

NORTHERN TERRITORY OF AUSTRALIA

Copy No. ....1....

**CONFIDENTIAL**  
**CABINET DECISION**

**No. 7064**

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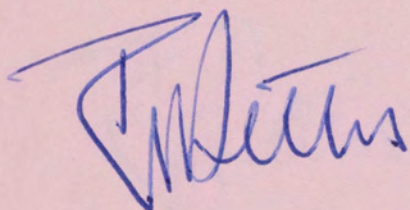
Submission No.: 6018

Title: PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES

Cabinet -

- (a) noted the Report of the Working Party on Equal Opportunity legislation;
- (b) approved the following grounds for prohibition of discrimination in Equal Opportunity legislation as recommended in the Working Party Report, namely -

- . Age
- . Sex, Marital Status, Sexual Harassment and Pregnancy
- . Impairment or Disability
- . Race
- . Trade Union or Employer Association Activity
- . Non-membership of Trade Unions or Employer Associations
- . Political Belief
- . Religious Belief
- . Irrelevant Criminal Record; and



**R. A. SETTER**  
Secretary to Cabinet

15 October 1991

.../2

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**CONFIDENTIAL**

NORTHERN TERRITORY OF AUSTRALIA

Copy No. ....1....

**CONFIDENTIAL**  
**CABINET DECISION**

**No. 7064**

2.

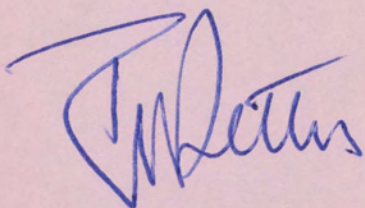
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Submission No.: 6018

Title: PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES

(c) approved the following areas to which Equal Opportunity legislation shall apply -

- . Education
- . Employment
- . Accommodation
- . Provision of Goods and Services
- . Clubs and Associations
- . Superannuation and Insurance.



**R. A. SETTER**  
Secretary to Cabinet

15 October 1991

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**CONFIDENTIAL**

**CONFIDENTIAL**

**6018**

**FOR CABINET**

**SUBMISSION No: .....**

<b>Title:</b>	PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES
<b>Minister</b>	THE HON SHANE L STONE MINISTER FOR EMPLOYMENT AND TRAINING
<b>Purpose:</b>	TO CONSIDER THE GROUNDS AND AREAS FOR THE PROPOSED EQUAL OPPORTUNITY LEGISLATION
<b>Relation to existing policy:</b>	CONSISTENT WITH EXISTING POLICY: CABINET DECISION NO 6429 OF 3 APRIL 1990; AND CABINET DECISION 6568 OF 7 AUGUST 1990
<b>Timing/ legislative priority:</b>	AT THE DISCRETION OF THE MINISTER
<b>Announcement of decision, tabling, etc:</b>	AT THE DISCRETION OF THE MINISTER
<b>Action re- quired before announcement:</b>	NIL
<b>Staffing implications, numbers and costs, etc:</b>	EQUAL OPPORTUNITY = 6 \$587 600 SAVINGS: OFFICE OF EQUAL OPPORTUNITY \$332 000
<b>Total cost:</b>	\$255 000

Department/~~Authority~~..... OF THE CHIEF MINISTER.....

**COMMENT ON CABINET SUBMISSION No.**

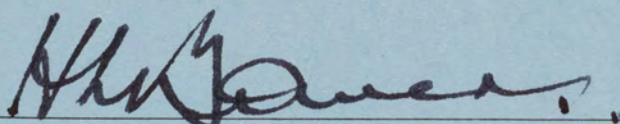
**TITLE:** ..... PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES.....

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**COMMENTS:**

The definition proposed by the Working Group for "marital status" is contrary to the policy reflected in the recently enacted De Facto Relationships Act. Inclusion of "marital status" as a ground for prohibition of discrimination is not supported unless the definition applied accords with that Act.

The recommendations of the Submission relating to other grounds for prohibition and areas to which the legislation is to apply are supported.



SIGNED: HUGH BOWERS

DESIGNATION: SECRETARY

DATE: 17 SEP 1991

**CONFIDENTIAL**

**CONFIDENTIAL**

**NORTHERN TERRITORY TREASURY**

Department/Authority.....

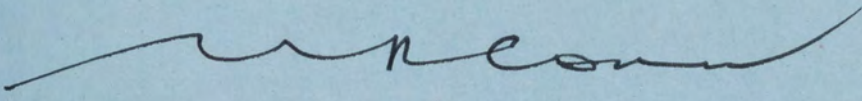
COMMENT ON CABINET SUBMISSION No.

TITLE: ..... PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES .....

COMMENTS:

Acceptance of the recommendations contained in the draft Cabinet Submission does not entail any economic or budgetary implications.

With regard to the removal of mandatory retiring age, it may be necessary to allow for exceptions e.g. Police Officers have a mandatory retiring age of 60 years.



\_\_\_\_\_  
SIGNED: N R CONN

DESIGNATION: UNDER TREASURER

DATE: // SEPTEMBER 1991 **CONFIDENTIAL**

**CONFIDENTIAL**

Department/Authority: LAW

**COMMENT ON CABINET SUBMISSION NO.**

**TITLE:** PROPOSED EQUAL OPPORTUNITY LEGISLATION -  
PRINCIPLES

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**COMMENTS:**

The Cabinet Submission incorporating Attachments "A" and "B" is supported by the Department of Law.

*Meredith Harrison*

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**SIGNED:** Meredith Harrison  
**DESIGNATION:** A/Secretary, Department of Law  
**DATE:** 3 October 1991

**CONFIDENTIAL**

**CONFIDENTIAL**

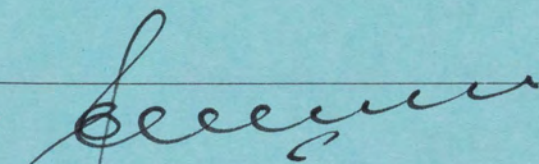
Department/Authority..... RACING COMMISSION.....

**COMMENT ON CABINET SUBMISSION No.**

**TITLE:** ..... PROPOSED EQUAL OPPORTUNITY LEGISLATION -  
..... PRINCIPLES  
.....

**COMMENTS:**

THE SUBMISSION IS SUPPORTED

SIGNED: 

DESIGNATION: CHAIRMAN

DATE: 6 SEPTEMBER 1991

**CONFIDENTIAL**

**CONFIDENTIAL**

**DEPARTMENT:** OFFICE OF LOCAL GOVERNMENT

**COMMENT ON CABINET SUBMISSION No.**

**TITLE:** PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES

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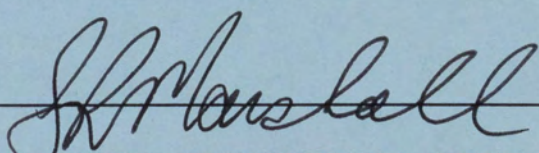
**COMMENTS:**

The Office of Local Government supports the recommendations contained in this submission.

SIGNED:

DESIGNATION:

DATE:



CHIEF EXECUTIVE OFFICER

September 1991

**CONFIDENTIAL**



~~CONFIDENTIAL~~

Department/Authority .....DEPARTMENT OF MINES & ENERGY.....

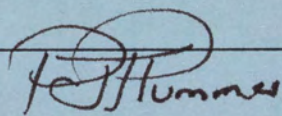
COMMENT ON CABINET SUBMISSION No.

TITLE: PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES.....

COMMENTS:

The Department supports the above submission.

SIGNED:



DESIGNATION:

A/Secretary

DATE:

9 September 1991

**CONFIDENTIAL**

Department/Authority: NT EMPLOYMENT AND TRAINING INTERIM  
AUTHORITY

COMMENT ON CABINET SUBMISSION No.

TITLE: PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES

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COMMENTS:

This Authority supports the intent of the submission.

