

## **Submission of a Group of Christian Lawyers In Respect Of Proposed Changes to the Anti-Discrimination Act**

### **Introduction**

The signatories to this submission are all Christian lawyers of various denominations. We oppose the proposals put forward in the Discussion Paper released in September 2017 which would see the Anti-Discrimination Act (**the Act**) amended by:

- a. removing the current exemptions for religious bodies, and
- b. rendering 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.

### **A Fundamental Step – A Backward Step**

1. No one should doubt the serious and fundamental nature of these proposals. They represent a radical, backward step for a democratic society, while being dressed up as modern, progressive and fair.
2. Christians are currently persecuted throughout the world on a scale unknown in history. Often that is in the form of physical violence directed at them by fanatics. In those places where Christians experience violent persecution (Egypt, Nigeria, Pakistan and so on) the state makes attempts to protect Christians from these fanatics, and respects the right of Christians to their beliefs and to preach their beliefs. It is notable that only dictatorships have hitherto attacked the right to believe and to teach those beliefs. It is in places such as China, Vietnam and North Korea that Christians languish in prison not for what they do, but for what they believe and teach.
3. These proposed amendments to the Act cross that clear line. For the first time they will render unlawful the teaching, and therefore effectively the holding, of Christian beliefs. Christians in the Northern Territory will run the risk of committing offences, not for acts of violence or subversion, but for holding, speaking about and teaching orthodox Christian moral beliefs in relation to sexuality and marriage.
4. These orthodox Christian moral beliefs are neither radical nor new. They date from the time of Christ. They are held universally by the Catholic Church, the Eastern and Oriental Orthodox Churches, and in large majority by the Evangelical

Churches and the established Protestant Churches. They are beliefs shared by our Jewish brothers and sisters. Similar beliefs are apparently held by followers of Islam. These proposals attack the rights of belief and teaching of followers of those religions, as much as it does for Christians.

- 5. No one should doubt the profound and radical nature of these proposals, which for the first time in the Northern Territory attacks a right to think and teach. We have already seen the frightening consequence of that in Tasmania. Bishop Porteous, the Catholic Bishop of Tasmania, circulated to parishes in his diocese a pastoral letter from the Catholic Bishops of Australia, to be read at Sunday Mass, to remind the faithful of established Catholic teaching on the sanctity of marriage. For that, he was subjected to a protracted and expensive defence of an allegation of discrimination under a provision effectively identical to that which is proposed for the Northern Territory. He was attacked for simply saying what Catholic Christians have believed for 2,000 years and will continue to believe and teach until the end of the world. Ultimately the allegation was withdrawn, so we do not know how it would have been judged, but the very fact that the law permitted it to be made is a frightening encroachment on religious freedom in this country.
  
- 6. We are not suggesting that there should be no limits on religious freedom. All freedoms and rights are ultimately limited as they run up against competing rights. Even a man's right to life is circumscribed. He cannot demand that the state pays an exorbitant sum for expensive and experimental medical treatment when those resources could be used for the conventional and cheaper treatment of many others. Religious freedoms would not extend to justify violence or practices dangerous to health and wellbeing of the community, or in other manifestly unreasonable ways, but they certainly should extend to the right to hold and teach beliefs, not only by word but by example. The right to religious freedom sits alongside other rights and freedoms (as internationally enshrined and supported by the Commonwealth Government) including the right against discrimination in respect of various 'attributes'. This fact appears to be totally ignored in the proposal. The proposed changes seek to relegate religious freedoms to a 'lower class'. We posture, why is the right to religious freedoms less important than other human rights?
  
- 7. Our Constitution ensures the importance of the dichotomy between Church and State and it has been commented upon favourably (from a religious freedom perspective) on numerous occasions by our High Court. Internationally, the US Supreme Court has unanimously upheld the 'right of religious schools to determine appointments to its staff as a fundamental expression of the right to religious freedom'.

8. Discrimination is not evil *per se*, just as tolerance is not good *per se*. In a democratic society we traditionally balance freedoms and rights. We discriminate on the grounds of age in respect of our electoral, liquor and driver licencing laws. We discriminate on the basis of certain physical characteristics for employment in the police or military forces. These forms of discrimination are justified by the existence of competing rights to expect the maturity of electors, public health and safety, and the effectiveness of those who protect and defend us. It is neither possible nor desirable to rid society of all discrimination, because much of that discrimination is reasonable and justifiable.

