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Submission Re: Modernisation of the Anti-Discrimination Act 2017

IEUA-QNT welcomes the opportunity to provide feedback regarding the Northern Territory Government's Discussion Paper *Modernisation of the Anti-Discrimination Act September 2017*.

IEUA-QNT represents ~17,000 teachers, support staff and ancillary staff in nongovernment education institutions in Queensland and the Northern Territory and consistently engages in public debate at both state and national levels through its system of member committees (e.g. Equity, Education and Industrial Committees) and through its national counterpart, the Independent Education Union, which receives input from members in all States and Territories.

For the purposes of this submission, our comments are aligned with the Summary of Questions presented on page 7-8 of the Discussion paper.

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

Our union is of the opinion that updating the term "sexuality" to "sexual orientation" is consistent with the broader goal of modernising the Act. As noted in the Discussion Paper, this is also consistent with Commonwealth legislation.

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

It is appropriate that gender identify be included as a protected attribute in the Act. As noted in the Discussion Paper, this is also consistent with Commonwealth legislation, which recognises that gender is a broader concept than sex.

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

It is appropriate that intersex status be included as an attribute in the Act. As noted in the Discussion Paper, this is also consistent with Commonwealth legislation.

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?

It is of fundamental importance that vilification provisions be included in the Act and that these extend to a full suite of protected attributes.

In relation to the proposed changes to definitions of vilification, we suggest that there

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is a potentially significant inconsistency in the Discussion Paper. At the top of page 12, reference is made to the fact that protection under the new act will provide legal

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redress against "extreme or pervasive vilification". In contrast, the wording used in the second last paragraph on page 11 is significantly broader: "reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or group of people".

We suggest that this inconsistency should be addressed in drafting the legislation, particularly as it is foreseeable that complaints could be made against teachers, especially those in high schools, who might be discussing issues which might cause or be said to cause offence to, or to insult or humiliate, a person or group of people. Under these circumstances, the difficulty with the wide definition is the problem of the process becoming the punishment and a dependence, therefore, upon whether the persons administering the Act make sensible decisions at an early point to reject untenable cases.

5. Should the Act create rights for people experiencing domestic violence in relation to public areas of life such as employment, education and accommodation?

It is appropriate that the Act create rights for people experiencing domestic violence in relation to public areas of life. As noted in the Discussion Paper, this is an important mechanism for creation of rights for people experiencing domestic violence.

6. Should the Act protect people against discrimination on the basis of their accommodation status?

It is appropriate that the Act protect people against discrimination on the basis of their accommodation status. As noted in the Discussion Paper, this is an important mechanism for creation of rights for homeless persons.

7. Should "lawful sex work" be included as an attribute under the Act?

Given that lawful sex work is, by definition, lawful activity it is appropriate that the Act contain provisions to prevent discrimination against workers from this industry. As noted in the discussion paper, legislation in other states, including Queensland, already provides protection for sex workers and broadening of the Northern Territory Act would support harmonisation of Anti-Discrimination legislation across jurisdictions.

8. Should "socioeconomic status" be included as a protected attribute?

Inclusion of socioeconomic status as a protected attribute is consistent with the broader goal of modernising the Act. As noted in the Discussion Paper, this is an important mechanism to ensure that socioeconomic disadvantage is not exacerbated by discriminatory practices.

9. Should the Act be broadened to include specially trained assistance

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animals such as therapeutic and psychiatric seizure alert animals?

It is appropriate that the Act is broadened to include specially trained assistance animals. Within this context, our union also supports the extension of existing liability

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provisions that provide for guide dog owners to be responsible for any damage or injury caused by an assistance animal.

10. Should a representative complaint model process be introduced into the Act? Should there be any variations to the process of the complaint model as described above?

While we maintain the importance of an individual being able to assert their rights to redress, an individual complaint model does not suit all complaints, or all complainants. For this reason, our union supports introduction of a representative complaint model.

We note, in particular, that the proposed model will allow for lodgement of complaints without obtaining individual consent, thereby allowing organisations such as ours to protect members from adverse action. Coupled with the ADC's powers to conduct investigations, we believe the proposed model (including its requirements for a written report and potential to compel organisations to make public announcements relating to actions arising from written reports) represents a potentially powerful tool for use in relation to systemic discrimination issues.

11. Should the requirement for clubs to hold a liquor licence be removed?

Our union supports a broadening of the definition of clubs to include organisations that do not hold a liquor licence. This is a logical step to ensure protection of members in a range of settings.

12. Should the restriction of areas of activity on sexual harassment be removed?

A broadening of the areas of activity is essential to modernisation of the Act. As noted in the Discussion Paper, relevant legislation in Queensland and Tasmania does not restrict sexual harassment by area of activity and broadening the areas of activity in the Northern Territory Act is an important step toward harmonisation across jurisdictions.

13. Should the definition of "service" be amended to extend coverage to include the workers?

Given that providers of services who experience discrimination from customers have no protection under the current Act, it is important that the definition of service be amended to include workers. As noted in the Discussion Paper, this provides an important mechanism by which employers can support employees who are subject to discrimination, harassment or vilification while at work.

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

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Our union supports the removal of automatic religious exemptions in favour of a system where religious organisations will need to apply for an exemption on a caseby-case basis.

[redacted]

We note that page 21 of the discussion paper proposes a system where religious organisations will "...be required to apply for an exemption with the ADC and justify why their service requires a particular exemption". If these concepts were reflected in the drafting of any relevant legislation that would be a fairly strict test and would presumably limit the circumstances in which exemptions are granted.

We believe that this would bring an appropriate level of consideration on the part of religious schools to adhere to more tolerant community standards rather than relying on the legal protection afforded to them under the existing legislation. In requiring religious organisations to formulate the case for exemption, government would also be challenging the organisation in question to confront their true purpose in seeking an exemption. This can only serve to reduce instances of discriminatory practice.