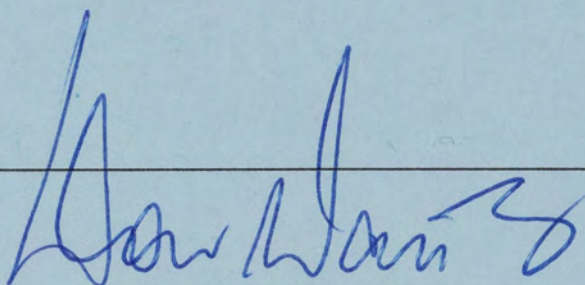
It is considered however that "sexual harassment" would be better included as a separate category and not incorporated with sex and marital status.

The application of the legislation should extend to "training" which could be incorporated with "Education".

Consideration may need to be given to the potential impact that may arise with the unqualified application of the principles included in this submission, to Education - especially from the point of view of those who may have taken a Public stance on the issues referred to.

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SIGNED:



DESIGNATION: CHAIRMAN  
NT EMPLOYMENT AND TRAINING INTERIM AUTHORITY

DATE: 4 SEPTEMBER 1991

~~Department~~/Authority....CONSERVATION..COMMISSION..OF..THE..NORTHERN..TERRITORY....  
~~XXXXXX~~

**COMMENT ON CABINET SUBMISSION No.**

**TITLE:** ....PROPOSED..EQUAL..OPPORTUNITY..LEGISLATION..-..PRINCIPLES.....

.....  
.....

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**COMMENTS:**

The Submission is supported.

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SIGNED: *Matti Uwert*

DESIGNATION: *Director*

DATE: *5/9/91*

**CONFIDENTIAL**

*CONFIDENTIAL*

Department/Authority: WORK HEALTH AUTHORITY

COMMENT ON CABINET SUBMISSION NO.

TITLE: PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES

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COMMENTS:

The Submission is supported.

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*S. Butterworth*

SIGNED: SARAH J. BUTTERWORTH

DESIGNATION: Chief Executive Officer

DATE: 4/9/91

*CONFIDENTIAL*

**CONFIDENTIAL**

Authority: MUSEUMS AND ART GALLERIES BOARD OF THE N.T.

**COMMENT ON CABINET SUBMISSION No.**

**TITLE:**

TO CONSIDER THE GROUNDS AND AREAS FOR THE PROPOSED EQUAL OPPORTUNITY LEGISLATION

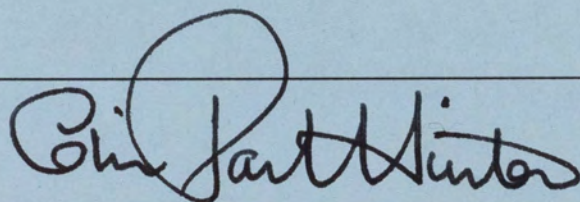
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**COMMENTS:**

The Museums and Art Galleries Board of the N.T. supports the recommendations regarding the proposed Equal Opportunity Legislation.

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SIGNED:



DESIGNATION:

DIRECTOR

DATE:

5/9/91

**CONFIDENTIAL**

Department/Authority ..... OF LANDS AND HOUSING .....

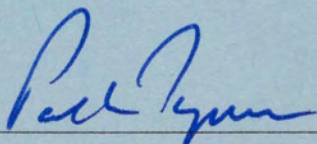
**COMMENT ON CABINET SUBMISSION No.**

**TITLE:** ..... PROPOSED EQUAL OPPORTUNITY LEGISLATION- PRINCIPLES..

---

**COMMENTS:**

The submission is supported.



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SIGNED: PAUL TYRRELL

DESIGNATION: SECRETARY

DATE: 10/9/91

**CONFIDENTIAL**

~~CONFIDENTIAL~~

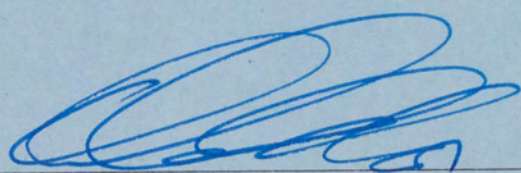
Department/Authority..... INDUSTRIES & DEVELOPMENT.....

COMMENT ON CABINET SUBMISSION No.

TITLE: ..... PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES.....

COMMENTS:

This Submission is supported.



SIGNED: O ALDER

DESIGNATION: SECRETARY

DATE: 9 September 1991

~~CONFIDENTIAL~~

Department/Authority .....**DARWIN PORT AUTHORITY**.....

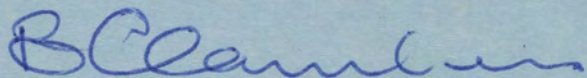
COMMENT ON CABINET SUBMISSION No.

TITLE: PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES.....

---

COMMENTS:

The Submission is supported.



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SIGNED: **B. CHAMBERS**

DESIGNATION: **CHAIRMAN**

DATE: **10.9.91**

**CONFIDENTIAL**



~~Department~~ Authority..... POWER AND WATER.....

**COMMENT ON CABINET SUBMISSION No.**

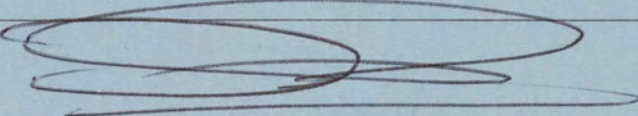
**TITLE:** ... PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES.....

---

**COMMENTS:**

This Authority supports this Submission.

---

SIGNED: *for* C J FULLER 

DESIGNATION: CHAIRMAN

DATE: 5 September 1991

**CONFIDENTIAL**

Department/~~XXXXXX~~ ..... TRANSPORT AND WORKS .....

**COMMENT ON CABINET SUBMISSION No.**

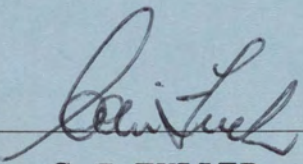
**TITLE:** ..... PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES .....

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**COMMENTS:**

This Department supports this Submission.

---

SIGNED:  C J FULLER

DESIGNATION: SECRETARY

DATE: 10<sup>th</sup> SEPTEMBER 1991

**CONFIDENTIAL**

**CONFIDENTIAL**

Department/Authority ..... HEALTH AND COMMUNITY SERVICES .....

**COMMENT ON CABINET SUBMISSION No.**

**TITLE:** ..... PROPOSED... EQUAL... OPPORTUNITY... LEGISLATION... PRINCIPLES .....

**COMMENTS:**

The submission is supported.

However, the two year phasing-in period for the removal of mandatory retirement age may be insufficient in terms of the legislative and administrative processes required and it may be better to have a three year phasing-in period.

SIGNED:

*M. Coonan*

DESIGNATION: SECRETARY

DATE: // SEPTEMBER 1991 **CONFIDENTIAL**

~~CONFIDENTIAL~~

Department/Authority ~~XXXXX~~ PRIMARY INDUSTRY AND FISHERIES

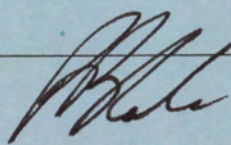
COMMENT ON CABINET SUBMISSION No.

TITLE: PROPOSED EQUAL OPPORTUNITY LEGISLATION -  
PRINCIPLES

COMMENTS:

The Submission is supported.

SIGNED: PETER G BLAKE



DESIGNATION: SECRETARY

DATE: 11.9.91

CONFIDENTIAL

CONFIDENTIAL

ABORIGINAL AREAS PROTECTION AUTHORITY

**COMMENT ON CABINET SUBMISSION No.**

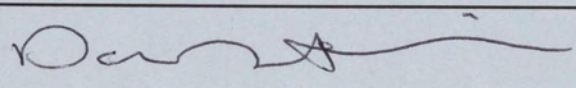
**TITLE: PROPOSED EQUAL OPPORTUNITY LEGISLATION PRINCIPLES**

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**COMMENTS:**

The Authority approves grounds for prohibition of discrimination in Equal Opportunity legislation as recommended in the Working Party Report.

