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COUNTRY LIBERAL PARTY
of the NORTHERN TERRITORY

TERRITORY DIRECTOR

31st January 2018

Director, Legal Policy
Department of the Attorney-General and Justice
GPO Box 1722,
DARWIN NT 0801

**COUNTRY LIBERAL PARTY SUBMISSION – DISCUSSION PAPER, MODERNISATION OF
THE ANTI-DISCRIMINATION ACT, SEPTEMBER 2017**

On behalf of the Country Liberal Party of the Northern Territory, please find our submission relating to the questions posed in your recent Discussion Paper.

We thank you for giving our Party the opportunity to contribute to this important Consultation Discussion Paper. If there are any questions regarding the contents of this submission, please do not hesitate to contact the Country Liberal Party Secretariat.

Yours sincerely,



BRAD VERMEER
Territory Director

***Country Liberal Party submission in response to the discussion paper
'Modernisation of the Anti-Discrimination Act, September 2017',
presented to the public by the NT Department of the Attorney-General
and Justice.***

Overview

The Country Liberal Party (CLP) is the Party established by Territorians, for the service of all Territorians, and we relish the opportunity to present this submission. The CLP is committed to the principles of individualism, equity, opportunity, compassion and social justice, and we stand for a just, fair and secure society that encourages a vibrant, diverse and harmonious multicultural community. We will always advocate for the rights and liberties of all Territorians, the primacy of the individual, the importance of personal responsibility, and the protection of the vulnerable and disadvantaged.

Any responsible Government, when proposing to substantially change a long-standing and effective Act, should always raise questions which must be seriously considered, including:

- a) Is there sufficient evidence to suggest that the proposed changes are necessary?
- b) Is there likely to be unintended consequences resulting from the proposed changes, and what might they be?
- c) Are the proposed changes representative, and in the best interests of the greater community?
- d) Has genuine public consultation occurred?

The CLP, in this submission, will answer these questions in the spirit of acting in the best interests of all Territorians.

Responses to questions posed in the Discussion Paper

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

The definition of “sexuality” in the Act includes heterosexuality, homosexuality and bisexuality, which are sexual preferences. It would be reasonable to suggest that the term “Transsexuality” is inaccurately included in the definition of “sexuality” in the Act, however there is no cause to remove the entire definition. It would be more sensible to remove only the term “Transsexuality” from the definition of “sexuality”.

2 - Should the attribute of “gender identity” be included in the Act?

Government should not endorse a notion that suggests that an individual may be neither male nor female, remembering that members of a community, including children, are influenced by what Governments deem to be fact. If such changes were to occur, there would be a need for all identification documentation (public and private), and all administrative documentation (public and private), to be amended to reflect the changes. This process would result in unnecessary expenditure of funds and resources by organisations and businesses throughout the Territory, many of whom are already experiencing hardship due to a difficult economic climate. It should be noted that complaints made to the Commissioner, by individuals who identify as neither male or female, represent only 0.6% of total complaints over the last four consecutive years.

% Complaints to Commissioner by Gender, 2013 - 2017

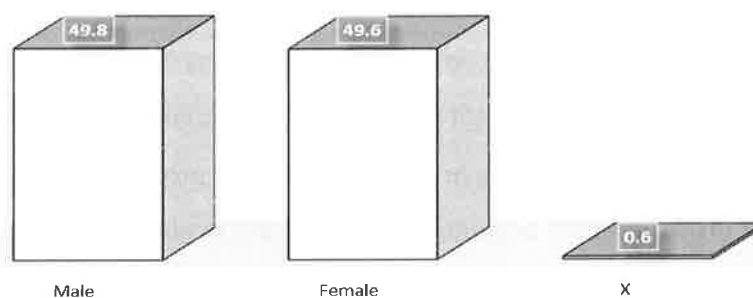


Figure 1: Average percentage of complaints to the Commissioner by gender, over the last four consecutive years. Source, NT Anti-Discrimination Commission Annual Report 2016 – 2017.

The proposed changes would likely result in requests from within the current NT Government, for content of material taught in the public and private education systems, to align with a formally endorsed Government belief that gender is not limited to being either male or female. Furthermore, when considering the fundamental purpose and intent of Anti-Discrimination legislation 'to promote recognition and acceptance within the community of the principle of the right to equality of opportunity of persons regardless of an attribute and to eliminate discrimination in areas of activity where discrimination is prohibited', it is evident that the Act in its current form provides absolute protection for all Territorians on the basis of their sex. This remains the case, whether or not an individual believes that their gender aligns with that of their assigned, and biological, birth sex.

