



From: [Redacted]
Sent: Wednesday, 31 January 2018 6:53 AM
To: Policy AGD
Subject: Anti discrimination act review

Follow Up Flag: Follow up
Flag Status: Completed

Dear review panel

Thank you for providing the public with an opportunity to comment on the proposed reforms to the Anti Discrimination Act. There is much to be commended in the proposed changes. As a solicitor practicing in the human rights jurisdiction, I appreciate that the government plays a significant role in ensuring that vulnerable and / or minority groups do not experience discrimination or treatment motivated by hate. I also value the significant progress we have made in the area of freedom of speech, conscience, religious and political views and appreciate that our Australian society, and the Northern Territory in particular, promotes a robust contest of ideas and thoughtful discussion on matters of significance. My concerns in relation to the proposed reforms relate primarily to the impact that some of the reforms may have on these fundamental ideals, in some cases swinging the balance to far in one particular direction.

Gender and sexuality protections

There are a wide range of community views on the role gender and sexuality plays in our society. I agree that discriminatory conduct in relation to a person’s gender and sexuality should be prevented. My primary concern is that reforms proposed as a package - including the vilification provisions and the possibility of exemptions for religious bodies being removed - can potentially work to enforce a certain gender and sexuality theory not held by all members of the community without the opportunity for reasonable discussion or the holding of alternately views. Whilst progression in the protection of rights is commendable, there are some traditional views which should not lightly be put to the side, especially those on which our society has always operated. There needs to be room for people to practice and maintain these long held values and beliefs. The legislature should be cautious of prescribing a certain view of societal institutions.

Anti vilification provisions

I absolutely agree that conduct that is motivated by hatred and intended to degrade vulnerable members of our community should be prevented. As a member of a faith based community I understand that the discrimination provisions seek to strike a delicate balance between the rights of individuals who face an increased potential for discrimination and the foundational values of freedom of belief, opinion and expression. From time to time, I myself experience conduct or comment in a way that offends, hurts or insults (often to a lesser extent than other groups) - intentionally, incidentally or accidentally. I do acknowledge however that this can be a cost of a society that promotes open dialogue and robust and reasonable discussion on matters of significance. We are a society that values ideas and we have the freedom to dialogue on matters that are important to us - relationships, identity and purpose. I greatly enjoy the regular discussions, formal and informal, I have with a range of cultural and faith groups different to my own. With many of my friends from Iran, we enjoy a depth of conversation and exchange of ideas, not permissible in their country of origin. Respectful yet challenging discussion on matters important to our society is an ideal I value greatly. I do agree though that the state has a role to play in protecting individuals from conduct that is motivated by hatred.

I am concerned however that establishing a threshold at the level of insult or offend sets the bar too low and may have a stifling effect on open community discussion. The proposed vilification test is very subjective and I believe sets a lower threshold than the term vilification implies. The subjectivity creates an uncertainty that makes the provision difficult to apply and has the potential to paralyse community discussion. People will be offended and insulted in a myriad of different ways with some people being very easily offended whilst others will not be. This could lead to a situation where people are afraid to express any opinion as it risks offending another and that the protection will become oppressive and regressive to open dialogue. The test should be higher and incorporate some objective component (whilst also recognising that subjective experiences are informative). Insult, offend or humiliate is too subjective – “degrade or promote hatred” could be an appropriate test.

I believe that the protections should be afforded to these other attributes if they are cast at this higher level.

Protections for lawful sex work

Whilst there appears a justifiable rationale for including lawful sex work as a protected attribute, I don't agree that 'lawful sexual activity' is appropriate as an attribute. This is raised in the discussion paper but it is not clear whether this is being proposed as a provision. This broader proposal goes much further than the concern underlying the inclusion - that is protecting the rights of sex workers. A provision so broad would appear to require the community to accept and endorse the actual practice of all manner of lawful sexual activity which could not properly be described as a group or attribute requiring protection.

Exemption for religious organisations

Whilst I do not support the removal of exemptions for religious organisations, this should not be interpreted as saying that I believe religious organisations should be able to treat freely people unfairly. Many faith groups hold particular views of about how we relate as members of a community and about certain types of behaviours and attitudes. For the most part, a much broader theology of life and relationships under lies these beliefs and whilst, in a democratic society such as ours, no particular view should be seen as the right one, they are nonetheless valid views, opinions and beliefs. Organisations that serve communities of these believers or facilitate their fellowship should be allowed to structure their organisation, including employment practices, around those values or beliefs. Not all people will share these values and beliefs and they therefore have the very legitimate option of not engaging with, or seeking the services of these organisations. As an example we are greatly served by one of the NT Christian Schools providing a pastoral and faith relevant education experience for our children. Myself and my wife strongly believe that this school should be able to continue employment practices which, together with all the other aspects of this school, promote this very valuable, yet different education experience.

Representative complaints model

I do support some facility to enable broader systemic matters to be considered by the ADC. The concern I have with the proposed model is that it does not require the permission or necessarily the involvement of the person who has suffered the discriminatory treatment.

It is an important principle of our system that people with the capacity to bring complaints or commence a legal action should do so and be the primary driver behind how the issue progresses. This is an important element of effective dispute resolution processes as what one person considers to be a resolution to their own issue, may be different from what another person views as a representative.

Introducing a representative complaints body should not come at the cost of fully supporting measures which help individuals articulate their own complaints. For example, if the inability relates to a communication barrier such as language or hearing impairment, then those barriers should first be removed

993

and every attempt made to enable a person to make their own complaint. Education and resources could be provided to advocacy bodies to assist their members to articulate and make their own complaints.

One option could be for the ADC to use an 'own motion' investigative power (like that held by Ombudsmen) to look at broader systemic issues – based on representations by an advocacy body or through observing particular trends in the complaints it receives.

I wish you well with the remainder of your review.

Sincerely

A large black rectangular redaction box covering the signature area.