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SIGNED:   
DESIGNATION: CHIEF EXECUTIVE OFFICER  
DATE: 9/9/01

CONFIDENTIAL

**CONFIDENTIAL**

Department/Authority SPORT, RECREATION AND ETHNIC AFFAIRS

**COMMENT ON CABINET SUBMISSION No.**

**TITLE:** PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES

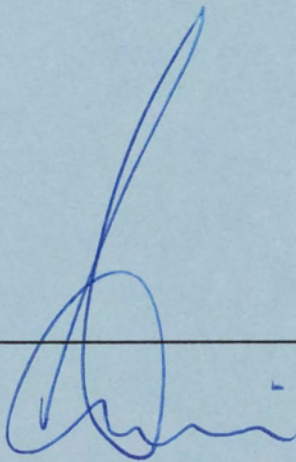
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**COMMENTS:**

This Office has read the Cabinet Submission on the proposed Equal Opportunity Legislation - Principles and fully supports the recommendations as stated in page 1 of the Cabinet Submission.

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SIGNED:



DESIGNATION: CEO

DATE:

5/1/91

**CONFIDENTIAL**

**CONFIDENTIAL**

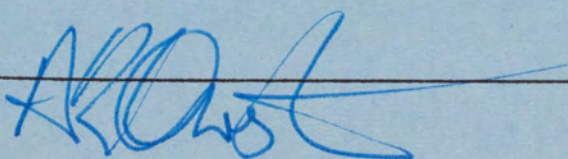
Department/Authority ..... DEPARTMENT OF CORRECTIONAL SERVICES .....

**COMMENT ON CABINET SUBMISSION No.**

**TITLE:** ..... PROPOSED EQUAL OPPORTUNITY LEGISLATION -PRINCIPLES .....

**COMMENTS:** The principles should be expanded to state that an "exclusions mechanism" will be provided in any legislation.

SIGNED:



DESIGNATION: SECRETARY

DATE: 4.09.91

**CONFIDENTIAL**

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Department/Authority NT LIQUOR COMMISSION

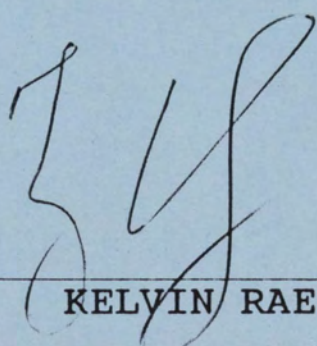
COMMENT ON CABINET SUBMISSION No.

TITLE: PROPOSED EQUAL OPPORTUNITY LEGISLATION -

PRINCIPLES AND ADMINISTRATIVE ARRANGEMENTS

COMMENTS:

The submission is supported.



SIGNED: KELVIN RAE

DESIGNATION: CHAIRMAN

DATE: 9 SEPTEMBER 1991 **CONFIDENTIAL**



**CONFIDENTIAL**

Department/Authority.

**COMMENT ON CABINET SUBMISSION NO.**

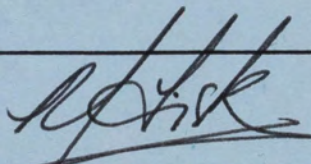
**TITLE:**

PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES  
.....  
.....

**COMMENTS:**

The objective of enacting realistic and workable equal opportunity legislation seems a desirable one in principle. The proposals in the draft Cabinet Submission should have a reasonable prospect of achieving this. The Cabinet Submission is supported.

**SIGNED:**



**DESIGNATION:** ACTING OMBUDSMAN

**DATE:** 9 September 1991

**CONFIDENTIAL**

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Department/Authority..... OFFICE OF THE AUDITOR-GENERAL.....

**COMMENT ON CABINET SUBMISSION No.**

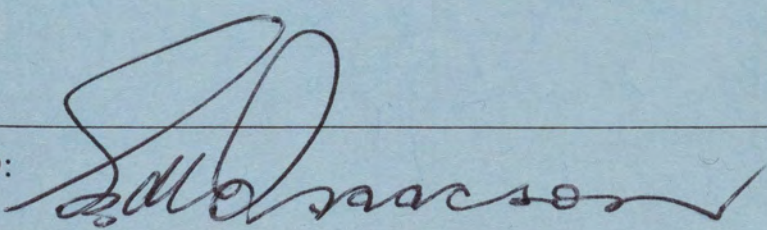
**TITLE:** ..... PROPOSED EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES.....

.....

.....

**COMMENTS:**

I have no comment to offer.

SIGNED: 

DESIGNATION: AUDITOR-GENERAL

DATE: 6 SEPTEMBER 1991

**CONFIDENTIAL**

~~CONFIDENTIAL~~

Department/Authority..... TRADE DEVELOPMENT ZONE AUTHORITY.....

COMMENT ON CABINET SUBMISSION No.

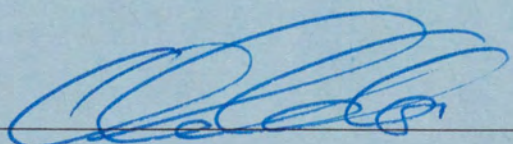
TITLE: ..... PROPOSED EQUAL OPPORTUNITY LEGISLATION -  
PRINCIPLES.....

COMMENTS:

The Trade Development Zone Authority supports in principle, the introduction of Northern Territory Equal Opportunity Legislation.

It is worth noting however, that there is a general consensus amongst individual staff of the Trade Development Zone Authority who have had the opportunity to study the draft Cabinet Submission, that prohibiting discrimination on the following grounds may not be desirable:

- \* medical
- \* disability
- \* sexuality
- \* irrelevant criminal records



SIGNED:

DESIGNATION: CEO

DATE: 8/9/91

**CONFIDENTIAL**



# LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Office of the Clerk

Telephone (089) 46 1450  
Telex AA85154  
Telegrams Comparias  
Facsimile (089) 41 2567

G.P.O. Box 3721  
Darwin, N.T. 0801

16 September, 1991

## FACSIMILE TRANSMISSION

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TO: SANDRA

FAX No: 896526

1. PROPOSED EQUAL OPPORTUNITY LEGISLATION -  
PRINCIPLES

General support for principles proposed.

2. PROPOSED EQUAL OPPORTUNITY LEGISLATION -  
ADMINISTRATIVE ARRANGEMENTS -

No opinion is offered as this is an Executive Policy matter.

**CONFIDENTIAL**

Department/Authority. NORTHERN TERRITORY LEGAL AID COMMISSION

**COMMENT ON CABINET SUBMISSION NO.**

**TITLE:** PROPOSED EQUAL OPPORTUNITY LEGISLATION \_ PRINCIPLES

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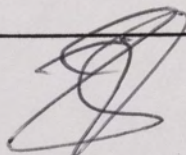
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**COMMENTS:** AGREE

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SIGNED: per:



DESIGNATION: DIRECTOR

DATE: 20th SEPTEMBER 1991

**CONFIDENTIAL**



COMMISSIONER'S OFFICE

: Your Ref.

91/888 : Our Ref.

Mr David Hawkes  
Public Service Commissioner  
for the Northern Territory  
GPO Box 4371  
DARWIN NT 0801

Dear David

CABINET SUBMISSIONS - EQUAL OPPORTUNITY LEGISLATION - PRINCIPLES,  
AND EQUAL OPPORTUNITY LEGISLATION - ADMINISTRATIVE ARRANGEMENTS

I refer to your letter of 2 September 1991 seeking comments on the  
abovementioned draft Cabinet Submissions.