#### Where is the Mischief?

9. Good laws address obvious (and usually critical) needs. Good laws generally arise from public pressure on government to fix an obvious or critical problem. The NT Government's law relating to the banned drinkers register is a fine example of such a law, responding effectively to public demands to reduce anti-social behaviour and to protect some vulnerable Territorians from themselves. But where is the public pressure for the changes to the Act which we oppose?
10. The Discussion 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." We are unaware of any example of any LGBTI person complaining of being unfairly denied employment with any religious body in the NT; neither is there any apparent widespread public pressure to remove the religious exemptions from the Act. This causes us to question the motives of those promoting these changes. Is it really to remove allegedly unjust discrimination, or it is a deliberate assault on religious (and particularly Christian) belief and practice?
11. In fact, we are aware that gay and lesbian people are employed at Christian church institutions in the Northern Territory, notwithstanding that the law permits the churches to decline to employ them. There is a common misconception that Christians believe homosexuality is a sin. No properly catechised Christian holds that to be true. LGBTI people are no greater sinners than the rest of us and are loved by God just as much as the rest of us. What Christians believe to be true is that gay *acts* are sinful.
12. Keeping that in mind, Christian institutions, attempting always to display the love of God, will readily employ gay and lesbian people where it is determined that their employment will not scandalise the Christian community, confuse the minds of the young or inhibit the passing on of the faith by word and example.

13. However, imagine that a militant LGBTI activist, well known to the public for his militancy, applied for a job at a Christian school. Parents and teachers at that school, who desire their children to be imbued with the light of the Gospel and Christian moral teaching, would be rightly concerned that such a person's presence on campus would sow scandal and confusion amongst the Christian community generally and the students in particular. How would it sit for those students to attend a religious instruction class on Christian sexual morality and be taught the biblical truths, "He created them male and female," and "That is why a man leaves his mother and father and is joined to his wife and the two become one body," and then to be confronted next lesson with their militant history teacher. That situation would be untenable.
14. Such a situation would render it effectively impossible for that school to carry out its principal purpose – passing on the Christian faith. Further, how could the teachers and parents of that school have any confidence that a person holding such militant views would not try to pass them on to students, notwithstanding that those views are completely contrary to Christian belief and practice?
15. Having said that, one wonders why such a militant person would seek employment at a Church institution, knowing that the church regards the very lifestyle he lives and promotes as disordered. It would be just as absurd for him to do that as for a committed evangelical Christian to apply for employment on the organising body of the Gay Pride Week. Once a reasonable balance of rights and freedoms is lost and the Act becomes skewed, it becomes open to abuse by those with an agenda. The experience of Bishop Porteous is proof of that.
16. In short, while Christian institutions may choose not to exercise the exemptions on many occasions, their right to do so, where Christian beliefs and practice are imperilled, must be maintained.

#### **We Have the Balance Right Now**

17. The Discussion Paper says that the changes to the Act will make things "fairer." We disagree. If enacted, the changes would provide no practical benefit to LGBTI people, nor overcome any manifest injustice, but will impose a great injustice on people of faith.
18. The Act as it presently stands provides for a just and fair balance of freedoms and rights. If a Christian lawyer refuses to employ a lesbian as his secretary because his faith rejects her lifestyle as sinful, that refusal to employ is unlawful. So it should be. He may be a Christian, but his law firm is not a Christian institution. His employment of a lesbian secretary does not inhibit the holding or teaching of Christian moral values.

19. The present law has the right balance. Virtually identical legislation has worked well and fairly in numerous jurisdictions for decades. It recognises that in certain restricted cases discrimination can be just and fair, in that it is required to balance competing rights and freedoms. Where the fundamental rights of Christians to hold and teach their faith, by word and example, is not threatened, they cannot discriminate against those whose beliefs and lifestyle is inconsistent with Christian faith. LGBTI people are well and adequately protected by the law as it stands.

#### **The Proposed Safeguards are False**

20. The Discussion Paper asserts that the religious exemptions would not be completely lost, but that a church body wishing to rely on them would have to justify their exercise to the Commissioner. That "safeguard" is a sham.
21. On what basis is a Northern Territory public servant holding for the time being the office of Anti-Discrimination Commissioner going to assess whether a church decision to not employ a particular person is justified or not? How is she equipped to assess the reasonableness of an article of faith maintained for 2,000 years (and having a much older Jewish ancestry), by some 2.4 billion Christians in the world today and by followers of other religions, who together represent the great majority of persons on earth? Will she refer to Sacred Scripture? Will she have any knowledge of moral theology? Or will she invoke the Holy Spirit? We do not pose these rhetorical questions to be gratuitously sarcastic, but to point out the absurdity of a public servant determining the validity of conduct arising from deeply held and well-established religious beliefs.
22. The fact is that if the Commissioner for the time being is a non-believer or a secularised nominal Christian, which is more likely than not to be the situation in Australia today, nothing the churches say or do would be accepted as justifying the application of the exemption. In fact, that is no safeguard at all.

