



PUBLIC SUBMISSION

**Submission on
Proposals for Racial and Religious Vilification
in the ACT**

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Executive Summary

The purpose of this submission is to address the ACT Human Rights Office's request for public comment on whether the Discrimination Act 1991 should be extended to cover religious vilification.

The Australian Christian Lobby (ACL) is opposed to making changes to the Discrimination Act 1991 (referred to from here on as the Act).

In summary, the basis of our position is:

1. Such laws have caused problems in Victoria and have been rejected by other states.
2. Freedom of Religion and Freedom of Speech would be further prohibited.
3. There is a fundamental difference between inherent attributes and those of personal choice.
4. Tolerance in a multicultural society would be further undermined.
5. Faith being tested by the law – an unholy mess?

Such laws have caused problems in Victoria and been rejected by other states.

As demonstrated by a couple of legal cases in Victoria, a religious vilification law is unworkable, limits freedom of speech, and is open to abuse by vexatious cases. Rather than leading to harmony between religious groups, it actually exacerbates divisions. The Victorian law (the [Racial and Religious Tolerance Act 2001](#) pdf file 112KB)) assumes two quiet different issues: race and religion are on parity. Race cannot be helped. You are born into one race and remain a member of that race for the rest of your life. But religion is different. While most people at first follow the religious practices of their parents or community, when older, people will often

accept or reject that religious upbringing. Religious conversion is a chief example of this.

The current Victorian Parliament in the debate, 4th May 2006, on the amendments to the Racial and Religious Tolerance Act 2001 responded to major problems with its own religious vilification provisions and acknowledged that the issue has caused more concern among religious groups in the State than any other issue in living memory. For these reasons, NSW, WA and SA have overwhelmingly rejected the need for such legislation. The Victorian Liberal and National Parties also oppose such provisions in law. At the federal level, both the Labor and Liberal Parties have rejected the need for such laws.

Freedom of Religion and Freedom of Speech would be further prohibited

The right to argue one's case, to criticise other points of view, to point out differences of religious and political viewpoints, these are all fundamentals of a free and democratic society. There is a serious risk of giving government officials the right to decide who is allowed to debate issues, and how that debate will take place. If such a move were to occur under ACT, effectively we would be moving away from freedom and towards repression. Allowing state authorities make decisions on questions of political and religious truth, we would risk replacing democracy for tyranny.

It is vitally important that individuals be able to have freedom of religion and freedom of speech. The only way this freedom can be achieved is if individuals have access to the ideas of many different religions. If religious groups are unable to express their ideas and critique one another's beliefs for fear of offending another religious group, individuals will no longer be able to search for truth. All religious organisations must be able to proclaim their beliefs freely, however offensive it is or is perceived to be.

Professor Patrick Parkinson of Sydney University's Faculty of Law, writes, "To a great extent, Australian laws which prohibit discrimination represent shared values and beliefs in the Australian community. The principle of giving people a 'fair go' irrespective of race, religion, political belief, gender or sexual orientation is a widely held moral value...However, recent laws passed in Victoria, Queensland and

Tasmania on religious vilification threaten that shared consensus, and are causing great division. At the heart of the debate about these laws is religious freedom: not the freedom to be intolerant, and certainly not the freedom to vilify – neither of these are legitimate expressions of religious freedom. Rather, at the issue is the freedom to express views about truth and falsehood, right and wrong, good and evil, which may offend others who have a different view on these matters. Religious vilification laws in practice, if not in theory, pose a grave danger to this freedom because of the collateral damage that can be caused by a legislative strategy to enforce tolerance.¹

ACL is apprehensive of legislation that limits the ability of religions to proclaim their beliefs: although this may not be the intention of any law it is still an undesirable and unmanageable consequence. Religious beliefs are generally based on the presupposition that other religions are incorrect. ACL believes all religions should be able to articulate their beliefs without fear of prosecution. In some cases this activity may be perceived by others of another religion to be offensive or slanderous. When a religion proclaims to have an exclusive truth, it should not be a crime to declare that or to refute it. In 2004, then WA Premier Geoff Gallop acknowledged that “one person’s religious affirmation can be someone else’s vilification’.

