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SUBMISSION ON THE DISCUSSION PAPER CONCERNING THE NT *ANTI-DISCRIMINATION ACT*.

Northern Territory Council of Churches

January 29, 2018

Introduction

We commend the NT Government for engaging in a process of consultation about possible revisions to the NT Anti-Discrimination Act, and are grateful for the meetings already held with the Attorney-General and the Anti-Discrimination Commissioner.

There is much in the discussion paper that is helpful and uncontroversial. The following submission deals only with the matters that raise concerns for us.

Modernisation Reforms: Gender and Sexuality Protections (Discussion Paper pp 9 to 11)

The Churches seek to demonstrate pastoral care for all people, regardless of their attributes, including race, age, gender, employment status, accommodation status, sexual orientation, and socioeconomic status. We understand the usefulness of the NT Act conforming to the Commonwealth's *Sex Discrimination Act 1984* (as amended in 2013) so that the issue of discrimination has parity across jurisdictions. Nevertheless, some of the material in this section of the discussion paper raises concerns for us. In particular, the move towards treating transgenderism as a given 'attribute' presents a problem. We recognise that there are people who experience dysphoria due to a perceived tension between their biological sex and 'who they feel they are'. Many of us have personal experience of people who are in this situation. However, academic literature suggests that 80 to 95% of children who have gender dysphoria have resolved this issue by late adolescence.¹ Other evidence indicates that the publicity given to transgenderism in recent years has led to significant increases in young people seeking to change gender, and it has been argued that this is not because the actual incidence of gender dysphoria has risen, but because young people have become confused about the normal processes of development and sexual identity. To include gender identity in the attributes listed in the Act is to send a signal that may lead to fewer people seeking interventions that will lead to long-term improvement in their well-being. It risks the possibility that providing counsel towards accepting their biological sex would be regarded as discriminatory or hostile. It also risks complicated legal action in what many would regard as common sense matters such as the provision of sex-segregated bathrooms, sex-segregated activities and sex-segregated associations.

Modernisation Reforms: Vilification (Discussion Paper pp. 11 to 15)

The Churches seek to work towards a society where all people are safe and not exposed to violence or the threat of violence. We agree with the suggestion that protected attributes should be increased to include domestic violence status, accommodation status and socioeconomic status.

¹ An example is Cohen-Kettenis PT, Delemarre-van de Waal HA, Gooren LJ, 'The treatment of adolescent transsexuals: changing insights,' *Journal of Sexual Medicine* 2008/5:1892–1897.

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The debate around Section 18(C) of the Racial Discrimination Act (Cth) has been well publicised, and positions are perhaps too well-entrenched for further discussion to be productive. However, in the Churches' view, balancing freedom of speech and perceived safety does not require the use of the word 'offend' in the Anti-Discrimination Act. The risk is that legitimate discussion on religious (and other) matters is shut down through a subjective response. If the concept of 'offence' is used, it must be clearly defined so that it does not include responses to religious doctrines that some might find objectionable. For example, declaring the Christian doctrine that Jesus is the Son of God, or saying that Muhammad is not a true prophet, might offend a Muslim, but this kind of 'offence' should not be the concern of the Act.

Additional attributes: Lawful sexual activity (Discussion Paper p. 14)

The Churches are concerned about moves that might be perceived as legitimating the sex industry, when there is considerable evidence that many sex workers are not engaged in their work simply by free choice. Individual sex workers need protection, but the risk is that the oppressive aspects of the industry as a whole may use their power to prevent even the protection that the discussion paper's suggestion seeks to provide. Meanwhile, the Churches seek to be able to guarantee that they are not liable to discrimination by requiring that premises owned by them are used according to the Churches' moral values and ethical codes.

Removing Content that Enshrines Discrimination: Religious Exemptions (Discussion Paper pp. 21 to 22)

Australians have for many years taken freedom of religion for granted, although there is no Bill of Rights that enshrines this freedom. Currently, religious exemptions in the Anti-Discrimination legislation of the various state and territory jurisdictions are one of the main place-holders of religious freedom, and to diminish them risks steps that are not conducive to religious freedom being maintained. We note that the suggestions in the Discussion Paper would move the NT out of step with other jurisdictions in a number of ways, including religious bodies having to apply for exemptions.

Increasing ignorance about religion among Australians may be the context for some of the suggestions in the discussion paper. In particular, the idea that religion is simply a set of 'religious observances and practices' does not correspond with many religions, where every part of life is brought under the domain of faith. The Churches are concerned that submitting (repeated) applications for exemptions, apart from flying in the face of freedom of religion, places unfair demands on government agents who would have to make these decisions. It suggests a government control over religion which has no place in modern democratic societies.

The Churches disagree strongly with the suggestion in the discussion paper that religious schools should lose their exemption which would remove their power to recruit staff that conform to their doctrines and moral values. We believe that parents have the right to choose an education system that corresponds with their own values, so that their children are educated in ways that do not contradict their own beliefs and morals. The suggestion seems to imagine school as simply a series of classroom lessons, but teachers have significant roles out of the classroom in shaping and nurturing the values of students.

Removing Content that Enshrines Discrimination: Assisted Reproductive Treatment Exclusion from Services (Discussion paper pp. 22 to 23)

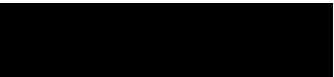
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The Churches recognise that infertility is a cause of enormous grief to many adults, including those in our faith communities. Different denominations in the Northern Territory Council of Churches have differing views about the place of Assisted Reproductive Treatment. We are agreed that it is imperative that practitioners have the right to exercise freedom of conscience in this area and not be liable to legal action as a result.

Clarifying and Miscellaneous Reforms: Work includes Volunteers and Modern Workplaces (Discussion paper p. 24)

The Churches are grateful for the work of many volunteers; without them we would not be able to function. Most Churches already treat volunteers as workers in terms of conforming to codes of conduct, and we agree with the suggestion that the definition of workers in the Act should be extended to include volunteers.

Submitted on behalf of the Northern Territory Council of Churches


Sue Smith
Secretary
31st January 2018