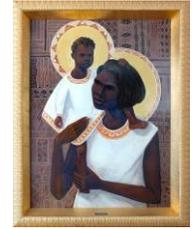




CATHOLIC DIOCESE OF DARWIN



11 November 2022

Private and Confidential

Hon Chanston Paech, MLA
Attorney-General and Minister for Justice, Minister for Racing, Gambling and Licensing, Minister for Local Government, Minister for Arts, Culture and Heritage, Minister for Desert Knowledge Australia, Member for Gwoja
PO Box 4592
Alice Springs, NT 0871
Electorate.Gwoja@nt.gov.au | Minister.Paech@nt.gov.au

Dear Mr Paech

Re: Anti-Discrimination Amendment Bill 2022

The Catholic Church supports the current *Anti-Discrimination Act 1992 (NT)* (**Act**) and some aspects of the Draft Amendment Bill, and the important purposes they each serve in preserving and protecting the interests of vulnerable and minority groups across the Territory.

However, I am writing to you to express my profound concerns in connection with the Amendment Bill.

I have commended the NT Government in its endeavors to ensure we have a just, equitable and respectful society. As a multicultural and pluralist society, it is important that we have a profound respect for all who live within our Northern Territory and that we are all mindful of different understandings of how these values are expressed and practiced. This should include people who have a religious belief.

Religious beliefs are fundamental to a person's identity and their decisions about how they wish to live their lives. Freedom to hold, express and act on one's religious beliefs as a citizen is fundamental to civilised democratic societies and are recognised as such in the International Covenant on Civil and Political Rights.

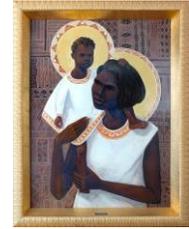
Governments are also obliged to ensure that freedom of religion and the freedom to manifest religious beliefs in public are recognised and protected by law alongside other rights.

Most people who have a religious belief want to serve the common good, respecting the rights and liberties of others. They expect in fairness that they will be given the same respect so they can practice and manifest their religious beliefs.

The community is stronger when people work together in unity around shared beliefs, as well as when they respect a similar freedom for others. Limiting respect for religion and for religious freedom to



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ministers of religion or places of worship undermines basic freedoms. People with a religious faith are your constituents.

Summary

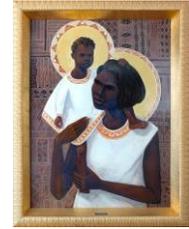
- A. There has been unreasonably short deadlines for interested parties to provide written submissions to Government (and for their proper consideration) for such significant legislation.
- B. What perceived wrongs are the removal of religious freedoms righting? There is no evidence (even anecdotal) that has been offered that our community has suffered under the current laws such as to justify the erosion of religious freedoms as is now proposed.
- C. They introduce a new positive duty to 'eliminate' discrimination. Nobody wants discrimination, but how can you positively ensure it is entirely eliminated? Currently the law's appropriate benchmark is 'NOT to discriminate'. The current law is proper and sensible. However, a duty to eliminate discrimination will impose a raft of new compliance requirements on all segments of the community. What a group or person must do to 'eliminate' discrimination is not explained in any fashion in these laws.
- D. **Any person will discriminate against another if their conduct** is reasonably likely, in all the circumstances, to '**offend**, insult, humiliate or intimidate another person' because, for example, of the other persons:
- (a) relationship status; or
 - (b) sexual orientation; or
 - (c) sex
- (to mention only some reasons).

What is reasonably likely to offend or insult one person may not be reasonably likely to offend or insult another. It is a reality of life that people will be 'offended' by the conduct or behaviours of others. This can happen many times in any given day to any given person. It is a terrible case of 'overreach' that this is now proposed to be labelled 'discrimination' against the offended or insulted person or group.

- E. It repeals the right of educational institutions to apply religious beliefs in good faith. The previous freedom of Catholic schools to employ staff who embrace a Christian mission and ethos is essential to ensure our schools are educational communities that express and operate within our faith tradition. Staff in Catholic schools have a professional obligation to be supportive of the teachings of the Catholic Church, to act as role models to students and to not in the school setting undermine the transmission of those teachings. The exemptions ensured religious schools were not compelled to employ people who openly challenged, opposed or ridiculed their beliefs. It is a significant intrusion into religious freedoms. The right of parents to send their



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children to the school of their choice and be taught in accordance with their religious convictions must be respected and protected. Parents, of all faiths and none, choose Catholic schools for their children because they expect that this education will be provided by school staff in a manner consistent with the Gospel of Jesus Christ and the teachings of the Church. This goes to the heart of the identity and mission of the Catholic school. Fundamental to this mission is that Catholic schools want to maintain the capacity to teach our faith according to our faith tradition, including in matters of religious belief, life, marriage and sexuality. Further, the current Commonwealth Labor Attorney-General in tasking a review of discrimination and religious freedoms has recognised the need to ensure that an educational institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed ' can continue to build a community of faith by giving preference, in good faith, to persons of the same religion as the educational institution in the selection of its staff'.

