

A response to the review of the NT Anti-Discrimination Act

We concur that the government is right to expect religious communities to operate within the law, and that they will not inflict any harm, particularly in ways that contravene the laws of the land.

RELIGIOUS EXEMPTIONS

The review asks the following question.

- *Religious or cultural bodies currently have exemptions under the Act for certain attributes and areas if in line with the religious doctrines necessary to avoid offending the cultural or religious sensitivities of people of that particular culture or religion. The exemptions apply automatically for religious organisations and do not require any justification by the religious organisation as to why the exemption should apply. To promote equality of opportunity for all Territorians, the removal of some of these exemptions is being considered.*
- *The Act could be amended to remove the current exemptions for religious bodies in the areas of religious educational institutions, accommodation under the direction or control of a body established for religious purposes and access to religious sites. Religious or cultural bodies would instead be required to apply for an exemption with the ADC and justify why their service requires a particular exemption.*

Out of respect for religious freedom, governments in Australia enable faith-based organisations such as church-run schools, health services and social welfare services to preserve their special religious culture (ethos, soul) by exempting them from some aspects of anti-discrimination law. Faith-based organisations preserve their special religious culture by, for example, reserving key leadership positions for committed believers, engaging in regular worship, writing into position descriptions the requirement to support the ethos and mission of the organisation, and in the case of schools, potentially prioritising students of a particular religious background.

Churches understand that these protections are a privilege, but we argue that removing them would potentially put these services, which have a utility for the whole of society, at risk. One can hardly expect a faith community to deny its very foundations in the good works it undertakes for the good of all. One can also not imagine a political party being forced to hire staff who are opposed to their ethos and policies. It is not realistic to insist that faith-based organisations set aside their foundational religious teachings in order to accommodate those who dispute them.

The ethos of any school is critical to that school, a religious school or a philosophical school. There are currently allowances for Christian schools to ask parents and students to accept and adhere to the ethos of the school. How will the suggested changes undermine that essential relationship between school and student? If the parents of the school refuse to allow the child's participation in activities which are essential to the spiritual faith of the school, what response of the school would be considered discrimination?

The essential ethos of a school can easily be recognized and just as easily be undermined, particularly by staff. Students are often fully aware of staff who do not fulfil the ethos of the school and these concerns quickly undermine teacher and student relationship.

Under the presented changes, the removal of all religious and cultural exemptions is undermined by the reference to the protections of the indigenous culture. This approach establishes a clear distinction between indigenous spirituality and all other religious communities.

The religious voice must be accorded the same respect as non-religious or atheist voices in debates on matters such as marriage and physician-assisted suicide. We gain nothing as a society, but lose a great deal, if we undermine the faith and value systems that have brought us this far as a free and reasonable nation. The removal of religious beliefs as a basis for receiving exemptions challenges the right of the individual to believe and act according to their faith.

VILIFICATION

The review asks the following question.

- All jurisdictions except the Territory have enacted legislation that makes public incitement to acts of racial hatred either an unlawful act or a criminal offence or both. Territorians who experience vilification because of their race only have protections and rights under the Racial Discrimination Act 1975 (Cth). There is currently no Territory law providing the equivalent rights and protection, aside from criminal laws that may cover some conduct (for example, the threat to kill). Territorians who experience vilification need to lodge a complaint under the Racial Discrimination Act 1975 (Cth) with the Australian Human Rights Commission in Sydney to obtain protection. There are also no federal or Territory laws that protect against vilification on the basis of religious belief, disability, sexual orientation, gender identity or any other attribute under the Act.
- The Act could be amended to make it unlawful for a person to do an act, other than in private (for example at home), if the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and the act is done because of a characteristic of that person or they are members of the group on the basis of race, disability, sexual orientation, religious belief, gender identity or intersex status.

The introduction of the term 'vilification' without clear definition but with the accompanying words 'offend and insult' creates a situation where freedom of speech is impinged upon. The whole of modern western society is founded on the freedom to express an opinion without fear of condemnation. But our desire to protect all people from abuse in all forms demands that vilification be proscribed in this legislation.

The NSW Anti-Discrimination Act provides a clear definition for 'extreme or pervasive' vilification which would satisfactorily achieve the objectives of the question without undermining freedom of speech. As defined by the Anti-Discrimination Board of NSW:

NSW anti-discrimination law defines vilification as a public act that could incite or encourage hatred, serious contempt or severe ridicule towards people because of the above characteristics. The vilification law only covers acts that are in public. It does not cover acts that are not public, for example abuse over a back fence that no-one else can hear.

Public acts could include the following:

- remarks in a newspaper, journal or other publications
- remarks on radio or television
- material on the internet, including social networking sites such as Facebook and micro-blogging services such as Twitter
- graffiti
- putting up posters or stickers
- verbal abuse
- making speeches or statements
- making gestures
- wearing badges or clothes with slogans on them.

http://www.antidiscrimination.justice.nsw.gov.au/Pages/adb1_antidiscriminationlaw/adb1_vilification.aspx

As legislated by the NSW act it reads:

20C Racial vilification unlawful

(1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.

(2) Nothing in this section renders unlawful:

(a) a fair report of a public act referred to in subsection (1), or

(b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the Defamation Act 2005 or otherwise) in proceedings for defamation, or

(c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

20D Offence of serious racial vilification

(1) A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include:

(a) threatening physical harm towards, or towards any property of, the person or group of persons, or

(b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

The desire to contain and control 'extreme or pervasive' vilification is admirable. Vilification need not be limited to a racial issue; any group subject to these acts could be protected under that act. However, the risk in setting a low bar of 'offend and insult' is that all free speech will be restricted and the ability to engage in civil conversation and debate will be reduced.