious school receives any taxpayer funding - even \$1.00 - then that school should have no right to deny access to the children of the very taxpayers who fund it.**

If we lived in a country with a theocratic system of government it would be appropriate to spend taxpayer money funding school that could discriminate in favour of the state religion - however, as Australia is a secular democracy, this is totally inappropriate.

**Section 37A** that permits religious schools to discriminate against employees on the grounds of religious beliefs, activity or sexuality

I strongly support the removal of exemptions that allow religious educational institutions to discriminate on the basis of sexuality in the area of employment.

Conversely, it must be noted that if a government school sacked or demoted a teacher because they were gay, this would be absolutely illegal. The public have a right to ask why is this discrimination allowed in some of our taxpayer-funded schools, but not in others.

Ireland has removed discriminatory exemptions to their law, making it illegal for religious schools and hospitals to discriminate on the basis of sexuality and gender identity, Similarly, Tasmania's Anti-Discrimination legislation contains no exemptions on the basis of sexual orientation, gender identity, intersex status, sexual activity or lawful relationship status.

Religious organisations are one of the NT's largest employers. They employ, plus provide vital public services to, many thousands of Territorians in areas including health, aged care, education, welfare and community/social services. In this vast country, in many instances a religious organisation, in the absence of a comparable government service, would be the only available service provider within hundreds of kilometres.

Current anti-discrimination laws can allow discrimination in two distinct areas:

1. Refusal to employ, or sacking of staff employed by religious organisations.
2. Refusing potential clients access to services provided by religious organisations.

In a secular democracy our Anti-Discrimination law is meant to protect citizens, however, we can see vital health, aged care, education, welfare and community/social services sack employees and refuse clients access to services, when these same actions would be totally illegal if preformed by either an identical government service or private business.

Don't forget - we are talking about taxpayer funded services that are allowed to selectively sack, or refuse service to, the very citizens who's taxes pay to fund them.

It is truly absurd that this is allowed to happen in a first-world country with a secular democratic system of government.

Anti-Discrimination law is meant to prevent discrimination - Instead, current Anti-Discrimination legislation actually permits and endorses discrimination.

**Part A - Selection of clients who may access (taxpayer funded) services provided by religious organisations.**

The member for Sydney, Alex Greenwich MP, introduced a bill to NSW Parliament titled the *Anti-Discrimination Amendment (Private Educational Authorities) Bill 2013*. Mr Greenwich notes that **this amendment "will make private schools and private educational institutions subject to the same laws that make discrimination unlawful in public schools"**

Mr Greenwich's 2013 document, *"Ending Discrimination in Private Schools: Discussion Paper"* states:

*"The December 2008 Melbourne Declaration on Education Goals for Young Australians agreed to by all Australian Education Ministers has as its first goal that Australian schooling promotes equity and excellence. It requires all Australian governments and all school sectors to provide all students with access to high-quality schooling free from discrimination based on gender, language, sexual orientation, pregnancy, culture, ethnicity, religion, health or disability, socioeconomic background or geographic location"*

*"Private education institutions including universities, colleges and specialty schools like business schools are also subject to the exemptions. These institutions can also deny entry to or kick out students who are gay/lesbian, transgender, single, too old, or pregnant, or refuse to teach them something in particular such as a medical procedure because of a characteristic."Students from private schools who suffer from discrimination on these grounds cannot go to the Anti-Discrimination Board"*

Mr Greenwich includes some important perspective about the harmful impact of discrimination:

*"Discrimination has serious ramifications. School is a vital part of development and should not be a place where children and young people are subject to discrimination, unfair treatment and left exposed to abuse or bullying. Discrimination at a school can involve being treated unfairly in comparison to other students. It can involve being singled out and targeted, being coerced to leave, or having authorities turn a blind eye to or tolerate bullying or harassment.*

*Falling victim to discrimination from a child's school impacts on their self-confidence and worth, and can seriously disrupt their education. It also legitimises vilification and harassment by other students in and outside the playground. Students suffering from bullying by their peers because of their LGBTI (Lesbian Gay Bisexual Transgender and Intersex) status are less likely to report the matter to teachers if they know they could be expelled. A school that can by law discriminate is less likely to have processes in place to deal with this type of bullying if it is reported.*

*Girls who become pregnant at school are less likely to graduate, more likely to become welfare dependent and socially and economically disadvantaged, and more likely to end up in an abusive relationship. It is not in their best interests to be expelled or pressured to leave.*

*The exemptions in the Anti-Discrimination Act make students of private schools more vulnerable than students of public school and expose them to wider violence and abuse."*

The harm done to real people by religious exemptions to anti-discrimination law, is summed up in the words of a student who was given an ultimatum by his school Principal - either to stop disclosing that he is gay, or be expelled.

