

Gay and Lesbian Rights Lobby

Comments on the Discussion Paper: Modernisation of the *Anti-Discrimination Act NT (1993)*



Gay and Lesbian Rights Lobby (NSW)

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Introduction

The NSW Gay and Lesbian Rights Lobby (“GLRL”) welcomes the opportunity to comment on the Northern Territory’s Discussion Paper: Modernisation of the Anti-Discrimination Act (hereafter referred to as the “Discussion Paper”).

Established in 1988, the GLRL is the peak organisation for lesbian and gay rights in NSW. Our mission is to achieve legal equality and social justice for lesbians, gay men and their families.

The GLRL has a strong history in legislative reform. In NSW, we led the process for the recognition of same-sex de facto relationships, which resulted in the passage of the *Property (Relationships) Legislation Amendment Act 1999 (NSW)* and subsequent amendments. The GLRL contributed significantly to reforms introducing an equal age of consent in NSW for gay men in 2003 and the equal recognition of same-sex partners in federal law in 2008.

The rights and recognition of children raised by lesbians and gay men have also been a strong focus in our work for over ten years. In 2002, we launched *Meet the Parents*, a review of social research on same-sex families. From 2001 to 2003, we conducted a comprehensive consultation with lesbian and gay parents that led to the reform recommendations outlined in our 2003 report *and Then ...The Brides Changed Nappies*. The major recommendations from our report were endorsed by the NSW Law Reform Commission’s report, *Relationships* (No. 113), and were enacted into law under the *Miscellaneous Acts Amendment (Same Sex Relationships) Act 2008 (NSW)*. In 2010, we successfully lobbied for amendments to remove discrimination against same-sex couples in the *Adoption Act 2000* (NSW), and in 2013 we were instrumental in lobbying to secure the passage of anti-discrimination protections for LGBTI Australians, through amendments to the Sex Discrimination Act (1984). We also campaigned successfully for the removal of the “homosexual advance” defence from the *Crimes Act 1900 (NSW)* and the extinguishment of historical homosexual sex convictions, both in 2014.

This paper will not address all the reforms mentioned in the Discussion Paper, only Question 14: “Should any exemptions for religious or cultural bodies be removed?”

Question 14 of the Discussion Paper: Should any exemptions for religious or cultural bodies be removed?

Religious or cultural bodies currently have exemptions under the *Anti-Discrimination Act NT* (1993) (hereafter referred to as the “Act”) for certain attributes and areas if in line with the religious doctrines necessary to avoid offending the cultural or religious sensitivities of people of that particular culture or religion.

The Discussion Paper notes:

The exemptions apply automatically for religious organisations and do not require any justification by the religious organisation as to why the exemption should apply.

The Act could be amended to remove the current exemptions for religious bodies in the areas of religious educational institutions, accommodation under the direction or control of a body established for religious purposes and access to religious sites. Religious or cultural bodies would instead be required to apply for an exemption with the ADC and justify why their service requires a particular exemption.

Another exemption that could be removed is section 37A that permits religious schools to discriminate against employees on the grounds of religious beliefs, activity or sexuality if done in good faith to avoid offending the religious sensitivities of people of the particular religion. For example, under this exemption a religious school

could justify not employing a prospective employee on the basis that they identify as LGBTI, if the religious doctrine does not support LGBTI relationships.

In the area of accommodation there are two exemptions that could be removed. Section 40(2A) that permits religious educational authorities as accommodation providers to restrict use of the accommodation to people of that religion and section 40(3) that provides an exemption for discrimination if necessary to avoid offending the religious sensitivities of people of the religion.

In respect to access to cultural or religious sites section 43 could also be removed. Section 43 permits restricted access to land, building or place of cultural or religious significance on the basis of sex, age, race or religion if it is in line with the religious doctrine or necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion. It is noted that protection of Aboriginal sacred sites is available through existing provisions in the Northern Territory Aboriginal Sacred Sites Act.

GLRL argues that equality and freedom from discrimination are universal human rights, regardless of sexual orientation or gender identity. GLRL recommends the abovementioned proposals but does not support a proposal to allow cultural or religious bodies to apply for a particular exemption. GLRL believes that the full and complete removal of religious exemptions is required to fully and completely protect the rights of LGBTI Australians. Further, granting exemptions only serves to undermine the purpose of the legislation.