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

There is no definition of "sex" or "gender" currently in the Act, so there is no basis to suggest that Intersex Status isn't already protected under the attribute of "sex" in the Act.

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?

The addition of such provisions in the Act, would substantially impact on the individual, social, political and economic freedom of all Territorians, freedoms of which the CLP hold in the highest regard and will always fight to maintain.

The proposed would likely result in an increase in frivolous and malicious claims brought to the Commissioner, which although may result in eventual dismissal by the courts, still subject innocent citizens to expensive and stressful legal processes. Whether or not an act was 'in the public interest' or done 'reasonably and in good faith' should not be determined at the discretion of the Commissioner. The proposed changes are likely to negatively impact on all citizens.

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

and

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

The CLP supports the proposed in principal, provided no other material issues are identified.

7 – Should “lawful sex work” be included as an attribute under the Act?

Including “lawful sex work” as a protected attribute in the Act could be considered discriminatory towards all other professions which have not been included as a protected attribute in the Act. If any change were to be made, it would be more sensible and effective to include “any lawful profession, occupation, trade or calling” as a protected attribute in the Act, however there would still be a need to ensure that provisions were included for exemptions in certain circumstances. For instance, a real estate Property Manager who may feel a strong moral obligation to resist granting a lease to a known sex worker in an apartment block consisting mainly of families with young children, should not be the subject of a discrimination claim.

8 - Should “socioeconomic status” be included as a protected attribute?

The CLP supports the proposed in principal, provided no other material issues are identified.

9 - Should the Act be broadened to include specifically trained assistance animals such as therapeutic and psychiatric seizure alert animals?

The CLP would support the proposed, pending the animals being appropriately accredited and liability extending to animal owners 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?

The Government should not legislate any change which would allow representative bodies to bring complaints to the Commissioner on behalf of individuals. Such a change could result in complaints being brought before the Commissioner, even if individuals do not consent to escalation of the complaint.

Apart from removing the ability of individuals to decide whether a complaint is brought to the Commissioner, it also presents the potential for well-funded interest or activist groups, to autonomously involve themselves in matters. The Commissioner should not under any circumstances, become involved in a matter if members who are subject of the complaint, have not given their consent for the complaint to proceed.

The Representative Complaint Model, would also allow for the Commissioner to raise motions and impose orders against organisations, or conceivably individuals, including instructing respondents to make public announcements of their wrong doing, as prosecuted by the Commissioner. The CLP does not support the proposed model.

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

This change in legislation would extend the reach of the Commissioner into any formal or informal club, providing the club consists of 30 or more members. The most serious consequence of the proposed change, is that all political, religious, cultural, interest, sporting and social groups with memberships greater than 30, would fall within the span of the Commissioners rule.

This could limit the ability of political groups to openly discuss issues that may be considered discriminatory by the Commissioner, and it would likely result in individuals within such groups, being less willing to openly discuss contentious matters. One of the greatest reasons for the existence of political groups in a democratic society, is to promote discussion, debate, freedom of thought and expression, and any attempt by Government to regulate such should be viewed as totalitarian and un-democratic.

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

The CLP condemns sexual harassment in all its form and in the strongest possible terms, however we fundamentally oppose a legislated increase in the powers of the Commissioner to intervene in matters outside of the Commissioners current scope. Furthermore, we feel that current Territory and Federal laws are adequate to ensure that unlawful behaviors are dealt with justly.

Anti-Discrimination Commission Annual Reports indicate decreases in sexual harassment complaints made to the Commissioner for the last four consecutive years (see figure 2). This suggests that individuals and groups in the Territory are increasingly making good decisions in relation to this issue, and that public awareness campaigns, including those facilitated by the Anti-Discrimination Commission, are an effective means of addressing the issue in society.

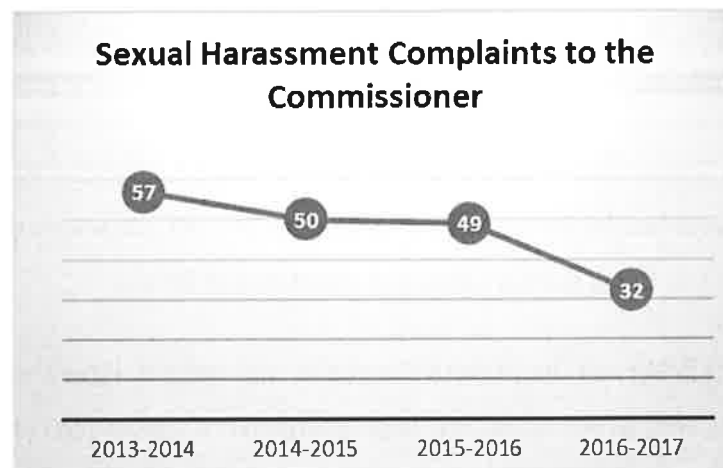


Figure 2: Year on year decrease in sexual harassment complaints to the Commissioner, between 2013 and 2017. Source, NT Anti-Discrimination Commission Annual Report 2016 – 2017.