The student states:

*"When I came out (as gay), I knew I was going to have bullies ... but I never expected it to be from the people who are meant to protect you from the bullies (school Principal) ... they themselves are the bullies."*

Source: <http://www.alexgreenwich.com/ada#sthash.LOTah15t.dpuf>

There have been multiple alleged cases around Australia of taxpayer funded religious schools refusing enrolment of a child who has same-sex parents. Each time there has been community outrage that the law allows this. Some cases taken to the media are:

- *"Gay Dad not welcome at Mandurah Christian school"* - source: <http://www.mandurahmail.com.au/story/3454887/gay-dad-not-welcome-at-mandurah-christian-school/>
- *"Gay parents accuse school of enrolment snub"* - source: <http://www.abc.net.au/news/2011-12-13/gay-parents-accuse-school-of-enrolment-snub/3728660>
- *"Schools defend right to expel gays"* - source: <http://www.smh.com.au/nsw/schools-defend-right-to-expel-gays-20130706-2pirh.html>

The reality is there are more and more same-sex couples having children, so the need for these families to be protected under law is becoming even more urgent. Legislative reform is required to protect these families. Many of these parents will prefer to send their children to a church run school - which they happen to be subsidising with their own tax dollars. It's vital that all students are treated fairly and given the same opportunities regardless of their background, family status, sexuality or other personal characteristic.

It's not fair to expect all taxpayers to fund these schools, yet to have some citizens and/or their children, blocked from accessing these public services which they have themselves funded. If the government takes your tax dollars to fund a public service that all others are allowed access to, but yourself or your family are denied, then this goes against the intention of anti-discrimination law.

If taxpayer-funded public services are legally allowed to do this, this can only be seen as government-sanctioned discrimination against citizens.

One of the above cases prompted Father Chris Bedding, Rector of the Anglican Parish of Darlington-Bellevue, to write an Op-Ed media article titled *"Religious schools vilifying people based on sexual identity is nothing new"*, in which the Priest wrote:

*"Young people can be, and often are, expelled from schools for refusing to be silent about their sexual identity. Church schools are legally allowed to do mean things"*

Source: <http://www.theage.com.au/comment/religious-schools-vilifying-people-based-on-sexual-identity-is-nothing-new-20151029-gkmd3.html#ixzz3ymRWDIBT>

## **Part B - Employment of staff delivering services by religious organisations.**

I was provided with the following quotes by teachers - one lesbian, one gay - working in a church-run school.

These teachers were only prepared to be quoted on the condition of anonymity, highlighting the level of fear of repercussions, including termination of employment, that LGBTI people and others experience knowing Anti-Discrimination law does not protect them.

Lesbian Teacher employed by a church school:

- *"I'm always on-guard and fearful that a parent or another teacher will see my partner and me at the supermarket or out for dinner. I need to keep my job to pay our mortgage."*
- *"I experience a lot of social alienation. I can't take my partner to Christmas parties, the annual staff dinner or the school fete, so I usually don't go. Other teachers think I'm a snob and that I don't want to go, but I'm afraid of losing my job."*
- *"New teachers ask me if I'm married. I'm forced to lie by either saying I'm single or making up a fake heterosexual relationship. Gay teachers know we aren't covered by the law. Always having to live a lie like this causes a lot of stress, and it dishonours my relationship."*

Gay Teacher employed by a church school:

- *"When I first began at this school I overheard another teacher say gays aren't fit to be parents. I feared that he would go to the Principal if he knew I was gay. I knew then that I needed to be in the closet at work."*
- *"I'm careful with my body language and always act straight. I could have a parent complain that I'm gay and they don't want me teaching their child."*
- *"Being a gay male teacher is difficult because people still associate being gay with paedophilia. I feel very uncomfortable going with students on school camp, in the swimming pool change room or even patting them on the back. The last thing I need is to have a parent make a false accusation to the principal about me inappropriately touching a child and me being sacked. Mud sticks."*
- *"I'm a gay teacher, I have become withdrawn at school. I live two separate lives and school can be a misery. I worry I could accidentally let my partner's name slip in conversation at school and my secret would be out. This causes me to feel depressed and anxious."*
- *"I feel vulnerable and unprotected. Teaching positions at my school are highly sought after and if it was known that I am gay, I could be gone. They would definitely bring in a straight (heterosexual) teacher to replace me."*

The two teachers quoted above work in schools that are:

1. Publicly funded with taxpayer money, and
2. Providing a public service (educating children).

It's very likely the majority of the Australian public do not believe a religious organisation should be allowed to discriminate to the extent they can, when providing public services using taxpayer money.

