



27 January 2018

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Dear Jenni

### **SUBMISSION ON MODERNISATION OF ANTI-DISCRIMINATION ACT**

Thank you for the opportunity to comment on the Discussion Paper on Modernisation of the Anti-Discrimination Act.

My comments are detailed below.

#### **Inclusion of Vilification Provision**

A vilification section should of course be included in the Act as part of modernising it. However, the grounds or 'bar' for lodging a complaint need to be carefully considered in the light of the unlegislated right to free speech in Australia.

Because the free speech 'right' does not exist in the Australian Constitution or any legislation, the codification of any restrictions on what a person can say needs to be carefully considered.

The Discussion Paper quotes the *Racial Discrimination Act 1975* grounds of "...offend, insult, humiliate or intimidate ... ." as the potential/probable grounds in an amended Act. As you would be aware the words offend, insult and humiliate in the current Commonwealth legislation have been a matter of public controversy on the basis that the 'bar' for complaint is too low and hence serves as a legislated limitation on free speech. Indeed, the current Commonwealth Government sought to replace those words with "harass" last year with that particular amendment not passing the Senate.

People in general seem to get offended or insulted by all sorts of things. It would make dealing with complaints under the vilification section more problematic if the words 'offend' or 'insult' are included. There is also the general caution about circumscribing free speech and including words which have recently proved controversial in the Commonwealth Parliament.

#### **Religious Exemptions**

Removal of the Section 30(2) exemption is supported.

Removal of Section 37A(a)(ii) the sexuality exemption is supported. It is important to retain the remainder of Section 37A.

The 2016 Census reveals that 28% of Northern Territory primary and secondary school students attend non-government schools (a little in excess of 1 in 4 students). For Aboriginal students it is 26%.

ABS statistics divide the non-government school sector into Catholic and Independent which is why those terms are used below.

Of the total NT school population, 1 in 7 school students attend a Catholic school and 1 in 6 students attend other independent (mostly Christian based) schools.

The parents/guardians who chose to send children to a religious education institution have a firm expectation and belief that the religious ethos and values of the school staff will reflect the underpinning religion (spiritual basis) of the school. This is not an area for Government public policy legislative intervention.

Another public policy ground for leaving the remainder of Section 37A in place is that revoking of the religious belief or activity exemption could well, over time, weaken the attraction of the religious education sector to parents/guardians. This of course would be through Catholic or other religious based schools not being able to confine staff to those that reflect the underpinning spiritual basis of the school, which is a significant part of the attractiveness to parents/guardians in the first place.

A weakening of the viability of the existing non-government school sector would place increasing demands on the government school system in a jurisdiction which has substantial government finance challenges (\$1.3B deficit this financial year). This is a public policy risk the Northern Territory should not run.

Yours sincerely

