



SUBMISSION

Review of the Complaints Handling and Dispute Resolution Provisions of the Anti-Discrimination Act 1998

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Executive Summary

The purpose of this submission is to address Question 61 of the discussion paper which asks:

'Should section 17 of the Act be amended to provide that a person must not engage in any conduct that offends, humiliates, intimidates, insults or ridicules another person on the basis of any attribute referred to in section 16?'

The Australian Christian Lobby (ACL) is opposed to making changes to section 17 of the Anti-Discrimination Act 1998 (referred to from here on as the Act) in accordance with Question 61 of the Discussion Paper, where those changes extend to the following attributes of section 16:

(m) political belief or affiliation, (n) political activity, (o) religious belief or affiliation, (p) religious activity, (c) sexual orientation, and (d) lawful sexual activity.

On the basis of the arguments below, we ask that the attributes in section 16 of the Act mentioned above are excluded from any amendments to section 17.

In summary, the basis of our position is:

1. The Act already includes provisions against 'inciting hatred'.
2. Freedom of Religion and Freedom of Speech would be further prohibited.
3. Robust political debate would be inhibited.
4. There is a fundamental difference between inherent attributes and those of personal choice.
5. Tolerance in a multicultural society would be further undermined.

The Act already includes provisions against 'inciting hatred'

Section 19 of the Act already provides that 'a person, by a public act, must not incite hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons on the ground of -

- (c) the sexual orientation or lawful sexual activity of the person or any member of the group; or
- (d) the religious belief or affiliation or religious activity of the person or any member of the group.

As demonstrated by a couple of legal cases in Victoria, a provision in law such as section 19 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 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.

Going one step further than the current provisions of section 19 of the Act by prohibiting conduct that offends, humiliates, intimidates, insults or ridicules another person on the grounds of religious belief or affiliation, religious activity, political belief or affiliation, political activity, sexual orientation or lawful sexual activity, would even further impinge on freedom of speech, and be even more susceptible to abuse by vexatious cases than those referred to above.

The discussion paper states that 'under contemporary social standards, it would be appropriate that the prohibited conduct described in section 17 should apply to all the attributes listed in section 16, not just a select few.' This appears to be an unfounded assertion, and one has to ask on what basis such an assumption is made?

Freedom of Religion and Freedom of Speech would be further prohibited

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".

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

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."

Regarding sexual orientation and lawful sexual activity, 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 section 17 of 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.

Robust political debate would be inhibited

In the same way that religious belief is a matter of personal choice, political belief, affiliation and activity is also a matter of personal choice. One has to ask where the consequences of amending provisions to include political belief or affiliation, or political activity will end up. The current culture of our parliamentary system of debate is such that one can easily claim to be offended, humiliated, intimidated, insulted or ridiculed. This happens on a daily basis, both within our parliaments and outside, between parliamentarians and between members of the community and parliamentarians.

What would become of grassroots political activity? Fundamental to our democracy is the ability of all citizens to participate in the political process. This participatory activity includes various forms of lobbying and involvement in public debate, writing letters to the editor, public rallies, media interviews and advertisements. If it becomes illegal to offend, humiliate, intimidate, insult or ridicule someone on the basis of political activity, or political belief or affiliation, the very foundation of our democracy will be undermined and eroded.

The suggestion of such amendments seems to further highlight the fact that the consequences of such law have not been properly considered. We can only begin to imagine the litigation and other undesirable consequences that would result under section 17 of the Act if it indeed is amended to prohibit such conduct.

There is a fundamental difference between inherent attributes and those of 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. Likewise, matters of age and disability are inherent attributes over which the individual has no control. Interestingly, the race and disability of a person are already sufficiently covered by section 19 of the Act.

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.

Section 19(c) more than sufficiently covers conduct that incites hatred on the grounds of sexual orientation or lawful sexual activity. As previously argued, an individual's moral views on such matters informed by religious beliefs should be able to be held and expressed.

The question we should be asking is not about whether to include all the attributes of section 16 under the provisions of section 17, but which ones. And this question of inherent attributes over which an individual has no choice or control in comparison to those that are matters of choice, must be central to this discussion. 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 would undermine multiculturalism. 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 our fellow-man. They have the opposite effect.

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

The amendments 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 like to be forced 'underground'. A hallmark of an educated free society is open dialogue and comparative analysis – this must be maintained, particularly in universities, colleges and churches and seminaries.

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 section 17 of the Act to include attributes such as sexual orientation, lawful sexual activity, political belief or affiliation, political activity, religious belief or affiliation, and religious activity 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? While the section states that the circumstances must be such that 'a reasonable person, having regard to all the circumstances, would have anticipated that the other person be offended, humiliated, intimidated, insulted or ridiculed,' 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 amendments in accordance with Question 61 including (c) sexual orientation, (d) lawful sexual activity, (m) political belief or affiliation, (n) political activity, (o) religious belief or affiliation, and (p) religious activity in section 16. The ACL urges the Government to retain the status quo in relation to these attributes.

Tasmania does not need such provisions in law.

The Australian Christian Lobby

The Australian Christian Lobby (ACL) is a non-party partisan, non-denominational political lobby group that represents the views of hundreds of churches and thousands of supporters Australia wide. The Christian constituency reflects a sizeable percentage of the broader community. 68% of the Australian population declared themselves Christian in the 2001 ABS Census and about 2 million Australians attend a church regularly. As such, while ACL does not claim to speak for all these people, its policy suggestions may resonate with large numbers of them.