In this context, we suggest an application process where interested parties be given an opportunity to make submissions relating to a particular application for exemption, or that there be public advertising with a following opportunity for interested persons to make a submission to be taken into account in the process under which the ADC considered the exemption.

A study by Evans and Gaze [1] (copy attached) indicates that, in practice, religious schools do accept enrolments from students who are not practising members of the nominated religion [1]. Further, it can also be assumed that many schools enrol children who identify as LGBTI or are children of same sex couples or unannulled divorcees. What this means is that, if current religious exemptions have any significance for schools, it is only to provide a degree of legal protection for a range of discriminatory practices.

A similar argument applies in the case of religious exemptions being used as grounds for dismissal of school staff. In practice, at least some employees of religious schools must necessarily exercise lifestyle choices that are incompatible with the strictest requirements of faith. Employing authorities do not, in a majority of these cases, dismiss these members of staff. In practice, as long as the person does not openly express their situation, religious authorities do nothing [1].

Given that religious exemptions are generally deployed only when extenuating circumstances emerge, religious exemptions, in most cases, operate as a convenient escape clause rather than a means of protecting deeply felt religious sentiments. Under the circumstances, requiring an employer to apply for an exemption on a caseby-case basis should prove effective in ensuring that exemptions are deployed only when truly justified.

One additional point we would raise in relation to religious exemptions is the necessity of dealing with applications for exemption in a timely manner. This is particularly important in cases relating to schools; unnecessary delays in processing of applications for exemption could have significant impact on student learning.

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

Our union has no comment in relation to legislation governing access to assisted reproductive treatment.

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16. What are your views on expanding the definition of "work"

We support the proposal to broaden the definition of work to include a broader range of working arrangements. While this may impose additional burdens on some of our members, particularly those in leadership positions, the principle is of sufficient importance to justify extra obligations on decision makers. In fact, we would argue that this is the very purpose of anti-discrimination or equal opportunity law.

17. Should section 24 be amended to clarify that it imposes a positive obligation?

Given that the existing Act already conveys a positive duty on employers, service providers, educators *et cetera*, we support rewording of the section to make this explicit.

18. Is the name "Equal Opportunity Commissioner" preferred to the name "Anti-Discrimination Commissioner"? Would the benefits of a new name outweigh the financial cost that comes with re-naming an office?

Our union perceives both advantages and disadvantages in changing the title of the Commissioner. Use of the title "Anti-Discrimination Commissioner" provides consistency with the legislation, which has clear advantages. We note however, that four jurisdictions (Victoria, South Australia, Tasmania and Western Australia) use the "Equal Opportunity" title while only three (New South Wales, Queensland and the Australian Capital Territory) retain the "Anti-Discrimination" label. We also note that the Discussion Paper argues that the change to "Equal Opportunity Commissioner" is more consistent with the work performed by the office.

19. Is increasing the term of appointment of the ADC to five years appropriate? Should the term of appointment be for another period, if so what?

It is appropriate that the term of appointment of the Commissioner be extended to five years. This is consistent with national practice and, as noted in the Discussion Paper, would be in-line with a majority of Commissioners appointed under other antidiscrimination legislation and other independent statutory offices in the Northern Territory.

20. Should definitions of "man" and "woman" be repealed?

It is appropriate that the language used in the Act be amended to be gender neutral.

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In most cases, there is no impediment to replacing the terms "man" and "woman" with gender neutral terms.

The proposition to repeal the definitions of "man" and "woman" and allow these, when used under the terms of the Act, to take on their more progressive ordinary meanings is consistent with a modernisation of the Act.

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21. Should the term "parenthood" be replaced with "carer responsibilities"?

Replacement of the term "parenthood" with "carer responsibilities" is consistent with a modernisation of the Act. As noted in the Discussion Paper, the broader definition takes into account that many people have caring responsibilities outside the parentchild paradigm.

22. Should the term "marital status" be replaced with "relationship status"?

Replacement of the term "marital status" with "relationship status" is consistent with a modernisation of the Act. As noted in the Discussion Paper, the term "marital status" is misleading as it does not reflect the true extent of the protection, which extends beyond married couples.

We thank the government of the Northern Territory for the invitation to engage in consultation through this submission and would welcome the opportunity to engage in further discussion.

Terry Burke
Branch Secretary
Independent Education Union of Australia
Queensland and Northern Territory Branch
30th November 2017

References

1. Evans, C. and B. Gaze, *Discrimination by religious schools: Views from the coal face.* Melbourne University Law Review, 2010. **34**: p. 392-424. **ATTACHED**.

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Tuesday, 5 December 2017

The Hon Natasha Fyles MLA
Attorney-General and Minister for Justice
Department of the Attorney-General and Justice
Northern Territory Government
GPO Box 1722
Darwin NT 0801

Dear Ms Fyles,

Re: Modernisation of the Anti-Discrimination Act

Our union recently made a submission relating to the Northern Territory Government's Review of the Anti-Discrimination Act.

In our submission, we outlined our reasons for supporting many of the proposed changes to the Act and we continue to support changes that are consistent with modernisation.

On reflection however, we feel our submission should also have acknowledged that implementing many of the proposed changes would also require some adjustment to staffing of the Anti-Discrimination Commission.

The requirement for religious organisations to apply for exemptions, for example, would mean that office staff would, presumably, be charged with the responsibility of processing applications. Under the circumstances it is, therefore, likely that staffing of the Anti-Discrimination Commission would need to be increased.

We thank the government of the Northern Territory for the invitation to engage in consultation through this submission and would welcome the opportunity to engage in further discussion.

Yours sincerely,

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TERRY BURKE
BRANCH SECRETARY