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3 February 2012

Assistant Secretary
International Human Rights and Anti-Discrimination Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Dear Assistant Secretary,

RE: Consolidation of Commonwealth Anti-Discrimination Laws 2012

On behalf of more than 25,000 tertiary education sector staff that the National Tertiary Education Union (NTEU) represents, we welcome the opportunity to make a submission in response to the Discussion Paper on the Consolidation of Commonwealth Anti-Discrimination Laws. Though the Union is not in a position to provide significant feedback across the proposed reforms, we would like to canvas a number of broad principles.

1. Changes in relation to protected attributes

Firstly, the Union's Aboriginal and Torres Strait Islander members have provided important feedback in relation to the Discussion Paper. The NTEU's primary concern is that the distinctiveness of discrimination experienced by key social groups, in particular, Aboriginal and Torres Strait Islanders, may be marginalised through the aggregation and/or consolidation of protected attributes.

While it is appropriate to expand the attributes covered under the Consolidation of the four major Commonwealth Acts, particularly in relation to additional attributes such as sexual orientation and gender identity, in the employment context, and in relation to domestic violence and 'intersectional' discrimination, the NTEU asserts that the particular commitments Australia has towards ensuring the amelioration of discrimination on the basis of race, sex and disability should not be diminished as a consequence of any changes to anti-discrimination legislation.

We believe that the final shape of the Consolidation laws should recognise this, in particular, the commitment Australia has to international principles that seek to ameliorate discrimination through:

- The International Convention on the Elimination of all forms of Racial Discrimination (CERD)
- Convention on the Elimination of all forms of Discrimination against Women (CEDAW)
- Convention on the Rights of Persons with Disabilities (CRPD)
- The UN's Declaration on the Rights of Indigenous Peoples

The primacy of these kinds of discriminations should be supported in the objects of the Exposure Draft.

In 2011 the NTEU's Indigenous Unit conducted a survey of racism in Australian universities finding that 71.5 per cent of the sample had experienced direct discrimination and racist attitudes in the workplace. Furthermore, the survey found that 60% of the sample had experienced 'lateral violence' or 'the harmful and undermining practices that members of oppressed groups can engage in against each other as a result of marginalisation'. We have attached the *'I'm not a racist but'* report with this letter. The NTEU believes the overwhelming experience of discrimination by Aboriginal and Torres Strait Islanders in tertiary education workplaces is unacceptable. In seeking to continue a focus upon discrimination experienced by Aboriginal and Torres Strait islanders, we are also strongly committed to prohibiting discrimination in any area of public life, and to the positive duty of public sector bodies to eliminate discrimination and promote equality.

2. Wide-reaching and comprehensive engagement

Secondly, recognising that the discussion paper is seeking feedback about potential legislative options, the NTEU is concerned as to whether the potential impact upon affected equity groups will be properly canvassed before the Exposure Draft is developed. Therefore the NTEU does not support any proposal for the consolidation of discrimination laws at this stage. There must be strong, comprehensive and meaningful engagement with the many communities whom the legislation seeks to protect, to properly ascertain any benefits that could accrue from aggregation or consolidation of protected attributes. Upon release of the Exposure Draft, the NTEU strongly recommends a wide-reaching and comprehensive consultation to identify the legislation's societal implications, and, in particular, the proposed interaction with state laws and regulatory frameworks.

3. Women's equality

Thirdly, the Union has endorsed the Submission by the Equality Rights Alliance (ERA), which brings together 56 organisations advancing women's equality. The Recommendations listed in this submission address many issues in relation to ensuring the elimination of gender inequality, and the NTEU is supportive of each of the Recommendations listed in this submission. In particular, the NTEU would draw attention to the following Recommendations:

- A shifting burden of proof once a prima facie case of discrimination is established (Rec 2);
- A single provision for special measures aimed at achieving substantive equality across the protected attributes (Rec 5);
- Inclusion of 'survivor of domestic or family violence status' as a protected attribute (Rec 11);
- Requirement of equality before the law across all protected attributes (Rec 13);
- Prohibiting sex discrimination and sexual harassment across any area of public life (Rec 14);
- AHRC's receipt of funding to enable the collection, publication and use of de-identified complaint data for research purposes (Rec 23);
- Remedies to compensate not only the particular complainant but to ensure others will not be similarly affected by systemic discriminatory practices (Rec 27);
- Ability of the Sex Discrimination Commissioner to appear as amicus curiae in appeals about the Consolidated Act (Rec 34).

The Equality Rights Alliance (ERA) submission also provides a number of outstanding Recommendations in relation to changing the role and function of the AHRC. These include that:

- The AHRC should have power to initiate inquiries into systemic discrimination;
- The Sex Discrimination Commissioner should be given the statutory duty to monitor and report to Parliament annually on progress towards gender equality;
- A discrete unit should be established within the AHRC to undertake the research required for the monitoring and reporting role and the AHRC should receive increased funding to enable it to effectively perform its additional monitoring and enforcement roles effectively.

The NTEU would add that the proposed reforms to the AHRC should sustain and embed similar broad powers and authority in the Aboriginal and Torres Strait Islander Commissioner as listed under the *Australian Human Rights Commission Act 1986 (Cwth)*, and enshrine similar powers and authorities for the Racial Discrimination Commissioner (under the *Race Discrimination Act Part 1974 Part VI*) and the Disabilities Discrimination Commissioner (under the *Disability Discrimination Act 1992 Part VI*).

We thank you for the opportunity to respond to this important discussion paper. We would welcome any opportunity to discuss the content of our letter with you further.

Yours sincerely,

JEANNIE REA

National President