The recommendations of the Submission titled "Equal Opportunity  
Legislation - Principles" are supported, with the same comment  
which was provided in response to your letter of 6 June 1991 on  
the same subject matter, as follows:

"It should be noted however, that there may be  
employment ramifications unless relevant  
exemption provisions of the proposed  
legislation (as outlined in chapter 5 of the  
Working Party Report) cover employees of this  
organisation. The matter of exemptions will be  
considered in detail when the legislation is  
drafted and promulgated for comment."

The recommendations of the Submission titled "Equal Opportunity  
Legislation - Administrative Arrangements" is supported.

Yours sincerely

M J PALMER  
COMMISSIONER OF POLICE

6 September 1991

CONFIDENTIAL

- 1 -

RECOMMENDATION

1. That Cabinet:

(a) notes the Report of the Working Party on Equal Opportunity legislation; and

(b) approves the following grounds for prohibition of discrimination in Equal Opportunity legislation as recommended in the Working Party Report, namely -

- . Age
- . Sex, Marital Status, Sexual Harassment and Pregnancy
- . Sexuality
- . Parenthood
- . Impairment or Disability
- . Medical Record
- . Race
- . Trade Union or Employer Association Activity
- . Political Belief
- . Religious Belief
- . Irrelevant Criminal Record

(c) approves the following areas to which Equal Opportunity legislation shall apply -

- . Education
- . Employment
- . Accommodation
- . Provision of Goods and Services
- . Clubs and Associations
- . Partnerships
- . Superannuation and Insurance

CONFIDENTIAL

- 2 -

BACKGROUND

2. Since 1977, New South Wales, South Australia, Western Australia and Victoria have each enacted Equal Opportunity or Anti-Discrimination legislation. Tasmania, Queensland and the Australian Capital Territory are presently developing similar legislation. In general, State legislation was developed in order to reflect their own philosophies, policies and community preferences, rather than the Commonwealth's. (Attachment A provides a comparative table of State/Commonwealth legislation).
3. Cabinet Decision No. 6429 of 3 April 1990 approved the drafting of Equal Opportunity legislation.
4. The decision was made in order to introduce NT legislation which -
  - . reflects the Territory's philosophy, policies and community preferences;
  - . upholds the Government's commitment to the dignity and worth of each person; and
  - . ensures the Territory Government is empowered to investigate and conciliate Territory matters independent of Commonwealth legislation.
5. Cabinet Decision No. 6568 of 7 August 1990 approved the content of a "Community Discussion Paper on Equal Opportunity Legislation". Intention to legislate in this area was announced in the Legislative Assembly on 14 August 1990, in conjunction with the tabling of the community discussion paper.

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CONFIDENTIAL

- 3 -

6. Subsequently a Working Party, representing community and employer organisations, unions and key Government Departments, was appointed by the Government to review the community submissions resulting from the discussion paper, and to assist with preparation of an issues paper for consideration by the Government.

#### CONSIDERATION OF THE ISSUES

7. A number of significant issues in relation to this matter have been deleted from this submission, in order to accommodate comments from Departments and Authorities. Identification and discussion of those issues is at Attachment B.
8. The introduction of Northern Territory Equal Opportunity Legislation will support the policy statements of previous Ministers and Chief Ministers: "...that each person has the right to be treated with dignity and to make decisions unrestricted by assumptions based on prejudice".
9. Following tabling of the Community Discussion Paper, in excess of 700 copies of the document were distributed to Government Departments and Authorities, community organisations and individuals, resulting in receipt of 30 written submissions. Community consultations were also held in seven Territory centres.
10. In general, community opinion supports the content of the Community Discussion Paper, and the general philosophy behind equal opportunity legislation, that is, that each person has the right to be treated with dignity and fairness, free from prejudice. (Attachment C provides some insight into the types of situations that would come within the ambit of such legislation).

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## CONFIDENTIAL

- 4 -

11. However, there were a number of contentious issues identified in the Discussion Paper and considered by the Working Party. These included:
  - . Sexuality
  - . Impairment or Disability to include diseases such as cancer and HIV/AIDS
  - . Sexual Harassment
  - . Age
12. Anticipated community reaction to the ground of sexuality did not occur. Only two objections were received, one by telephone and one at a community consultation. Inclusion of this ground would be consistent with Commonwealth, New South Wales and South Australian legislation.
13. Wide community support was evident for the definition of "Impairment or Disability" covering total or partial loss of a bodily function; the presence in the body of an organism which has caused, or is capable to causing disease; malfunction or disfigurement of part of the body; physical or intellectual disability; or psychiatric or psychological disease or disorder, either permanent or temporary.
14. The definition covers not only physical impairment or disability but also diseases such as cancer and AIDS. It is consistent with the National HIV/AIDS Strategy, and proposals in the "Discussion Paper in HIV/AIDS and Anti-Discrimination Legislation" prepared by the Inter-Governmental Committee on AIDS Legal Working Party, of which the Territory is a member.
15. The Working Party has recommended that Sexual Harassment be included in the ground of sex, marital status and pregnancy, and that sexual harassment not be qualified by a detriment clause.

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## CONFIDENTIAL

- 5 -

16. Sexual Harassment would be better dealt with as a separate ground, and a detriment clause similar to the South Australian Legislation could be used. That is "that the person harassed feels offended, humiliated or intimidated, and that it was reasonable to feel this way". This would be consistent with other jurisdictions.
17. The removal of mandatory retiring age is in accordance with the concept of equity. In order to allow time for employer adjustments, and any necessary superannuation changes, a two year phase in time for the particular clause is recommended. Age as a ground of unlawful discrimination has been included in Commonwealth, New South Wales and South Australian Legislation. Western Australia are to introduce legislation for age discrimination.
18. Controversial matters recommended by the Working Party for inclusion in the legislation, but not included in the Community Discussion Paper, and therefore, not tested at wider community level are -
- . the status of "Defacto" to include same sex (homosexual) partnerships under "Marital Status";
  - . inclusion of Transexual persons by definition of sex; and
  - . requirements for Equal Opportunity Management Plans within the NT Public Sector, to include Community and Municipal Government.
19. To date no other jurisdiction or any other legislation accords same sex partnerships "Defacto Status".
20. Transexuality was included in the status of "sex" to follow recent international decisions. Transexuality is included in other jurisdictions.

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- 6 -

21. Introduction of a requirement for Equal Opportunity Management Plans (EOMPs) within the Public Sector, including Local Government, was a strong and separate recommendation of the Working Party. EOMPs provide a mechanism for accountability of employment and client service equity issues. This is consistent with New South Wales and Western Australian legislation.
22. Additional grounds not included in the Community Discussion Paper, but identified in the Working Party Report for further investigation and possible later inclusion are -
  - . Cultural Practices and Beliefs; (3.12 page 22)
  - . Irrelevant Occupational Record; (3.13 page 23)

OPTIONS

- (a) To adopt the recommendations on grounds and areas for prohibition of discrimination; or
- (b) To not adopt the recommendations on grounds and areas for prohibition of discrimination.

PUBLIC IMPACT OF THE RECOMMENDATIONS

23. There is wide community support for the introduction of legislation including the establishment of an Equal Opportunity Commission.
24. There may be some adverse reaction by sections of the community to some of the grounds recommended by the Working Party in its report.

FINANCIAL CONSIDERATIONS

25. These are the subject of a separate Cabinet Submission.

CONFIDENTIAL

CONFIDENTIAL

- 7 -

REGULATORY IMPACT

26 The drafting of new legislation. Regulations would be required to determine procedures for dealing with complaints, particularly at the stage that they may be referred to a Tribunal. (for information on a Tribunal refer to Cabinet Submission on Administrative and Financial).

EMPLOYMENT AND INDUSTRIAL RELATIONS

27. Employees and Unions would view legislation as a positive measure.

COMMONWEALTH STATE AND LOCAL GOVERNMENT RELATIONS

28. The introduction of Equal Opportunity Legislation would further the objects of Commonwealth Human Rights and Equal Opportunities Legislation.