Freedom of speech must also be protected. It is believed by many to be the most crucial freedom in a democratic society. Protecting freedom of speech does require a level of responsibility, which is addressed in specific legislation such as defamation law.

In his paper ‘The Problem with Vilification Legislation’, Bill Muehlenberg writes that, “these laws are a genuine threat to freedom of speech. They effectively clamp down on the discussion of important religious, theological, social and ethical issues. The answer to bad speech is not shutting speech down. It is rebutting it with good speech.”

The Discussion Paper briefly asks whether vilification on other grounds should be made an offence. ACL’s comments on the problems with religious vilification laws

¹ This quote is taken from Professor Patrick Parkinson’s paper, “Enforcing Tolerance: Vilification Laws and Religious Freedom in Australia”.

also apply vilification for any other reasons. Perhaps the most likely next candidate would be vilification on the grounds of sexual orientation and lawful sexual activity (as being considered in Tasmania). People have a right to their own moral views on sexuality, including homosexuality. To the extent that those moral views are informed by religious beliefs, they also have the right to hold and express those beliefs. Therefore, freedom of speech informed by religious beliefs, and freedom of religion itself is also at risk if the proposed changes were undertaken.

However noble and good the intentions of amending the Act may be, such amendments will further inhibit freedom of speech, freedom of religion and stifle genuine religious debate for fear of litigation. Individuals and groups should be able to listen to other group's points of view without taking offence.

Fundamental differences between inherent attributes and personal choice

There is a fundamental difference between inherent attributes and those of personal choice. For example, this inherent difference applies to matters of race and religion. We are born into a particular race – this is something beyond our control. The strength of our multicultural society relies heavily on the ability of all citizens to respect each other regardless of nationality or ethnic backgrounds.

However, religious belief is a matter of personal choice and therefore individuals should be able to engage in discussion about their religious beliefs as argued in the previous point. As religious beliefs are sensitive and strongly held, these discussions will sometimes be heated. As Bill Muehlenberg states “when a belief or behaviour is chosen, it is quite different from something that is intrinsic to a person and cannot be altered.”²

Tolerance in a multicultural society would be further undermined

The suggested amendments in the ACT could effectively undermine multiculturalism. Religious truth claims, by definition, imply that some religions are

² Quote taken from Bill Muehlenberg's paper: The Problem with Vilification Legislation

true, while some are false. They imply that some actions are good, some are bad. And they imply that some religious activities are appropriate, while some are not. Of course a Muslim will be offended if a Christian says that Jesus is God. Of course a Hindu will be offended if a Muslim claims that only Islam is the final and true religion. Of course an atheist will be offended if a Jew insists that God exists. Of course a Christian will be offended if a Muslim says Jesus did not die on the cross and rise again. The very nature of religious truth claims will involve offence on the part of those who do not adhere to them.

If an atheist scoffs at the claims of Mohamed and mocks the Koran, of course a devout Muslim will take offence. If homosexual activists send up nuns in a pride march, of course Catholics will feel ridiculed and vilified. If someone says that Jesus is the only path to eternal life, of course universalists will be offended.

To seek to do away with all feeling of ridicule, offence and insult would be to attempt to deny most religions (and especially those which make exclusive truth claims) of most of their core doctrines and teachings. If the ACT Government were to reach for such a lofty sentimentality what would these religions have left? Our culture would be left with a watered down lowest-common denominator mish-mash that offends no one and fails to fully satisfy the need for diversity, contentment and fulfilment. One aim of legislative reform could be a lowest-common denominator approach, where belief and faith is potentially devoid of truth, where the government controls the religion e.g. what the church teaches and the people learn. Evidence from Russia behind the 'iron curtain' showed the effect of this government propaganda that denied the people access to the truth and as result drove the people to defy the government and indeed some religious groups become militant.