This point was highlighted recently when a West Australian **religious school sacked a teacher because he was gay.**

Source: <http://www.watoday.com.au/wa-news/youre-gay-youre-out-gay-teacher-sacked-due-to-wa-law-loophole-20171122-gzqe1o.html>

Understandably, there has been widespread community outrage that this is even legal.

There was further community outrage when Caloundra Christian College sacked a teacher allegedly because she became pregnant while unmarried. The local media and talk back radio was abuzz with people in shock that this could happen in the 21st Century.

The local paper reported:

*"The Daily's website was choked with more than 200 comments yesterday, mostly from people angry at the school's stance."*

Source: <https://www.sunshinecoastdaily.com.au/news/union-sacked-teacher-caloundra-christian-college/1365471/>

Further media reports on this incident, and reader online comments critical of the exemptions for religious schools are here:

- <https://www.brisbanetimes.com.au/national/queensland/teacher-sacked-over-pregnancy-20120501-1xw79.html>
- <https://www.themorningbulletin.com.au/news/unmarried-pregnant-and-sacked/1363649/>
- <http://www.couriermail.com.au/news/queensland/teacher-sacked-for-being-pregnant/news-story/238d676867ed6e7e240e25fbbf0bb3c9>
- <https://www.sunshinecoastdaily.com.au/news/unmarried-pregnant-and-sacked/1363649/>

The media reported that the school Principal said the school employment processes *"are in line with Section 25 of the Anti-Discrimination Act 1991."*

Source: <https://www.sunshinecoastdaily.com.au/news/unmarried-pregnant-and-sacked/1363649/#addcomment>

This story was picked up by the media nationally, and there was similar community shock and disbelief around the country. LGBTI people I spoke to said they felt very vulnerable, especially LGBTI staff working in church-run hospitals, schools and other areas of public service delivery. They spoke openly about how insecure they felt.

Caloundra Christian College, referred to previously for allegedly sacking a teacher for becoming pregnant while unmarried, may have continued to actively discriminate in the employment of staff. Since the previously mentioned occasion, job advertisements on the school website for a "Tuckshop Assistant", and another for a "Relief Teacher", showed the following religious affiliation requirements for employment at the school - including *"How long have you known Christ as Lord and Savior"*, plus requesting the name of the applicant's church and *"Pastor's name"*.

• **Positions Vacant (1)**

**Tuckshop Assistant**

An opportunity has become available for an energetic, passionate and committed person for the position of Tuckshop Assistant who can demonstrate a Christian commitment consistent with the College's Ethos

**Register Interest as a Relief Teacher**



Section 3: Christian Background	
How long have you known Christ as Lord and Saviour?	_____
What is your denominational preference?	
Are you an active member of a local church?	YES / NO
Which Church?	_____
Pastor's Name:	_____

Two employment opportunities as previously displayed on the website of Caloundra Christian College, Queensland.  
(only part of the full advertisements are shown)

For a government department or a private business to enforce the religious requirements in these job ads, would be a breach of Anti-Discrimination law - however, as a religious organisation they are exempt from the law. People would accept these religious requirements for a Religion teacher in a church school - but a religious test for a non-religious role such as a Tuckshop Assistant or a Relief Teacher would be flatly rejected.

I suggest that the primary concern of most parents would be that their children are being taught by good teachers - not whether or not the teacher holds personal and private religious views.

**Q 15. Should the exclusion of assisted reproductive treatment from services be removed?**

Yes.

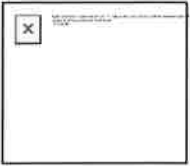
Assisted Reproductive Treatment (ART) should be available to all people who otherwise may experience difficulty becoming parents. It's disappointing to see that ART is a service that is exempt from the NT Act, meaning that providers can discriminate as to who they will and won't assist. The delivery of ART services should be consistent with the aims of The Act - i.e. non-discriminatory.



Sincerely



"I always wondered why somebody doesn't do something about that. Then I realised I was somebody": Lily Tomlin



Australia passes equal recognition of love under civil law - 7 December 2017