CO-ORDINATION AND CONSULTATION

29. This Submission has been circulated to all Departments and Authorities for comment. Departments of Chief Minister, Health and Community Services, Law and the Office of the Public Service Commissioner were represented on the legislation Working Party.

PUBLICITY

30. At the discretion of the Minister.

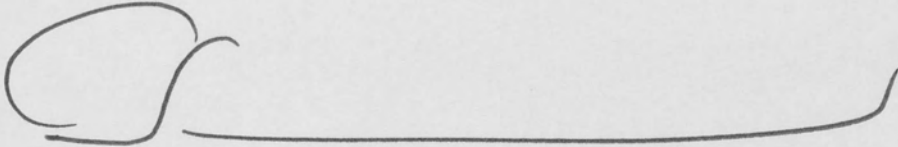
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- 8 -

TIMING

31. At the discretion of the Minister for Employment and Training.

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a long horizontal line that tapers to a point on the right.

Shane L. Stone

Minister for Employment and Training

CONFIDENTIAL

## ATTACHMENT A

EQUAL OPPORTUNITY LEGISLATION  
 GROUNDS OF DISCRIMINATION  
 COMPARATIVE TABLE BY STATES AND COMMONWEALTH

GROUNDS	JURISDICTION					#AUS	Intend NT
	AUSTRALIAN STATE						
	VIC	NSW	SA	WA			
Race	+	+	+	+	+	+	+
Marital Status	+	+	+	+	+	+	+
Pregnancy	-	+	+	+	+	+	+
Parenthood	+	-	-	-	-	-	+
Sexuality	-	+	+	-	#+	#+	+
Physical Impairment	+	+	+	+	#+	#+	+
Mental Impairment	+	+	-	+	#+	#+	+
Religious Belief	+	-	-	+	#+	#+	+
Political Belief / Union	+	-	-	+	#+	#+	+
Age	-	*	+	^	#+	#+	+
Criminal Record	-	-	-	-	#+	#+	+
Medical Record					#+	#+	+

\* Deletion of Mandatory Retiring Age only in Public Sector.  
 Other areas to follow 1992/3

^ Inclusion Imminent

# Commonwealth Legislation. These grounds conciliation only, no other remedy.

ATTACHMENT B

PROPOSED EQUAL OPPORTUNITY LEGISLATION

PRINCIPLES

DISCUSSION OF ADDITIONAL SIGNIFICANT ISSUES

INDEX

1. GROUNDS OF DISCRIMINATION
  - a. ADDITIONAL
  - b. DELETIONS
  
2. DEFINITIONS
  - a. "DEFACTO" - MARITAL STATUS
  - b. MEDICAL RECORD
  - c. SEX, MARITAL STATUS, SEXUAL HARASSMENT AND PREGNANCY
  - d. AGE
  - e. TRADE UNION OR EMPLOYER ASSOCIATION ACTIVITY
  - f. EDUCATION
  
3. GENERAL COMMENTS
  - a. EQUAL OPPORTUNITY MANAGEMENT PLANS
  - b. DIRECT, INDIRECT AND SYSTEMIC DISCRIMINATION
  - c. IMPUTED CHARACTERISTICS AND ASSOCIATION
  - d. EXEMPTIONS



## ATTACHMENT B

## Discussion of additional significant issues

1.  GROUNDS OF DISCRIMINATION

## a. ADDITIONAL

A. NORTHERN TERRITORY EMPLOYMENT AND TRAINING  
INTERIM AUTHORITY

## Comment

"In respect to "Cultural Practices and Beliefs" I assume others have discussed the problems which exist by the interface between the practice of these beliefs and many of the inflexibilities which exist in award agreements under the heading of "restrictive work practices". Our working and non-working structures still give Sunday a special significance not always perceived in other cultures. Employers asked not to discriminate must have flexibilities."

## PSCO Comment

The Working Party Report recommended that investigation be undertaken into the ground of "Cultural Practices and Beliefs" with a view to later inclusion of the ground in the legislation. This was because of the complexity of the ground and that some cultural practices may contravene, for example, criminal law and child protection legislation. Cabinet would need to approve investigation into this matter.

Should "Cultural Practices and Beliefs" be included at a later stage then some exemptions and flexibilities as to what would be reasonable and justifiable should be included.

## b. DELETIONS

## A. DEPARTMENT OF EDUCATION

## Comment

"While supporting the Submission in general I have serious concerns in relation to prohibition of discrimination in relation to sexuality and irrelevant criminal record.

I believe there would be a crisis of confidence in our schools if, for example, a transexual teacher was employed or if a teacher publicly flaunted his or her particular variety of sexual deviancy while employed as a teacher working with children. This has happened in other States and has resulted in the teachers concerned not being able to teach in schools.

We have a problem with the direct and indirect messages and role models we provide for children in relation to what is on the one hand a "normal" lifestyle and what on the other hand may be tolerated in the wider community as being not a criminal offence.

While community standards and values vary from generation to generation in areas such as marital status, religious belief, parenthood, etc., parents in general have high expectations of teachers in relation to the "wholesomeness" of people who teach their children.

In relation to criminal records one would assume that someone convicted of an offence in the general area of paedophilia would not be regarded as suitable to work in an early childhood area - there is an enormous range of criminal records which the community would feel nervous about. There would need to be very careful definition in this area".

#### PSCO Comment

With regard to transexuality the same criteria used for the employment of heterosexual teachers should apply. Any behaviour which was unreasonable should be dealt with through sound management practices. The Working Party was of the belief that transexuality should be included in the legislation as a ground of unlawful discrimination.

Sexuality as a ground is included in Commonwealth and State Legislation. Commonwealth Legislation through Human Rights and Equal Opportunity Commission Regulations incorporate sexuality as a ground. These regulations may be applied to the Northern Territory Teaching Service. The Working Party has recommended that a person's sexuality, whether that person is homosexual or heterosexual, should not be a ground for discrimination. Again any behaviour which was unreasonable should be dealt with at a management level.

Paedophilia is a criminal activity and would not be covered by the proposed legislation. The ground of irrelevant criminal record would not apply with regard to paedophilia or to people convicted of child abuse or child sexual assault where a person convicted of such acts was seeking to be employed to work with children. However, convictions resulting from such acts should be considered irrelevant if a person was employed for example as a miner.

- 4 -

**B. TRADE DEVELOPMENT ZONE****Comment**

"It is worth noting that there is general consensus among individual staff of the Trade Development Zone Authority who have had the opportunity to study the draft cabinet submission that prohibition to discrimination on the following grounds may not be desirable:

- medical
- disability
- sexuality
- irrelevant criminal records"

**PSCO Comment**

The Trade Development Zone has given no reason as to why prohibition to such grounds may not be desirable.

Reasonable and justifiable discrimination may be upheld if the employer, for example, was able to prove that employment of a person with a criminal record of fraud should not be employed as an accountant.

With regard to say disability, Paragraph 3.5 of the Working Party Report includes, in its definition, reference to "reasonable" and "reasonable adjustment". If the definition of "Impairment or Disability" as a ground of unlawful discrimination includes a qualifying provision of "reasonable" and "reasonable adjustment" then the concerns of TDZ would be addressed.

**2. DEFINITIONS****a. "DEFACTO" - MARITAL STATUS****PSCO Introductory Comment**

The draft submission initially contained two paragraphs which read:

"16. Concern was raised that "Defacto" relationships were listed under "Marital Status". This may be offensive to certain sectors of the community, particularly as marriage is not permissible for these couples under the "Commonwealth Marriage Act".

17. To date no other jurisdiction includes same sex partnerships within the definition of "Marital Status" nor accords them "Defacto Status". State and Commonwealth legislation defines "Defacto" in terms of opposite sex relationships."

