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**Submission to the Northern Territory Attorney-General and Minister for Justice**

**Responses to the *Discussion Paper:***

***Modernisation of the Anti-Discrimination Act, September 2017.***

by Rabbi Dr Shimon Cowen

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

The term “gender identity” is distinguished from biological sexual identity. The latter is anatomically confirmable as male, female and intersex. “Gender Identity”, on the other hand, has been used to denote what a person “feels” he or she is, notwithstanding a biological sexual description, which may be the opposite. Apart from the question of whether this gender is dysphoria is actually an illness which needs treatment rather than cultural encouragement, the move to accept subjective designation of sex leads to great potential dangers of abuse and harassment. Women are deeply and understandably distressed when a person with male anatomy and genitalia are allowed to use their toilets, shower and changing rooms and perform intimate medical procedures on them (such as pap smears), because they “feel” or *claim* to feel that they are women. This produces fear and actual intimidation, both psychologically and physically, to women. It may also be profoundly distressing to men that biological women are permitted to use their toilets and changing rooms. This is regardless of whether the person self-designating as a member of the opposite biological sex is “sincere” in this belief or a mere charlatan, posing this way (which could often happen). For this reason the attribute of “gender identity” should not be included in the Act.

**Question 4. Should any exemptions for religious or cultural bodies be removed?**

Where a religious faith prescribes certain forms of moral conduct and seeks to transmit that faith in a school setting to its students, it is clear that the means available to it must include both instruction and example. If a religious school teaches a certain sexual morality and is forced to employ a staff

member whose manifest sexual morality contradicts that moral teaching, the role of the school in teach and transmitting its values is utterly vitiated. It is spurious to say that the school may claim the right to discriminate on these grounds only with regard to teachers of religion and priests, but not other staff members. The reason for this is that the environment, ethos and atmosphere of an institution is affected by all its staff. "Do as I/we say, not as I/we do" is educationally disastrous.

The Discussion paper suggests that a religious school should have to apply to a Tribunal for an exemption. Thus, it would have to justify to a secular Tribunal why a maths teacher or officer worker should also display a morality consistent (or not inconsistent) with the morality it teaches. The secular Tribunal could ask "What has a person's personal morality – even if it is against your School's faith – got to do with teaching maths?" Such a secular tribunal, with no sympathy or understanding for the values of the religion, and that religion is taught by example as much as by word, could thus paralyse the school's transmission of faith. The idea that only the priest or the Scripture teacher or Principal need conform with the faith school's values, but no other staff member is actually to misunderstand how faith is passed on – both by instruction and by an exemplary institutional ethos, as a whole.

Let us consider how this contemplated move would affect the political office of a member of the NT Legislative Assembly. Let us assume that the member is a Greens or Labor politician. Should that member be prosecutable for refusing to employ in his or her personal staff a person who is a strong opponent of "climate change" teachings? Should an Emily's List member be prosecutable for refusing to employ in her office a person who is a strong opponent of abortion? And what if the person is to be employed is not a senior advisor (analogous to the priest or Scripture teacher in a religious school) but simply as a receptionist (analogous to the maths teacher in a religious school). Should that politician be forced to apply to a Tribunal for the dispensation to discriminate in employment of such a person, whose values contradict that of his or her political office? Should that

member of the NT LA have to justify why it matters that a receptionist in *their* office *not* be anti-abortion or anti-climate change? After all what does that have to do with their work as a receptionist? The answer is simple. A politician wants in his or her office people who *reinforce or at least do not disturb* the ethos of the office. That the rights which are granted politicians are refused to religious institutions is hypocritical and grossly discriminatory against religion. This point was made with great intensity in the debates in the Victorian Parliament which in fact overturned a similar move to interfere with staffing of religious schools.

For the same reasons a religious school should be allowed to admit children who belong to its faith only. The reason for this is that religious values can often be expressed in a full, comfortable and uninhibited way only when a homogenous ethos is present in the school. Where children of other faiths are present, either teachers or the students of other faiths themselves can feel inhibited and their words and sentiments experienced as out of place in view of those students who come from different value-sets. Again, religion is not something simply taught, it is something pre-eminently experienced and lived and a religious school has a clear right to create the homogeneous atmosphere in which those values are not only taught but lived and experienced. Religious freedom consists not only in the right to believe in some personal space – away from the school, away from community – but also in being able to live and practice that faith in institutions, schools and communities of that faith.

This too can be readily understood by politicians. Should the organizers of a Greens or Labor party meeting be prosecuted for not allowing members of other parties, with values different or antithetical to their own, to be present? Everyone understands the right to create a homogeneous ethos within spaces of society, and it is acknowledged and allowed. Were religious schools and communities and institutions to be denied this, it would be a matter of simple discrimination against religion, bordering on religious persecution. Exemptions for religious bodies should not be removed.

908

**Question 20. Should definitions of “man” and “woman” be repealed?**

They should not be repealed, but a category of “intersex” or “indeterminate” may be added, if it does not already exist. The reason is as given in answer to Question 2, that the ability for an anatomical man or woman subjectively to claim to be a member of the opposite anatomical sex is a source of harassment, intimidation and psychological and physical anxiety to others. Whether or not the person self-designating is “sincere” or a charlatan, that person’s entry into the toilets, changing and shower rooms and the like of members of the opposite biological sex is profoundly distressing and frightening especially for women users of those facilities. It has led to the gravest consequences, as in the case of Maddison Hall, a biological male, who was imprisoned for murder in NSW, and identifying as a woman (and also taking hormone treatments) sought and was permitted to enter a women’s prison. There he was alleged to have had sexual relations with several female prisoners and to have raped another. Thereupon he was returned to a male prison. Upon release he sued the State of NSW and received an out of court settlement(!)<sup>1</sup>.

Whether persons “identifying” as a biological sex other than their own are genuine or fraudulent, to allow them to be classified according to their wishes is experienced as a palpable source of physical and psychological danger to others. Accordingly the terms male and female (with the addition of intersex or indeterminate), which describe biological realities, should alone be used. Abandoning the terms “male” and “female” opens to the above described abuses.

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<sup>1</sup> The following sources were made available to me by Mr Pat Byrne: “Prisoner Noel Crompton, Known as Maddison Hall,” *NSW Parliament Hansard*, 21/09/2006.  
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