

Submission on Anti-Discrimination Discussion Paper

Gender Identity

I am concerned about gender identity moving from the simple biological male and female description to a non-descript definition that will allow all sorts of versions of gender identity to become attributes. If people want to define their gender outside of male and female that is their business but not the business of the anti-Discrimination commissioner. The law should protect people from unreasonable discrimination but at the same time protect males and females especially younger people from the use of gender identity where it could put the wellbeing of others at risk. An example of this is in the Safe Schools program which has a section on gender fluidity. This programme has been introduced and is now in the NT. It says

Toilets and changing rooms.

As part of the written plan, confirm the toilets, changing rooms, showers, and swimming facilities based on the student's gender identity and the facilities they will feel most comfortable using. Schools can also consider providing gender-neutral toilet options, which should be accessible to any student who wishes to use them and will help to establish a more inclusive environment for transgender and gender diverse students. There is no requirement to use a unisex or accessible toilet or changing room unless a student makes an active choice to do so. Continued use of unisex or accessible facilities can cause additional stigma and potential for discrimination.

Gender fluidity is a concept that has broad implications which it seems are not questioned in the discussion paper but accepted without saying whose idea is this and what are the implications of this type of thinking. I have included below the following article from a Mr Patrick Byrne which highlights the complications that this type of thinking is likely to lead to, something that I believe is very concerning.

To show how this can get further get out of hand there is now the concept of trans race. From Wikipedia it says Transracial people are individuals who claim to have a racial identity that differs from their birth race. If you allow trans gender to be an attribute, then you must allow trans race to be an attribute and where will this all end. Are we losing the plot?

GENDER POLITICS Northern Territory proposes recognising people by their fluid gender identity

A Northern Territory discussion paper proposes redefining the human person by their fluid gender identity and sexual orientation, while removing the biological definitions of man and woman from the Territory *Anti-Discrimination Act*.

The discussion paper for "Modernising the *Anti-Discrimination Act*" (*ADA*), issued by the Territory Attorney General's Department, says that the proposals are based on changes made in 2013 to the federal *Sex Discrimination Act 1984* (*SDA*).

The discussion paper says: "Gender is not limited to biological sex assignment; it takes into account appearance, mannerisms and the social identity a person chooses for themselves, including to be something other than male or female. Gender refers to the way a person presents and is recognised within the community.

"A person's gender might include outward social markers, including their name, outward appearance, mannerisms and dress. It also recognises that a person's assigned biological sex and gender may not necessarily be the same. Some people may identify as a different gender to their assigned biological birth sex and some people may identify as neither male nor female.

The discussion paper endorsed the changes to the federal SDA, which defined gender identity as "the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth."

What does it mean to say gender identity is based on *mannerisms* or on *gender-related characteristics* like dress, makeup, or to change physical *appearance*, regardless of a person's sex at birth? Mannerisms can reflect feelings that are deep and profound, vague and subject to moods and emotions, permanent, occasional or fleeting, past or present, different in the future. Changing one's appearance can involve a total change of appearance to identify as the opposite sex, or partial change, or minimal change, and can be permanent, temporary or only for social occasions; it can be a fashion statement ("the new black") or it can be an identity politics statement in opposition to the state identifying people as male or female only.

The SDA definition of gender identity and the discussion paper's description of gender identity allows a biological man, with or without medical intervention, to identify more as a woman. It allows a biological woman, with or without medical intervention, to socially identify more as a man. It allows for legal recognition of the 58 gender identities listed on Facebook, or for persons being on a spectrum between 100 per cent male and 100 per cent female. It can mean a person identifying as genderless, that is, as having no sex identity or gender identity.

The SDA definition and discussion paper description of gender identity is open to infinite possibilities. Whereas sex describes something objective – an innate, immutable and deeply abiding aspect of the human person – gender identity describes something subjective, fluid, uncertain and ambiguous.

A human right can only be based on what can be objectively defined, like a person's race, age, disability or sex. But gender identity is wholly a social construct, a fluid and ambiguous term that cannot be consistently objectively be defined. Writing fluid gender identity into law creates uncertainty in law, with penalties for those who fail to comply with what they cannot understand with certainty. Attempting legally to recognise every idiosyncratic form of gender identity risks descending into legal and cultural incoherence. To underscore the change from recognising a person by their biological sex to recognising a person by their fluid gender identity, the discussion paper argues that the biological definitions of man as "a member of the male sex" and woman as "a member of the female sex" should be repealed from the ADA.