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

The CLP supports the proposed in principal, provided no other material issues are identified.

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

It was never the intention of Anti-Discrimination legislation, nor should it ever be, to diminish the rights of religious organisations to act in accordance with the belief systems which are fundamental to the reason for their existence.

Where automatic exemptions currently exist, the proposed changes would require religious organisations to apply for individual exemptions on a case by case basis, giving absolute discretion to the Commissioner to determine whether a request should be granted. This proposed reform directly contradicts Article 18 of the International Covenant on Civil and Political Rights, of which Australia is a party to and which states:

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.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
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.

The CLP believes that it is not the role of Government to limit the ability of a religious organisation to act upon it's faith, provided they do so in accordance with current and long-standing principles of lawful conduct.

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

The CLP seeks to ensure that providers of assisted reproductive treatment can objectively determine the suitability of those undergoing such treatment.

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

The CLP are concerned that people giving up their own time, usually for the good of the community, may be subject to greater regulation and the potential of frivolous claims being brought against them, if the proposed change was legislated. This may discourage individuals from offering their services to an organisation, resulting in a negative impact to the community. This proposed change also extends the reach of the Commissioner to an individual's private residence, if conducting any work services from their home. The CLP believe that the reach of the Commissioner should not extend into an individual's private residence, and that current provisions under the Fair Work Act are adequate.

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

The CLP supports the proposed in principal, provided no other material issues are identified.

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?

Given that there has been no substantive benefit identified regarding the proposed name change, and given that the Commissioner works in accordance with the Anti-Discrimination Act, there is no justification for the proposed change.

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

The CLP does not support any increase in the term of appointment of the Commissioner.

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

Repealing the definition of "man" and "woman" is unnecessary, furthermore, it awards discretion to the Commissioner which is excessive to the scope of their appointment. The CLP do not believe there is any reasonable basis for such a change in the Act.

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

There should be two parts to this question, firstly whether the term "parenthood" be replaced with "carer responsibilities", and secondly in relation to the definition of "carer responsibilities". Currently the definition of parenthood in the Act includes parent, step-parent, adoptive parent, foster parent, guardian and a person who provides, nurturing and support to a child. For the proposed change to have any effect, a definition of "carer responsibilities" would need to replace the current definition of "parenthood". The CLP would seek to see the proposed definition of "carer responsibilities" prior to supporting or opposing the proposed change in the Act.

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

The CLP do not see how the proposed change would be beneficial or result in any positive impact to any individual or the community.

Conclusion

Of the values that Australians have fought and died for, which is exceptionally significant to the Territory, none are more important than freedom of speech, religion and assembly. Furthermore, the practice of regulating and policing speech, religion and assembly, is representative of Governments from which many have come to Australia (and the Territory) to seek refuge from. Many of the proposed changes, as documented in the discussion paper, do not reflect the values of freedom and liberty which are held deeply by Territorians.

The current NT Anti-Discrimination Act was passed by the parliament in 1992, under a CLP Government, and for the last twenty-five years has served its purpose with little cause for concern. This is verified by data from previous Anti-Discrimination Commission Annual Reports, which demonstrate that the Commission has been largely successful in terms of their intended function. There is no evidence to suggest that the scope of the Commissioners role should expand, or that the reach of the Commissioner should extend into the private lives of Territorians.

Regarding the Government's approach towards genuine public consultation on these reforms, it appears to have been severely lacking. Simply displaying information on a Government web page, is not proactively seeking to ensure that Territorians are reasonably advised regarding the proposed changes. Furthermore, public consultations were not adequately promoted and advertised, resulting in attendances of as low as two people in the large population of Palmerston – not because residents weren't interested in the proposed reforms, but because they were not made aware that public consultations were taking place.

The CLP will continue to stand up for the freedoms of Territorians, whilst upholding our values of equal opportunity, diversity, multiculturalism, and protection of the vulnerable and disadvantaged. The principles of equal opportunity, and the freedoms of an individual or a group, need not ever be sacrificed for one or the other. An effective Government should seek to encourage communities to balance these principles with the support of sensible legislation, not to extinguish them.