- F. It repeals the right for religious boarding schools and colleges to manage facilities to ensure there are enough places for the accommodation for children of the relevant religious group. This is not to say children not of the relevant religious group are currently discriminated against. It unreasonably removes the religious schools right to place children of that religion in its schools first.
- G. It introduces, 'systematic discrimination', that is, 'behaviour, practices, policies or programs of an organisation that have the effect of creating or perpetuating disadvantage' for example, people who in the school setting promote and teach contract to Church beliefs and whom the Church refused to employ. The complainant has no obligation to even identify the people in the group. It is open to serious manipulation. It will permit lobby groups (of 1 person) to launch a complaint without the permission or even knowledge of the supposedly affected persons and would allow the Commissioner to start investigating and looking for complaints where in truth and substance there are none.
- H. The great deal of uncertainty that these proposed laws have already created will mean that much of their interpretation will be left to the Courts and at great expense to those who are caught up in them. They represent a collective erosion of religious freedoms at a higher level and to a greater extent than any other Australian State or Territory Government.

Exposure Bill and Submissions

1. On 20 July 2022, the Government released an Exposure Draft Bill. The Governments Policy lawyers ('Policy') met with a group of religious organisations on 9 August (including via TEAMS) to respond to and answer questions arising from the Bill.
2. At this time any 'Written Submission' from concerned parties had to be produced to Policy before COB on Friday 12 August.
3. The time provided between that engagement process and deadline for Written Submissions was less than a month, which is unreasonably short.



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4. Our Written Submission was, notwithstanding the timeline, delivered on 12 August.
5. Virtually none of our Submissions were accepted.

What Is the Purpose of the Amendments

6. What perceived wrongs are the proposed changes righting?
7. What groups have complained that they have been affected negatively under the current laws and have not had adequate protections under them? In canvassing the Catholic Church institutions in the Northern Territory, I have not been able to find any evidence that suggests the Church is discriminating against anybody.
8. The Exposure Draft Bill fails to identify in any way whatsoever what members of our community have suffered under the current laws such as to justify the erosion of religious freedom exemptions as is now proposed.
9. Collectively, the changes discussed in this letter represent an erosion of religious freedoms at a higher level and to a greater extent than any other Australian State or Territory Government.
10. The Commonwealth Attorney-General has requested the Australian Law Reform Commission to review religious exemptions for educational institutions.
11. It says the *purpose of the referral is to ensure that an educational institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed 'can continue to build a community of faith by giving preference, in good faith, to persons of the same religion as the educational institution in the selection of its staff.*
12. The current Amendment Bill is quite inconsistent with the 'protection' the Commonwealth Attorney-General has already marked out as cornerstone to considerations under their proposed new laws.
13. The reality is that Commonwealth laws may possibly override Territory laws and having inconsistencies between Commonwealth and Territory laws (discussed below) is to be strongly avoided.

Erosion of Religious Freedoms

Positive Duty

14. Section 18A has turned the Act from operating as a 'shield' against discrimination to it being a 'sword' to attack those organisations who it is believed have not 'to the greatest extent possible' prevented discrimination from taking place (including victimisation).
15. The section speaks in terms of the taking of measures necessary to 'eliminate that discrimination'.



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16. The section says that the measures taken have to be 'reasonable and proportionate' but the list of factors indicating what this means are general and not adequately prescriptive.
17. A positive action model cannot be properly implemented by organisations without the Act explaining specific matters that it should address. The Act is silent on this.
18. It is also unclear how this section fits with section 57 which specifically permits a person to discriminate against another person to promote equality of opportunity in a disadvantaged group.
19. There will be a very substantial cost to developing and then implementing systems that must eliminate discrimination. What is and is not reasonably proportionate will likely be the subject of expensive litigation.

To 'offend' - Section 20A

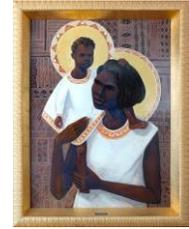
20. The introduction of section 20A makes conduct that is 'reasonably likely, in all the circumstances, **to offend**, insult, humiliate or intimidate another person or group of people; and is done because of an attribute of the other person or other group.
21. The test is subjective and what might be reasonably likely to offend one person may not be reasonably likely to offend another.
22. A person's religious belief or activity is a protected attribute. There is every likelihood that some more extremist religious groups could take offence to things said by another and vice-a-versa.
23. There is simply no mechanism in the Act to resolve how complaints of discrimination going back and forth should be managed.
24. According to Catholic faith and teachings, the sacrament of marriage is a partnership between a man and a woman. So, while the Diocese supports the protection of all rights, including the rights of people who are not heterosexual, the Diocese asserts that this includes the right to continue to teach the sacredness of matrimony in accordance with Catholic beliefs.
25. A sermon on this topic from a priest at a service that has non-Christians in attendance may cause 'offence' to one or more of them. The subjectivity that the definition operates in is so general and incapable of precise meaning that it will likely place many common stance public statements in the realm of discriminatory conduct.