This prompts a question. If the law is change to allow a person to identify socially as a member of the opposite sex, or with a fluid gender identity, can the law also be changed to allow a person to change their race or age, or to claim a disability they don't have? The discussion paper proposes a new vilification clause that would 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" on the basis of their gender identity, sexual orientation and other protected attributes.

This vilification clause is similar to controversial vilification clauses in the *Racial Discrimination Act 1975*, under which journalist Andrew Bolt was prosecuted, and the Tasmanian *Anti-Discrimination Act 1998*, under which there was an attempt to prosecute Catholic Archbishop of Hobart Julian Porteous.

This definition of vilification would make it an offence for a person simply to disagree with another person. This legally institutionalises intolerance and would seriously limit freedom of speech, which is the foundation of democracy.

This threat to basic freedoms is made worse by having the ADA cover all schools, while removing more religious exemptions. Religious exemptions in the current ADA are described by the discussion paper as enshrining discrimination. NW

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The definitions of sex and gender should be left as they are because the present meanings are based on a biological definition and not on what a person chooses to claim is their gender. Intersex as an attribute is a

biological condition and should be included with gender identity but gender identity based on *outward social markers, appearance, mannerisms and the social identity a person chooses for themselves* should not be an attribute. It is a distortion of the meaning of the word gender to suit some people but that doesn't make it right or sensible – it's more about someone pushing an ideology under the smokescreen of discrimination using a definition which is not objective or biological but feelings based – choose one gender today, another type tomorrow. If someone is offended or vilified by someone questioning a person's gender, the lawyers would have a field day because the concept of gender identity as mentioned above enabling someone to claim to be of a different gender let alone a different race would be open to endless and costly legal cases.

Vilification

As stated in the discussion paper the NT does not have laws that makes public incitement to acts of racial hatred either an unlawful act or a criminal offence or both.

It also states that there is no Federal or Territory law that protects against vilification based on religious belief, disability, gender identity or intersex.

The first question needs to be asked is whether we need a law or laws at all considering we are already covered in part by the Commonwealth law. The argument put forward by the NT Government is that it brings us into line with the Commonwealth something which other states have done. If we are already covered by the Commonwealth laws, why the move to change our laws?

If the argument is accepted that we need to bring our existing laws in line with the Commonwealth, then where does it say we have to accept everything the Commonwealth does? Section 18C certainly has been the centre of much debate in recent times especially in relation to free speech – do we need to copy it?

If we introduce our own legislation which has the words *offend, insult, humiliate or intimidate* are we lessening the rights of people to say what they think? Of course there needs to be a balance and we know what affect a word can have especially on young people through social media. But if this legislation is similar to Tasmania and can be used like it was recently by the Anti-discrimination commissioner in Tasmania to attempt to prosecute Tasmania Catholic Archbishop Porteous then I don't think we should go down that path. The commissioner notified Archbishop Porteous that there was a possible breach of Tasmania's Anti-Discrimination Act by "conduct that is offensive, intimidating, insulting or ridiculing of Ms Delaney and the class of same-sex attracted people". This was after he sent out a booklet called 'Don't mess with Marriage' to schools in Tasmania. Ms Delaney was a transgender person and a Member of Parliament. The charges have since been dropped.

Freedom of speech is not an unfettered right to say what you like but trying to find the right balance can be difficult. The old saying 'Sticks and stones will break my bones but names will never hurt me', I don't think applies anymore especially with the advent of Facebook. We only have to be reminded of the sad case about Dolly and the effect of hate mail. But we still must have the right to be able to put out alternative views and if those views are going to be stopped because someone doesn't like them or is offended (which is a very broad word) and the person goes to the Anti-Discrimination Commissioner who accepts the complaint, like what happened to Archbishop Porteous, then I won't be supporting changes to the existing legislation.

What worries me is that as I don't believe in gay marriage and never will, will I also be prosecuted if I say that publicly? Could I offend someone because of my views? How much offense is required to be offensive? What

protections will I have? If I am not protected or others with similar views to mine for that matter then I won't support this change to the legislation.

I note that the discussion paper says that Territorians have the right to maintain lives free from harassment, psychological distress, hurt, anger and anxiety that exists in society. Whilst in a utopian world you may wish for that, it is never going to happen because we are human beings with faults. It is good to strive for such things but the reality we should be teaching children especially, to be able to withstand some of these pressures because they will face them through life and legislation trying to ban all these things will make little difference.

Facebook bullying or vilification by anonymous people especially through social media cannot be controlled by these proposed changes. We need to train young people and teach young people to not use social media for bullying and hateful purposes but at the same time teach them ways of confronting and handling hurtful comments so they can move on with their lives positively. Perhaps may I suggest that you don't need social media to live your life.