Currently, the Act gives wide scope to churches and religious people to continue to engage in discriminatory homophobic practice by discriminating against any employee or potential employee regardless of their role or how qualified they may be. Churches and religious schools at present receive large amounts of government funding and dominate the education sector, thus yielding a wide influence in Australian society, allowing them to impose value judgements on people who don't share them. In the Northern Territory alone, 28.2% of students attended non-government schools in 2016¹, which gives few options to some LGBTI teachers to just refuse to work at religious schools when they hold such a large share of the education sector.

GLRL knows of cases where teachers in Australian schools have been forced to hide their sexuality for fear of losing their job.² Further, studies show that depression, suicide and bullying rates are particularly high for those who identify as LGBTI³ and workplaces that endorse or even stay silent on homophobia exacerbate this.⁴ GLRL believes that allowing religious organisations to continue to discriminate is, in effect, sanctioning the denial of equal rights to LGBTI Australians and supports the repeal of section 37A of the Act.

Further, the Australian Human Rights Commission has found numerous examples of discrimination in aged care settings, such as overt discrimination against people accessing aged care services, no acknowledgement of a visiting partner, and no staff training to ensure recognition and respect for LGBTI relationships.⁵ GLRL notes the deleterious impact that such discrimination can have on the health of older Australians and the complete lack of any justification

¹ Australian Bureau of Statistics, 'Schools: 4221.0', <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4221.0>

² Josephine Tovey, 'Gay teachers in school hide sexuality', 25 January 2013, <http://www.smh.com.au/nsw/gay-teachers-in-catholic-schools-hide-sexuality-20130124-2d9oa.html>

³ D.M. Skerrett, K. Kolves and D. De Leo, (2015), 'Are LGBT populations at a higher risk for suicidal behaviours in Australia? Research Findings and Implications', *Journal of Homosexuality*, v62(7). <http://www.tandfonline.com/doi/abs/10.1080/00918369.2014.1003009>

⁴ S. Rostosky and E. Riggle, (2002), 'Out' at work: The relation of actor and partner workplace policy and internalized homophobia to disclosure status', *Journal of Counseling Psychology*, v49(4).

⁵ Australian Human Rights Commission, (2007), 'Stories of discrimination experienced by the gay, lesbian, bisexual, transgender and intersex community', Accessed at <https://www.humanrights.gov.au/publications/stories-discrimination#endnote8>; and (2011) 'Addressing sexual orientation and sex and/or gender identity discrimination: Consultation Report', Accessed at <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/addressing-sexual-orientation-and-sex>.

for religious organisations to impose such practices on their residents. Accordingly, GLRL welcomes the proposal to remove the right of religious accommodation providers to discriminate under section 40(3) of the Act.

With the recent passing of amendments to the Marriage Act (Cth) to allow for marriage between two people of the same sex, GLRL believes that the groundswell of support is moving in the direction of removing the last bastion of remaining discrimination against LGBTI Australians. We also note the recent hurtful, vitriolic debate regarding the survey on changes to the *Marriage Act* (Cth), contributions of some religious bodies to the “no” debate” and the negative impact that this debate had on LGBTI Australians.⁶ GLRL supports the proposal to hold religious bodies more accountable for their actions and the effect that their actions have on LGBTI Australians and supports the creation of a more fair and equal Australia for everyone.

The Discussion Paper makes note of section 51 of the Act:

However, exemptions relating to discriminatory acts that are permitted or necessitated by legislation would remain. These include ordination of priests, ministers of religion or members of a religious order (including training or education), selection or appointment of people to perform functions in relation to any religious observance or practice and an act or body established for religious purposes if the act is done as part of any religious observance or practice.

GLRL supports retaining section 51 of the Act.

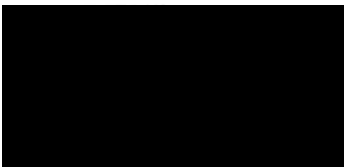
Recommendation - Ensure the removal of the exemptions for religious and cultural organisations in sections 37a, 40(2A), 40(3) and 43 and supports retaining section 51 of the Act.

GLRL thanks the Department of the Attorney General and Justice for the time it took to read this.

Any questions are welcome and can be directed to Lauren Foy, Convenor of GLRL



Warm regards,



Lauren Foy
Co-convenor, NSW Gay and Lesbian Rights Lobby

⁶ Paul Karp, 'Marriage equality survey marred by doubling in reported assaults', 5 December 2017, <https://www.theguardian.com/australia-news/2017/dec/05/marriage-equality-survey-marred-by-doubling-in-reported-assaults>; Josh Butler, 'Marriage debate inflicting serious psychological harm on LGBTIQ', 18 October 2017, http://www.huffingtonpost.com/au/2017/10/18/marriage-debate-inflicting-serious-psychological-harm-on-lgbtq_a_23246972/