- 5 -

The following comments by Departments and Authorities refer to these two deleted paragraphs and paragraph 19 of the Cabinet Submission which reads:

"To date no other jurisdiction or any other legislation accords same sex partnerships "Defacto Status"."

#### A. CONSERVATION COMMISSION

##### Comment

"The Commission acknowledges that paragraph 15 is indeed controversial by its nature and strongly supports the position taken in paragraph 16 and 17. The Commission would oppose the expansion of the definition of the status of "Defacto" under "Marital Status" to include same sex partnerships."

#### B. DEPARTMENT OF MINES AND ENERGY

##### Comment

"One item worth mentioning is the impact of some of the controversial matters mentioned in Paragraph 15. For example what effect would removal of a mandatory retiring age have on superannuation. Also if same sex partnerships were considered defacto would a person on the death of their partner be eligible for portion of their pension from a superannuation scheme? There could be significant cost implications in both these examples."

##### PSCO Comment

The inclusion of same sex partners in the definition of Defacto, would be inconsistent with the definition of defacto in other States Legislation and Commonwealth Legislation. However, the example of deceased estates was one of the factors considered by the Working Party when making its recommendations. Other examples considered included access to accommodation, and goods and services. The Working Party was of the view that the issue was the permanency of the relationship not the sex of the partners and that, under the law, homosexual partners should be afforded the same rights as heterosexual partners.

Superannuation has been included in the areas to which the grounds may be applied. However certain exemptions should be included in the legislation in relation to actuarial and statistical advice. This would be consistent with other jurisdictions.

C. DEPARTMENT OF THE CHIEF MINISTER

Comment

"The inclusion of discussion concerning same sex partnership under "Marital Status" is unnecessary and distracting. Debate on the issue may be counter productive to consideration of the main issues."

PSCO Comment

Paragraphs 16 and 17 regarding same sex defacto partners were included to clarify the status of same sex defacto partners in other jurisdictions. Deletion of these paragraphs may not necessarily circumvent debate on this issue.

b. "MEDICAL RECORD"

A. DEPARTMENT OF EDUCATION

Comment

"The word "Irrelevant..." should be inserted as medical records may, in certain instances, give a true indication of ability to perform a job. The onus would be on the employer to prove the relevance of the record. This approach would accord with the grounds of "Irrelevant Criminal Record".

PSCO Comment

The insertion of the word "Irrelevant" is not considered necessary. The suitability and capacity of a person to undertake a particular job should be addressed through sound recruitment and selection procedures.

c. "SEX, MARITAL STATUS, SEXUAL HARASSMENT AND PREGNANCY"

A. DEPARTMENT OF EDUCATION

Comment

"The word Sex" should be replaced with "gender", as the issue of sexuality is dealt with separately."

PSCO Comment

The Macquarie Dictionary defines Gender as "a set of classes, such as masculine, feminine and neuter, which together include all nouns"; Sex is defined as "the character of being either male or female: persons of different sexes." For the purpose of Equal Opportunity Legislation, Sex as so defined is the correct word. Sex is not to be confused with Sexuality which is defined as "sexual character; possession of sex; and the recognition or emphasising of sexual matters".

- 7 -

B. NORTHERN TERRITORY EMPLOYMENT AND TRAINING  
INTERIM AUTHORITY

Comment

"I have absolutely no doubt that sexual harassment must be covered in this legislation, indeed I fought for its inclusion in equal opportunity regulations elsewhere. However, it seems to me to be out of place when grouped with "Sex, Marital Status, Sexual Harassment and Pregnancy", especially when some of the separate classifications have more in common with the nature of discrimination in respect to sex, marital status and pregnancy.

Sexual harassment is a complex issue about interpersonal relationships, respect for the rights to privacy, communication between people, and the exercise of power, not only in respect to control in the employment situation. Other matters listed are the failure of people acting in their established position to exercise non-discriminatory values in respect to criteria established by the legislation embodying community expressions which have wide support.

Sexual harassment presents far wider dimensions. It occurs randomly in organisations not associated necessarily with the structure of work. In extreme cases, of course, harassment can be a criminal offence. It must receive separate consideration.

Incidentally, I support the definition preferred by the Working Party."

PSCO Comment

The comment that Sexual Harassment seems out of place when grouped with Sex, Marital Status, Sexual Harassment and Pregnancy and that it should be a separate ground and extend beyond employment is noted. This could be attended to at the legislative drafting stage and would be consistent with similar State and Commonwealth Legislation.

C. DEPARTMENT OF LAW

Comment

"The Department considers that the definition of 'sexual harassment' proposed by the Working Party is too broad. It would include, for example, an invitation to dinner that was 'unwelcome' simply because the recipient did not like the proposer. The Department considers that the definition of 'sexual harassment' should include a requirement either that:

- 8 -

- (a) there be a disadvantage caused to the person harassed (as per the Commonwealth Sex Discrimination Act); or
- (b) that the person harassed feels offended, humiliated or intimidated, and that it was reasonable to feel this way (as per the South Australian legislation).

If the requirement of 'disadvantage' is added, it should be broadly defined to cover situations where a person is denied the ordinary standards of acceptable civil conduct."

"The Working Party's report recommends that the prohibition of discrimination on the ground of a person's sex include prohibition of discrimination on the ground of a person being a transsexual. As noted in the Cabinet Submission, this ground (of being transsexual) is covered by the equal opportunity legislation of other jurisdictions. The recommendation that the ground of transsexuality be included within the ground of sex is predominantly a drafting recommendation: it fits most logically there. It could quite easily be a separate ground."

#### PSCO Comment

The inclusion of a detriment clause in the definition of Sexual Harassment would be consistent with similar State and Commonwealth Legislation. This Office supports Law's Option (b).

The Department's comments regarding transsexuality are noted and this Office agrees that this is predominantly a drafting recommendation.

#### D. DEPARTMENT OF LAW

##### Comment

While the Working Party report grouped sex, marital status, sexual harassment and pregnancy, it is also resolved that NT legislation should follow the general pattern of the Commonwealth legislation. In that legislation sex, marital status, sexual harassment and pregnancy are separate grounds. While largely a matter of drafting style, there is merit in having them as separate grounds. There is no stronger reason for having sexual harassment as a separate ground than there is for having sex, marital status and pregnancy each as a separate ground. That is, each of the four grounds should be separate.

- 9 -

## PSCO Comment

The Department of Law comments are supported. This is a matter which could be attended to at drafting.

**E. DEPARTMENT OF LAW****Comment**

Approval should be sought of the proposal to include same sex harassment within sexual harassment and of the definition of sexual harassment (particularly given the change from the Working Party Report suggested definition to include detriment/disadvantage).

## PSCO Comment

The Department's comments are noted. Should Cabinet approve the inclusion of same sex harassment a detriment/disadvantage clause similar to the South Australian legislation may be considered appropriate.

**d. "AGE"****A. DEPARTMENT OF LAW****Comment**

"The recommendation should seek approval of the two year phase-in in relation to the removal of the mandatory retiring age."

## PSCO Comment

The Department's comments are noted and this Office supports the two year phase-in period, which would allow time for the examination of relevant legislation and awards, and appropriate amendments or adjustments.

**B. CONSERVATION COMMISSION****Comment**

"The Commission supports in principle the removal of the mandatory retiring age in employment in accordance with the concept of equity. However, it may be worth considering provision in the legislation for the mechanism whereby Chief Executive Officers can make a recommendation on behalf of employees to the Public Service Commissioner for mutually agreeable yearly extensions beyond a certain age."



## PSCO Comment

Review of any employee's performance is a management issue. To include a requirement in Legislation for performance review of those over a specified age, would defeat the object of inclusion of this ground.

e. "TRADE UNION OR EMPLOYER ASSOCIATION  
ACTIVITY"

A. DEPARTMENT OF LAW

Comment

"The Submission recommends that the legislation prohibit discrimination on the ground of trade union or employer association activity.

