

This document contains a response to Discussion Paper "Modernisation of the Anti-Discrimination Act".

The Comments found within, if they are to be published, should be unaltered and anonymous.

General comments:

Regarding the format of the discussion paper and the method of providing comment on the discussion paper. I found the discussion paper itself a little confusing and not very clear. The format of the discussion paper made it hard to distinguish which question was in relation to which section. Furthermore, the method and format of the feedback that the Attorney-general seeks is a bit vague. Also, I have heard from many people that the email address that feedback on the discussion paper should be sent to has bounced, hence people's feedback to the paper is not being received and many people feel as if their voice is not being heard.

I recently provided feedback on the NT government's "Planning for a vibrant future" discussion paper. 1) The discussion paper was engaging and informative with lots of visual aid to communicate ideas. 2) The avenue for providing feedback was streamlined and allowed the person giving feedback to give detailed feedback on specific topics in the discussion paper online (hence the need for sending feedback via an email address was non-existent).

For future reference, the persons that wrote up the proposed changes to the Anti-discrimination Act discussion paper should look at the discussion paper on the following website for what an engaging discussion paper could look like. <https://haveyoursay.nt.gov.au/vibrantfuture>

Furthermore; the NT gov has a "Have your say" platform in the form of a website with survey forms for people to provide comment on. Please see <https://haveyoursay.nt.gov.au/>

Why was the Modernisation of the Anti-discrimination Act discussion paper not put up on the "have your say" government website? It would have been the perfect place to put the discussion paper and the website seemed to already have the capability to let people provide feedback through forms on the website, hence streamlining the feedback process to one place where the public would know that their feedback is being received.

Comments on questions in the discussion paper:

Question 1

As long as the term "sexual orientation" cannot be later twisted to somehow include paedophilia and bestiality.

Question 2

The idea of gender neutral bathrooms comes to mind with this question. Does this mean that if a man, who identifies as a woman, wants to go to the women's bathroom he can file a complaint that he is being discriminated against because he identifies as a woman and therefore should go to the women's bathroom? If women are forced to allow men "who identify as women" into the restroom even though it makes them feel uncomfortable and unsafe is that really justice? Vice-versa applies for men's restrooms. We need to be very careful that we don't risk the security of the majority to satisfy a minority in issues that can have adequate solutions (with some compromise from all sides).

Question 3

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No comment

#### Question 4

The wording in this part of the Act needs to be very careful. As it is currently proposed, in my view, it seems too open and all sorts of negative social ramifications will follow. For example, what if someone feels threatened or offended because of what a person/group (political, religious etc) teaches or espouses, can the offended/threatened person lodge a complaint against that individual/group and say it is vilification? Freedom of speech and religion will surely suffer. Many people get offended over minor issues (and from some people's perspective, major issues) and will look for ways to bring other people and groups down. If the law somehow provides people like this with a way to bring others down society will be worse off. There needs to be strong safe guards in the Act that protect all so that the Act doesn't get used as a destructive tool under the name of "vilification" and "justice".

Quoting from the discussion paper "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". – Would this mean that if someone attend a service in a religious institution and the teacher taught something that offended/insulted etc the attendee then they could file a vilification complaint? Even if what the teacher was teaching was in line with the religion? For example; if a Christian went to a Muslim prayer service and the Imam gave an address and mentioned "destruction to the infidel ('infidel' meaning anyone who is not Muslim)", could the Christian file a vilification complaint?

Perhaps include places of worship, religious and cultural sites as protected places. Where there are cultural, religious and political differences there will always be the space for offence. But that is the nature of democracy. We risk losing true democracy when people are too scared to say anything in fear they will offend someone. It is in the argument, the dis-agreement and the debate that we come up with better ideas and new solutions. Please don't make laws that will threaten dis-agreement and debate, because that is where true democracy lies.

#### Question 5

Yes, the Act should protect people in domestic violence situations but also needs to keep in account that businesses still need to keep running and work still needs to be done. For example, putting a business at serious risk to accommodate an individual is costly and may not be the best in the long run.