Anti-vilification laws need to be very carefully worded allowing for the right to freedom of speech to be paramount but that right must be respectful, and hateful speech is not respectful. The discussion paper says *To balance these protections, the Act could also be amended by including appropriate exemptions to cover acts done "reasonably and in good faith" to allow for free and fair speech on related topics.* If this section becomes law it should be monitored and reviewed annually.

Additional Attributes

The question of whether we need more attributes is only covered by the words in the Discussion Paper which state that to keep the NT *In line with discrimination reforms interstate and to reflect current issues being faced in the Northern Territory.* Whilst there needs to be recognition of changing circumstances, to add more attributes based on so called reforms interstate is not a reason for increasing the number of attributes. As for reflecting on current issues being faced in the NT that is a more appropriate reason if there needs to be changes.

The discussion paper recommends four new attributes – domestic violence, accommodation status, lawful sexual activity and socioeconomic status.

Adding attributes should only be done if there is shown to be cases where there is a proven need. Adding more attributes can just make laws unnecessarily more complex and to society in general. Looking through the Anti-Discrimination Annual Report 2006/17 there is no mention of these four possible attributes being an issue. The report does ask for people to raise any particular issues but nowhere are the four proposed attributes mentioned in the discussion paper mentioned in the Annual Report.

The report does say that some matters are not covered by the Act but doesn't say what those matters are. Under the heading Enquiry Trends -Attributes - it says

ATTRIBUTES • Not under the Act (21%) • Race (19%) • Disability (16%) • Failure to accommodate a special need (11%) • Sex (8%) *The enquiry trends closely reflect the trends for complaints in 2016-17.*

Not Under the Act: *Not under the Act refers to enquiries where the nature of the issue raised lacks an attribute for the purposes of the Act. An attribute is a characteristic a person may have that is one of the reasons for the alleged discrimination.*

But again there is no mention of what the nature of those issues were.

So is there a need to add these attributes?

Domestic Violence

The proposed changes under this heading are aimed to protect people who because of domestic violence situations may be discriminated in areas such as employment, education and accommodation.

In relation to employment this is a difficult one especially if a domestic violence situation is ongoing and there are continual problems. The employer must also have some rights to operate his/her business in a viable way especially for small business operators where the loss of an employee suddenly, can cause problems to the business operations. I think any reasonable employer would assist their employee in difficult situations but if written into legislation as an attribute this may not be appropriate or fair. Perhaps this should be covered under the Fair Work Commission.

In relation to domestic violence as an attribute to prevent the removal of children from an educational institution, there needs to be some examples given as there is no explanation as to what this means.

In relation to domestic violence as an attribute to prevent someone acquiring accommodation, this seems fair but there would need to be some discussion about whether a domestic violence situation could overflow and be a threat to others who may be accommodated on the premises. Are safeguards needed?

Accommodation Status

This an attribute could be supported but in reality is it a problem? I would be interested in the views of Government agencies and NGOs such as Somerville and believe for this attribute to be supported it needs to have some evidence that discrimination does occur because of 'accommodation status' or no fixed address.

Lawful Sexual Activity

Whilst the law might say that people employed as sex workers should not be discriminated against in relation to accommodation, the owners of accommodation should have the right to say that their premises will not be used for such purposes. The sex industry is not your average type of work and people who own premises who don't agree for their premises being used for such purposes either on moral grounds or business grounds should be permitted to reject the use of their property for such purposes. Using the *Convention to Eliminate All Forms of Discrimination against Women* as a reason for the change is a bit rich as firstly the discrimination is against the activity and secondly not all sex workers are women.

Socioeconomic Status

There is no definition of *Socioeconomic Status* given. It appears to be an attribute based on a number of socio and economic factors so broad and airy-fairy that using this an attribute would create a lawyer's field day. This should not be included as an attribute.

Rights for Carer Assistance Animals

I have long supported the use of animals in helping people whether they are in prison, have mental health problems or for companionship. If there was one issue of discrimination that presently occurs, it is in one NT prison. The use of animals for rehabilitation purposes is not permitted at the Darwin Correctional Centre.

The suggested alternative approaches as in the discussion paper are supported but I would presume that public and private transport companies that would carry these animals are included in the discussion.

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Representative Complaint Body

I would support the ability of organisations putting forward general complaints about discrimination but I do not support such organisations taking up an individual cause where a person who has decided to not go ahead with the complaint has the complaint taken forward by an organisation. That should only be done with the consent of the complainant. What would stop the organisation who had nothing to do with the case putting a complaint to the Commission against the person who has had the complaint dropped?