Repealing Section 37A

26. Section 37A permitted an educational institution to be operated in accordance with the doctrine of a religion and discriminate in the area of work on the grounds of religious belief or activity or sexuality provided it was in good faith and to avoid offending religious sensitivities of the people of that religion.
27. This permitted schools to engage the senior leaders of our schools as people of our faith. It permitted schools to not employ people who deliberately promote and teach behaviour that is contrary to our religious beliefs within the school setting.



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28. In his speech to Parliament on 13 October 2022, the Attorney-General said:

'Educational institutions are no longer permitted to discriminate when employing staff on the basis of sexuality or religious beliefs in the same way they cannot discriminate in the areas of work based on other protected attributes.'

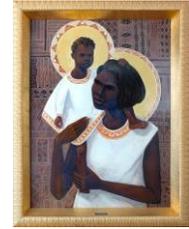
29. Necessarily, the changes preclude schools giving preference to students who share catholic faith beliefs.
30. Necessarily, the changes preclude schools giving preference to teachers who share catholic faith teachings.
31. Necessarily, the changes preclude schools from refusing to employ people who in the school setting deliberately promote and teach behaviour contract to Church teaching.
32. Removing the "sexuality" exemption, creates the potential for an unbalanced resolution of inconsistencies between the activities of people in their public and private lives, and consequently an imbalance in conflict resolution.
33. As a hypothetical scenario, a teacher employed at a religious educational institution might deliberately promote and teach behaviour that is contrary to our religious beliefs within the school. In this scenario, it is likely that complaints and concerns would be raised by parents, staff and community members of the religious educational institution. The comments might indeed be 'offensive' or cause 'insult'. The school would likely be precluded from taking any action against the teacher.
34. It is conceivable that pressure groups might utilise the narrowing of the exemption to attack religious beliefs in and outside the course of their employment.
35. As noted above this is inconsistent with the Federal Laws under consideration by the Australian Law Reform Commission (ALRC).

New Exemption 35A

36. The Exemption added as section 35A permits discrimination on the grounds of employment status if the discrimination is reasonable, justifiable, and proportionate in the circumstances.
37. It is unclear if religious beliefs can be considered in the assessment of reasonableness, and, or if they provide some level of justification for not employing on the basis of doctrine or belief. It is likely that this does not offer any protection to religious institutions.
38. As noted above this is inconsistent with the Federal Laws under consideration by the Australian Law Reform Commission (ALRC).



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Repealing Section 40(2A) and new 40(4).

39. The Exemption in 40(2A) permitted an educational authority that operates an educational institution in accordance with the doctrines of a particular religion to provide accommodation wholly or mainly for students of that religion.
40. This is a key provision for boarding schools and colleges for religious schools who should be able to ensure that there are enough places for the accommodation for children of the relevant religious group. Children not of the relevant religious group are currently NOT excluded which would be contrary to Catholic teachings and ethos.
41. Section 40(4) has been introduced to allow discrimination in the provision of accommodation if the premises are within or attached to a church etc.
42. There is no sensible rationale for differentiating between religious boarding colleges or schools that are on Church land and those that are not.

Section 62 A Representative Complaints

43. The introduction of 62A is said to ensure 'systemic discrimination' is addressed. The section allows for representative complaints to be made against a party without having to identify who the individual members of the group are, the number of them or to even obtain the consent of the individuals who the complaint alleges are affected by the systemic discrimination.
44. Systematic discrimination means behaviour, practices, policies or programs of an organisation that have the effect of creating or perpetuating disadvantage for a group that shares a protected attribute (eg people who in the school setting deliberately promote and teach behaviour that is contrary to Church teaching) who the Church refused to employ.
45. This process is able to be easily manipulated by any individual to elevate what should be a standard complaint into a more serious one of systemic discrimination.
46. The new section increases the risks of vexatious complaints. Various lobby groups will be permitted to launch a complaint without the permission or even knowledge of the supposedly affected persons and would allow the Commissioner to investigate and look for complaints where in substance there are none.

Costly, Expensive and uncertain reform legislation

47. The great deal of uncertainty these proposed laws have already created will mean that much of their interpretation will be left to the judiciary.
48. It isn't desirable that the Northern Territory community is forced into unnecessary and costly litigation.



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49. The positive duty provisions will cause significant financial hardship for a very broad range of organisations as they seek advice on the extent to which their new 'systems' and 'processes' to eliminate discrimination are reasonably proportionate to the costs of achieving 'elimination of discrimination'.

We do not believe in discriminating against people because of orientation or personal beliefs. In fact, the beliefs that I hold onto which are part of my faith are that we are called to love and respect everybody. It is indeed what Jesus said. However, we want to ensure that the rights of all are respected. We want to make sure that there are no unforeseen consequences that could mean that in our schools and other institutions we are not able to live by our beliefs and moral values. I repeat this does not mean that we don't respect everybody. We are indeed about preserving the dignity of all human beings.

I would appreciate the opportunity to meet with you to discuss this important issue. I can be contacted via Clalia Mar, Standards Administrator in my office on 08 8942 6000 or diocadmin@darwin.catholic.org.au.

Yours faithfully

Bishop Charles Gauci
Catholic Bishop of Darwin and the Northern Territory