#### Question 6

No comment

#### Question 7

Can the NT adopt the wording of the ACT "profession, occupation, trade or calling"?

#### Question 8

No comment

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#### Question 9

Yes! Assistance animal are life-savers.

#### Question 10

I have some concerns with the Representative Complaint Model as proposed. A representative complaint model would be useful and helpful in some cases but it has a large potential of being abused if the process is not carefully thought through. Quote from the discussion paper; "A representative complaint could be lodged without obtaining individual consent of each person". A representative model with this process could be grossly misused. Who can lodge a complaint on behalf of who? Do the individuals need to be part of an organisation (an employee, a person who receives service etc) for the organisation to lodge a complaint on their behalf? What if the individual does not want a complaint lodged on their behalf but the organisation lodges it anyway or lodges the complaint without the individual knowing? What if organisations use the representative model to lodge complaints for their own agenda and to further their own ideology/goals in the name of "social justice"?

Individuals need to give written consent for organisations to complain on their behalf. There needs to be a simple, non-intrusive, approved form for individuals to sign to give consent to organisations to complain on their behalf.

#### Question 11

Removing the requirement for clubs to hold a liquor license will broaden the definition of "clubs" in the Act extensively. Hence, does this mean that if someone wanted to join a club (pretty much any club if the liquor licence requirement were removed), but were refused, due to them not holding the same values/goals/culture/nationality as the club (whatever criteria are needed to be part of the club), could that person file a complaint? For example, if a person wanted to join the Country Liberals party but held strong Labour views (or views that were contrary to Liberal party views) could that person file a complaint that the club is discriminating against them due to their political views? Another example, let's say a Caucasian wanted to join the Timorese club but it is a requirement to be Timorese to be part of the club. Could the Caucasian person file a complaint that the club is discriminating against them?

Discrimination is not inherently a bad thing, we do it all the time to navigate through society and life. It just means to recognize a distinction or to differentiate and difference is needed in society, we can't all be the same. So, if the liquor license is removed, the Act needs to protect clubs' ability to discriminate and exclude people who do not hold the same values as the club or do not meet the criteria of the club.

#### Question 12

Restriction of areas of activity on sexual harassment should be removed.

#### Question 13

The definition of service should be amended to extend coverage to include workers.

## 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, an employee's personal beliefs need to be in agreement 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>

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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.

#### Question 15

A clause should be added to make sure that people applying for ART are capable of supporting a child. There have been recent cases in America where people have been allowed access to reproduce children through ART and surrogacy programs but they are unfit to care for children. For an example of such a case, please see the following article

<http://www.foxnews.com/health/2016/02/24/california-triplets-at-center-thorny-surrogacy-case-pro-life-debate.html>

Quoting the discussion paper - "The Act prohibits discrimination from occurring in the provision of services. ART is a service that is exempt under the Act". This comment, and the comment in the next paragraph, seems to put ART into the same basket as any other service, which I find disturbing. ART is a service that involves the production of new life and is not something that should not be taken lightly. ART as a service cannot and should not be placed into the same category as other services. A service that involves the production of life has huge ethical and social complications.

#### Question 16

No comment

#### Question 17

No Comment

**Question 18**

It is hard for any name to accurately describe the purpose of an office that is as complex as the Anti-Discrimination office. Just because there may be equal opportunity for all people that does not mean that everyone will have equal outcome or be better off. Please see the following video for a better explanation for what I mean. The professor in the video explains some concepts about inequality much more eloquently than I could; <https://www.youtube.com/watch?v=Jtxuy-GJwCo>

Hence, I think it would be a waste of time and money renaming the office. The name 'office of the Equal Opportunity Commissioner' may not fully embody the purpose and mission of the office in any case.

**Question 19**

What about the option of 3 years with the ability of re-appointment?

**Question 20**

Do not change the definition of a man and a women.

**Question 21**

No comment.