Broadening the Scope of Clubs

Supported

Sexual harassment

I support changes to legislation which prohibits sexual harassment against people working in service industries such as hospitality. This would protect or at least try and protect people who are serving in those industries rather than applying the definition to only those who are receiving a service.

As for applying sexual harassment prohibition legislation outside of a workplace I think it would be simply impractical e.g. down at the beach, at a concert or in the street. By removing the restriction on the area of activity at which the laws could apply might sound good, the practicality of applying laws for instance in public places may be seen as tokenistic and impractical to enforce. Education may be a better approach.

Definition of Services

I support these changes as mentioned under the sexual harassment clause above.

Religious Exemptions

The present Act does not define religion and there needs to be a definition in the Act. Is atheism, agnosticism, naturalism, nihilism, etc defined as religion?

There is no need to change the existing exemptions because as you can see in the Annual Report there does not appear to be any complaints. Is this an example of a so-called Representative Complaint's group taking up an issue where there isn't an issue? Is this really an attack on mainly Christian religions by some in Government and small activist groups who see this as an opportunity to push their gender issues under the guise of equality and to attack people or organisations that don't agree with those views?

As stated at my briefing, the Director of the Anti-Discrimination Commissioner said these exemptions are never really used anyway.

For the Director then to say that the Commission wishes to scrap these laws because they are rarely used highlights the fact that changes to the legislation is not required and the removal of these exemptions would play into the hands of those anti-religious groups.

We live in a democracy which is under threat of being white anted by various pressure groups as shown with the increasing pressure to restrict people's freedom to practice their religious faith freely e.g. Archbishop Porteous. The use of terms like equality and equal opportunity are used in a way which seems to want us to

be bricks, all of the same size, shape, gender, characteristics, background as if equality and equal opportunity are the sole guidance in everything that we as humans do regardless of all the other characteristics we have including religion, background, political views, physical makeup, etc. We are far more complex than a prescribed formula. There can be good discrimination and bad discrimination, these exemptions are good examples of discrimination.

Discrimination exemptions under this section should be retained.

Assisted Reproductive treatment exclusion from Services

The reason for treatments like IVF were to help couples who were infertile. In other words this is meant to fix a medical problem. I don't support laws that enable use of this technology outside of that purpose and making babies for people that live in same sex relationships or for surrogacy purposes is not what this should be about. Theirs is not a medical problem. As mentioned in my submission to the Parliament on changes to adoption laws, we should take a lesson from nature based on the fact we naturally reproduce as male and female and therefore mum and dad. We seem to now want babies on order as if that they were a right or an off the shelf commodity rather than creating and raising our children as nature designed. To use equality as a reason for scrapping the exemption takes no account of the rights of the child to be born with parents (mum and dad) – Under the UN Convention on the Rights of the Child.

To use the excuse that SA already has these laws doesn't mean we have to follow. As mentioned before discrimination can be good and the present exemptions are good and therefore the exemptions should remain.

Work Includes Volunteers and Modern Workplaces

These changes are supported as volunteers need to be protected as if they were paid employees.

Failure to Accommodate a Special Need

Existing Section 4 (1) seems clear so if the Anti-Discrimination Commission believes there needs to be changes to that clause, then there needs to be words to explain those changes. I can't support this change until new wording is developed for comment so as to compare it with the existing law.

Re-naming Anti-Discrimination Commissioner.

I don't see a need to change the present title. The term of office should be 5 years.

Modernising the Language

This heading is code for changing our language which in this case is something I strongly disagree with. Many people I have spoken to about this cannot understand why the change and want to know who is pushing this agenda. This is social engineering by somebody or some groups attempting to say how we must define ourselves instead of respecting definitions of who we are as we have done for thousands of years. The

ordinary meaning of male as in the Macquarie Dictionary is *a male human being a human which produces spermatozoa*. A female is *a female human being a human that normally produces ova*.

Gender neutrality is discrimination against those who wish to retain the terms 'male' and 'female'. Leave the names alone. It seems that a small minority of people are calling for these changes whilst most people I speak to think repealing the definition is just plain silly. Unless you are intersex, you are biologically male or female.

I think it is offensive that whoever wrote the discussion paper refers to the description of the use of the word 'male' as being 'offensive' – page 27. Is this discussion paper therefore biased? Who is offended by the word male?

Carer Responsibility

Simply retain the word parent and add carer to the clause. There is no need to change the language and a parent and a carer might do similar things but they are definitely not the same.

Relationship Status

Once again leave the term as it is or just add relationship status. Since the Marriage Act has just been changed I would have thought some people would have supported the retention of the phrase, marital status.

Note: Is there any reason why this discussion paper was not on Have your Say NT?

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