Such prohibitions do not promote tolerance and unity; but rather in practice have proven to create division and intolerance. Such laws do not and will not lead to a spirit of tolerance, compassion and respect for others. They have the opposite effect. This occurred in China with the explosion in growth of the underground church during the oppressive Communist years.

The amendments proposed in the ACT would only serve to infringe on our national spirit and our local community. The risk is too great. Our Australian attitude of

'show me the evidence, what is the difference' is likely to be forced 'underground'. A hallmark of an educated free society is open dialogue and learned comparative analysis – this must be maintained, particularly in parliaments, universities, colleges and churches and seminaries. Then of course there are the feisty discussions and debates that occur in our clubs and pubs. Would such freedoms and liberties be threatened by amendments to the Discrimination Act 1991?

Evidence from Victoria demonstrates that vilification laws are bad laws because they have potential to create a new crime based on so call hate crimes. Hate crime laws punish people for not saying politically correct thoughts. But who determines what a hate crime is? And how? If a homosexual activist calls a Christian a bigot, is he guilty of a hate crime? If a secularist calls a concerned conservative Catholic a religious Taliban, is that a hate crime? Indeed, there seem to be a lot of double standards here. Christians are vilified everyday, but do not hear those screaming for tolerance and acceptance rushing to their defence. Clearly we have evidence from Victoria that if Christian's dare stand up for what he or she believes in, or provides scholarly comparative analyses of faiths they are dragged off to the tribunals.

Through amendments to the ACT Discrimination Act 1991 there is potential to create a crime where none previously existed. By simply expressing a point of view, which results in no outward action, a judge can rule that such comments may have incited violence or hatred. In effect, the law has potential to create a crime without victims. There is only the potential for an unpleasant outcome to occur. Someone, somewhere, sometime might be offended. No crime has taken place - just some vague potential for someone to feel offended, maybe.

Faith being tested by the law – an unholy mess?

The Victorian case referred to above highlights the anomaly of a secular judge or authority making complex judgments on matters of religious and theological dispute. When religious experts are quite divided on many questions of theology and religion, how can we expect the government appointed secular arbiter - who knows little or nothing of the theological subtleties and complexities - to make a helpful and informed decision? This is a case of secular government getting in the way of freedom of religious expression.

Based on our knowledge of the application of this type of legislation in Victoria, this confirms ACL's position that it is totally inappropriate for the ACT Government to create laws that would empower a judge who is skilled in matters of the law to make determinations on the grounds of belief and faith. We are strongly opposed to the ACT Government encroaching into religious matters. Religious discussion and debate should be allowed to take place in the public arena, and not be stifled, controlled or censored by an intrusive state apparatus. It is exactly the hallmark of totalitarian states when governments decide upon questions of religion and belief. By telling people what to think and what to believe, the state moves well beyond its role in a democratic society.

Conclusion

In conclusion, it is vital that freedom of speech and freedom of religion be protected, not prohibited. The strength of our democracy relies on these important rights and responsibilities. While the intent of amending the Act may be good, we strongly believe it will have the opposite effect of that intended. This point has been reinforced in our arguments.

Claims of offence, humiliation, intimidation, insult and ridicule are very subjective in nature. How does one define the terms offend, humiliate, intimidate, insult and ridicule? Such reactions are subjective as they do vary from person to person. What may amount to one person as offence for example, may appear to another to be a bit of harmless fun or humour. For example, some 'reasonable people' are offended and much more sensitive than others, and react to different situations differently, affected by various other circumstances in their lives. Such provisions would make for very bad law, and further serve to create division and animosity in society – rather than the harmony intended.

Therefore, the ACL strongly opposes amending the Discrimination Act 1991 to include religious vilification. The ACT does not need such provisions in law.

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