#### **Submission**

23. If enacted, the proposed removal of the current exemptions for religious bodies and the imposition of the proposed vilification provisions, will transform the Act from a fair, workable and balanced instrument into an unfair and unjust device. It will leave Christians, and those of other faiths who share their moral convictions, practically unable to maintain and pass on those beliefs within their own institutions, and will expose believers to allegations of unlawful conduct for merely stating what they believe.
24. We urge that these changes not be enacted.

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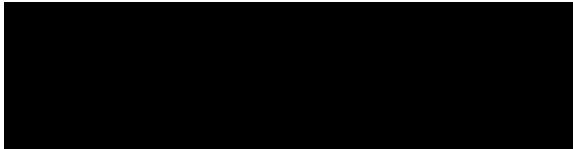
Dated 31 January 2018

**SIGNATORIES TO THE SUBMISSION DATED 25 JANUARY 2018 OF A GROUP OF CHRISTIAN  
LAWYERS IN RESPECT OF PROPOSED CHANGES TO THE ANTI-DISCRIMINATION ACT**

'See Attachment Signatories'

**Submission of a Group of Christian Lawyers In Respect Of Proposed  
Changes to the Anti-Discrimination Act**

Executed by PAUL MAHER



Signature of PAUL MAHER

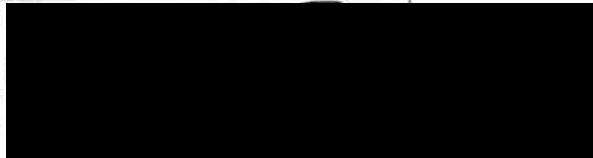
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**Submission of a Group of Christian Lawyers In Respect Of Proposed  
Changes to the Anti-Discrimination Act**

**Executed by Tony Morgan**

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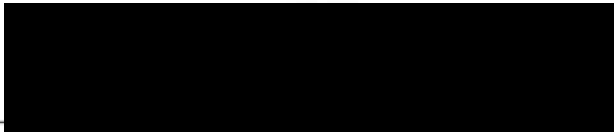




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**Submission of a Group of Christian Lawyers In Respect Of Proposed  
Changes to the Anti-Discrimination Act**

**Executed by Colin McDonald QC**

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**Signature of Colin McDonald QC**

**Submission of a Group of Christian Lawyers In Respect Of Proposed  
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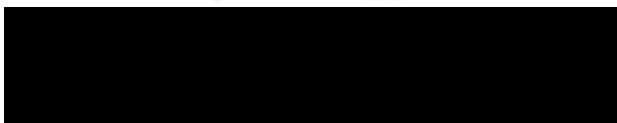
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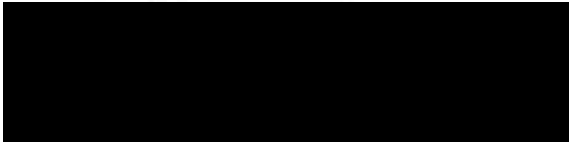
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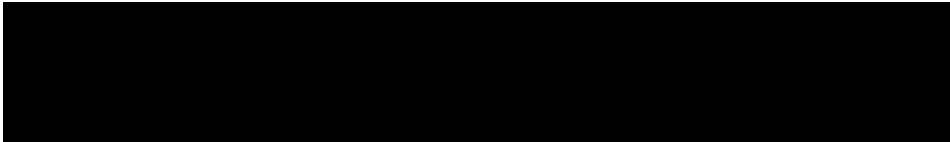
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**Submission of a Group of Christian Lawyers In Respect Of Proposed  
Changes to the Anti-Discrimination Act**

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**Submission of a Group of Christian Lawyers In Respect Of Proposed  
Changes to the Anti-Discrimination Act**

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**Submission of a Group of Christian Lawyers In Respect Of Proposed  
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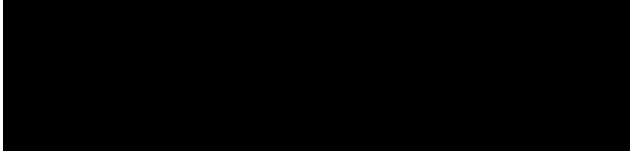


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**Submission of a Group of Christian Lawyers In Respect Of Proposed  
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**Executed by Kathryn Anne Ganley**



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