In certain situations, Northern Territory legislation prohibiting discrimination on the basis of trade union membership (or lack thereof) will have a limited application. This is because the Industrial Relations Act 1988 (Commonwealth), which applies in the Northern Territory, empowers the Industrial Relations Commission to insert preference clauses in awards. A preference clause requires an employer to give preference to unionists. The fact that a preference clause in an award may result in unionists in a particular industry having a monopoly in employment (ie a closed shop situation) has been recognised by the High Court.

Commonwealth legislation (including awards made under Commonwealth legislation) prevails over inconsistent Northern Territory legislation. Consequently, a person discriminated against for not being a member of the union in an industry covered by an award containing a preference clause would have no redress under the proposed Northern Territory legislation. However, given that not all awards contain preference clauses, the Territory should still include this ground of discrimination in its proposed legislation. Inclusion of this ground would be in line with the Human Rights and Equal Opportunity Commission Act (Commonwealth). Discrimination on the ground of trade union activities is covered by that Act. The Human Rights and Equal Opportunity Commission has power to inquire into any act or practice that may constitute discrimination and may endeavour by conciliation to effect a settlement of the matter. The Commission may also report to the Commonwealth Attorney-General on any matters in relation to which conciliation was unsuccessful or considered to be inappropriate."

- 11 -

B. NORTHERN TERRITORY . EMPLOYMENT AND TRAINING  
INTERIM AUTHORITY (NTETIA)

Comment

"In respect to "Trade Union and Employer Association Activity" I am concerned by the complacency within the community and expressed here in which employment is denied through a person not joining a union. Such discrimination is a denial of the fundamental right to choose one's association and is irrelevant to all the grounds on which employment should be based."

PSCO Comment

The comments of Department of Law and the concerns of NTETIA are noted. The Department of Law has confirmed that Trade Union or Employer Association Activity of the proposed legislation, as noted in the Working Party Report, may have limited application, due to coverage of the *Commonwealth Industrial Relations Act 1988*. This would include 'closed shops' or preference clauses in awards. The legislation would be especially relevant to awards without preference clauses and those occupations which are not covered by awards.

It is therefore recommended that no amendments to this ground be made.

f. "EDUCATION"

D. NORTHERN TERRITORY EMPLOYMENT AND TRAINING  
INTERIM AUTHORITY

Comment

"I note that "Education" gets a mention while "Training" does not. I suspect that in the workplace training is more important and more often access to it is based on stereotyping which in turn is based on gender perceptions."

PSCO Comment

With regard to workplace training this would be covered by the definition of discrimination, i.e., "Discrimination is any practice that makes distinctions between individuals or groups so as to advantage some and disadvantage others", and subsequently by the application of this definition to discrimination in employment. That is if a person was denied access to training or development in employment because of that person's sex, race, age, etc. and it was not reasonable under the circumstances, then that person would have legitimate ground for a complaint of discrimination.

### 3. GENERAL COMMENTS

#### a. EQUAL OPPORTUNITY MANAGEMENT PLANS (EOMPs)

##### A. DEPARTMENT OF LAW

###### Comment

###### "Paragraph 20

This paragraph does not adequately explain EOMPs. Specific approval should be sought of the proposal to require EOMPs."

###### PSCO Comment

EOMPs are not a new concept for the Northern Territory. In May 1989, following various announcements in the Legislative Assembly, Equal Opportunity Management Planning was launched in the NT Public Service. The intention of the Working Party to include EOMPs in the proposed Equal Opportunity Legislation was to ensure that EOMPs were introduced to Local Government as well as Northern Territory Government Departments and Authorities.

An EOMP is a mechanism by which Departments and Authorities may institute measures designed to encourage the use of all the skills and experiences of all staff, benefiting both the staff concerned and the Department or Authority through the efficient use of available skills. Merit should be at the basis of such planning.

It should be noted that the proposed Public Sector Employment Act may also include provision for the introduction of EOMPs.

#### b. DIRECT, INDIRECT AND SYSTEMIC DISCRIMINATION

##### A. DEPARTMENT OF LAW

###### Comment

"The draft Cabinet Submission deals only with the grounds of discrimination, and even in relation to these matters it is not comprehensive.

The Department considers the recommendation to be deficient. For example, it should be clear that Cabinet's approval of the inclusion in definition of direct, indirect and systemic discrimination is sought (with these terms defined/expanded in the submission)."

###### PSCO Comment

The Department's comments are noted. The Working Party Report has included the following definitions :

**"Direct Discrimination"** occurs when the discriminator treats the aggrieved person less favourably than the discriminator treats, or would treat, a person of another class or group of people.

**Indirect Discrimination** occurs where a discriminator requires the aggrieved person to comply with a requirement or condition:

- (a) with which a substantially higher proportion of persons of another class or group to that of the aggrieved person comply, or are able to comply;
- (b) which is not reasonable having regard to the circumstances of the case; and
- (c) with which the aggrieved person does not or is not able to comply.

**Systemic direct** discrimination occurs when persons of a particular class or group are systematically treated less favourably than persons of another class or group. Systemic direct discrimination can be established by statistical evidence that, for example, an employer has systematically treated one race or sex less favourably than another race or sex. Non-discriminatory employment practices should result over time, in a workforce that reflects the racial gender composition of the "community" from which the employees are selected. That "community" will of course vary according to the qualifications necessary for the job under consideration."

The inclusion of direct, indirect and systemic discrimination would be consistent with other jurisdictions.

### **c. "IMPUTED CHARACTERISTICS" AND "ASSOCIATION"**

#### **A. DEPARTMENT OF LAW**

##### **Comment**

The recommendation should make it clear that the Submission also seeks approval of the grounds of "imputed characteristics" and "association" described at pages 8 and 9 of the Working Party Report.

##### **PSCO Comment**

The Working Party Report has defined "imputed characteristics" and "association" as follows:

##### **"Imputed Characteristics"**

In addition, the Working Party considers that the proposed legislation should prohibit discrimination on the basis of imputed characteristics. For example, if A wrongly believes B to be of a

- 14 -

particular race (or sex etc) and consequently discriminates against B, then B should be entitled to redress, despite the fact that B is not of that race.

#### Association

The proposed legislation should also provide a remedy for someone who is discriminated against on the basis of his or her association with persons with certain characteristics (ie, those listed as grounds above). For example if A discriminates against B on the basis that B is the spouse of C (who has a disability), B should be entitled to lodge a complaint under the Act."

The inclusion of discrimination on the ground of imputed characteristics or by association would be consistent with other jurisdictions.

#### d. EXEMPTIONS

##### A. DEPARTMENT OF LAW

###### Comment

"Cabinet's endorsement of the "exemption mechanism" should be sought as should its endorsement of any proposed areas of exemption. The system should be explained."

###### PSCO Comment

The Working Party Report pages 27 - 32 has outlined the types of exemptions and the proposed areas of exemption which may be included in the Legislation.

##### B. NORTHERN TERRITORY POLICE

###### Comment

"It should be noted, however, that there may be employment ramifications unless relevant exemption provisions of the proposed legislation (as outlined in chapter 5 of the Working Party Report) cover employees of this organisation. The matter of exemptions will be considered in detail when the legislation is drafted and promulgated for comment."

###### PSCO Comment

Comments by the Northern Territory Police are noted. Some automatic general exemptions, such as statutory requirements, would apply to police. Other individual exemptions would be provided for in the Act and would be determined by the individual circumstances of the application. However, blanket exemptions to the proposed Act should neither be required, nor supported.

## ATTACHMENT C

### CASE STUDIES

The following cases are based on actual complaints handled and conciliated by the Commonwealth Human Rights and Equal Opportunity Commission, the Western Australian Equal Opportunity Commission and the South Australian Equal Opportunity Commission.

#### **CASE 1: Impairment: goods and services**

A woman lodged a complaint of impairment discrimination after she allegedly received less favourable treatment in the interstate conversion of a driving licence.

The complainant stated that she was a paraplegic and had a current licence issued in another State. However, she claimed that when she tried to convert this to a local licence she had to complete a medical form and take a practical driving test. The woman claimed that the normal procedure for conversion of licences is a sight test only, and that the extra formalities she was subjected to had caused her delay and inconvenience and cost her money.

The respondents stated that due to a clerical error in the State of origin of the licence, the woman's licence did not show any evidence of her impairment. The complainant stated that she had also produced the old licence that contained this evidence, but the respondents stated that the officer at the licensing centre could not remember seeing this. The complaint was conciliated by the licensing authority refunding the money paid out by the complainant and by them initiating awareness raising sessions on the relevant issues with their staff.

#### **CASE 2: Sexuality: employment**

A man applied for a job as a clerk in the Public Service. He gained excellent marks in the clerical tests and was interviewed by a panel of three. One person asked him about his personal life and he told the panel that he was a homosexual. He was then told that he was not successful because the Public Service 'did not want those types'.

He complained to the Commissioner and was given a position in another government department.

#### **CASE 3: Age: employment**

A 61 year old woman complained that her new Manager, when he became aware of her age, advised her she would have to retire since it was the practice in the organisation that women retire at 60. The woman who was a sole parent and in

need of her income stated she was shocked and distressed by her Manager's advice since it appeared she would be required to leave within a week.

When the employer was advised of the complaint they responded that company policy was to give the woman the option of retiring at 60 since they were eligible for the pension at that age. The Manager indicated that he had perceived some problems in the woman's work and thought it was kinder to suggest she retire rather than address the performance issues. However, when asked for more details of the perceived performance problems the Manager acknowledged that he had not investigated the matter fully and had merely responded to a chance remark from the woman's Supervisor.

A conciliation conference was called and it was agreed that the employer would advise all employees that they had the right to continue working until they were 65 irrespective of sex. A memo was also sent to the complainant's fellow employees explaining why she had lodged a complaint and what the issues were which were raised by this complaint. A further meeting was arranged between the Manager, Supervisor and complainant to discuss her duty statement and to reassure her that there would be no adverse reports regarding performance issues placed on her file.

The complainant then indicated that these measures had resolved her complaint.

#### **CASE 4: Race: Accommodation.**

A man of Lebanese descent lodged a complaint alleging discrimination on the ground of race in accommodation. The complainant alleged that his application for accommodation with a public housing authority was treated less favourably. He alleged that he was given a lower priority and was placed on the 'wait turn' list and that persons of a different race under similar circumstances would have been placed on the 'priority' list or housed.

The respondent denied the man's application had been treated less favourably on the ground of his race and advised that there were other factors which placed the applicant in the 'wait turn' category. During the course of the investigation the complainant was offered and accepted accommodation in the area of his choice.

The complainant did not pursue the matter further with the Commission.

#### **Case 5. Marital Status: Accommodation**

A single father-of-two lodged a complaint against a real estate agent after his application for a rental property was rejected. He claimed that he was told the owners did not want a single parent to occupy their home. He stated that

when the property was re-advertised he applied again and was told that the owners hadn't changed their minds.

The reason for this refusal, according to the real estate agent, was not just because he was a single parent but also because as a man he was not considered to be as clean as a woman would be in housekeeping matters. The respondent denied making the alleged discriminatory statements and stated that the decision to decline the complainant's application was due to an adverse report from a previous property manager and an adverse credit check.

The complaint indicated that he did not accept the respondent's reasons but he eventually decided not to pursue his allegations.

#### **CASE 6: Sexual Harassment: employment**

A woman who worked as a technician in a food factory lodged a complaint of sexual harassment against the Production Manager, and their employers.

She alleged that he made frequent sexually suggestive remarks and that her rejection of these only made his behaviour more offensive. She claimed that he would stand close to her and unnecessarily touch her and that when she broke away from one embrace, the man said that she was sexy when she was angry. The woman stated that the Manager persistently called her at home and called to the house on several occasions.

The employers took immediate action on receipt of the allegations. They pointed out to the Manager verbally and in writing that a repeat of this behaviour would result in instant dismissal. The incidents were recorded on the Manager's file and referred to the Board of Directors. Further, the Manager apologised to the woman and undertook to stop the behaviour. This action resolved the woman's complaint.

#### **CASE 7: Union Activity: employment**

A man alleged that his applications for employment as a tradesman with a sub-contractor on stage two of a large construction site were repeatedly refused because of his political conviction. The man said he had previously worked on stage one of the construction and during that period of employment had been the on-site convener for his union. The man said that as the on-site convener he had taken public stands over safety and award issues, and that as a consequence the employer had forced him to terminate his employment. The man stated that his union activism was a manifestation of his socialist beliefs. The complainant also alleged that the sub-contractor's refusal to employ him, at a time when many other tradesmen were successful in securing employment on the site, was prompted by a policy



issued by joint venture partners who were the major contractors for the site. It was alleged that the joint venture partners vetted all employment applications submitted to the sub-contractors, and withheld approval for employment for any applicant who was active in union matters. The man noted he secured alternative employment for a short period with another sub-contractor, but that this employment was obtained only on the proviso he sign a declaration confirming he would play no role as a union representative during his employment. Both the sub-contractor and the joint venture partners denied absolutely the allegations made in the man's complaint. Since attempts to conciliate the matter were unsuccessful the complaint was referred to the Equal Opportunity Tribunal for adjudication.

**CASE 8: Political Belief: employment**

A complainant who had been employed for two months as a clerk in the lay-by section of a large department store stated that one Thursday evening he was seen selling the Socialist Workers newspapers in the Hay Street Mall by another member of staff. He claims this fact was mentioned to him by his supervisor the next day, and he was questioned about his actions. The following Tuesday he alleged he was told by the store's Personnel Officer that his employment was to be terminated. He asserted that he had never before been counselled about his work performance, and that this decision came as a shock to him. He also asserted he was not aware that he was employed on a three month trial, although the store argued strongly that he had been advised of this. The complaint was conciliated when the store agreed to employ the complainant in another area on a temporary basis. As he was planning to return to studies in the new year this arrangement was quite suitable for him. The complaint was conciliated.

**CASE 9: Medical Record: employment**

A young woman applied for employment with a major state government department. On completion of the medical examination she was informed that whilst she was obviously physically fit, the fact that she has psoriasis precluded her from joining this particular department. It was considered that even though she had had psoriasis since she was 17 years of age in later years she may develop arthritis, and the Department would then have to pay her out at their expense as medically unfit. A letter was written to the Department, outlining the complainant's allegations of discrimination, as a result of which the Department undertook a review of their policy on dermatological skin group disorders. The effect for the complainant of this reviewed and modified policy was that her suitability for employment could now be assessed on her skin condition at the time of application. Thus the prognosis would be based on the probability of an occurrence (or reoccurrence) of increased severity, or a development of widespread disease,

rather than allowing a past history or mere presence of the condition to arbitrarily preclude her acceptance. The complainant was informed of this new policy but chose not to apply for the position due to moving interstate.

**Case 10 Pregnancy: Employment**

A woman lodged a complaint against her employers whom she alleged were forcing her to take her maternity leave a month before it was due.

The complainant alleged that she was told her stomach was too big and that customers were commenting about this. She alleged also that she was not allowed to get to the toilet when she needed to and that she was made to wear a tight uniform belt.

The respondents took action to rectify the situation. Her date of maternity leave was adjusted to suit her and she was moved to an area with fewer restrictions. These actions resolved her complaints.

**Case 11 Sex: Employment.**

A man lodged a complaint against an organisation that he had approached for a position as a bar attendant. He alleged he had been told they were looking only for female staff.

The respondents in their reply stated that they could not ascertain who had given the complainant that information and offered to interview him. He was subsequently given a job by them and this resolved his complaint.