Submission

Inquiry into

Consolidation of Commonwealth anti-discrimination legislation

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Salt Shakers is a Christian ethics organisation that engages in discussions in the public square and promotes a Christian perspective on the issues of our time. Thousands of people across Australia receive our monthly journal and email news.

This Submission includes an Overview, Recommendations and Discussion.

Overview

Anti-discrimination legislation always pits one person's so-called 'rights' against those of another person. Whichever group is seen to be the most disadvantaged, or has the loudest voice, at the time is usually favoured by such laws.

In some instances, such as race, gender or age, the attributes that are protected by anti-discrimination law are 'inherent' or 'innate' – characteristics we are born with and cannot change. Even in those cases, anti-discrimination law removes freedom of expression and choice from employers and those supplying accommodation and so on.

Other attributes are not inherent or innate: the ones flagged by the Discussion Paper as being proposed by the government to add to anti-discrimination laws – sexual orientation and gender identity – fit into the 'non-inherent' category. Non-inherent attributes, such as sexual orientation, gender identity, and religion, should not be included in anti-discrimination laws.

Salt Shakers opposes any form of anti-discrimination legislation on the basis that it impinges on the rights of other people. Such laws often remove freedom of speech and freedom of choice. Also, once a complaint is made it has to be defended. We have followed many such cases of complaints made under anti-discrimination and vilification law – complaints can be made on flimsy grounds, the 'complaint' is considered by an 'equal opportunity' or 'human rights' tribunal. The rule of law is not followed in such tribunals.
As detailed below, such defences can cost hundreds of thousands of dollars.

Our conclusion for this Inquiry is that there should be no extension of anti-discrimination laws at the Commonwealth level in Australia.

Recommendations

We recommend that:

1. The government does not consolidate the various anti-discrimination laws into one Act as this would inevitably lead to an increase in the attributes protected and also in the penalties.

2. The government does not add anti-discrimination laws based on sexual orientation or gender identity to the Commonwealth anti-discrimination laws, as these attributes are not 'inherent' or 'innate' attributes and they remove freedom of speech, religion and expression from other people.

3. The government does not add protection for any additional attributes to the Commonwealth anti-discrimination laws. In particular, we do not want an anti-discrimination law based on religion, since religion is a choice and having such laws impinges on people's freedom of religion and expression, as protected in the *Universal Declaration of Human Rights* at Article 18.

4. The government does not add any additional attributes to the Commonwealth vilification legislation – for instance, on the basis of religion or sexual orientation or gender identity.

Discussion

The proliferation of anti-discrimination laws in both state and federal legislation has placed an inordinate burden on business and individuals. Whilst the original intent of the laws may have been to stop unpleasant and even illegal treatment of people, much of this is already covered by the normal laws.

In many cases, it has led to complaints being made, and people then having to defend themselves against a complaint, at their own expense.

In this discussion, we will cover several areas, relating to our recommendations.

1. Not having a single Act that consolidates all anti-discrimination laws

The UK government recently passed the **Equality Act** – their version of having one law that combines all anti-discrimination laws.
In enacting that *Equality Act*, new laws were included and the whole system of 'anti-discrimination law' was 'beefed up'… new attributes protected, and increased penalties.

Already we are seeing more people brought before the legal system in the UK, particularly complaints made against Christians on the basis of discrimination on the attributes of sexual orientation and religion.

Here are several of the high-profile cases:

In one case, a homosexual couple tried to book at a small guest house where the owners, a Christian couple named Peter and Hazelmary Bull, took guests into their guest house which was also their own home – they had a clear policy that stated they did not have unmarried couples sharing a double room and so they refused the booking. Despite this, the homosexuals took the couple to the Tribunal.

The homosexuals eventually won because of the wording of the Equality Act. They are appealing against the decision.
Case outline at http://www.equalityhumanrights.com/legal-and-policy/legal-updates/peter-and-hazel-mary-bull-v-stephen-preddy-and-martyn-hall/

In another case, a woman, Lillian Ladele, who was a registrar for a local Council, was taken to court because she refused to carry out ceremonies that register a civil partnership between two homosexuals.
See article at http://uk.reuters.com/article/2009/12/15/uk-britain-registrar-idUKTRE5BE20420091215

Our concern with having a single Act is that additional attributes will be included – and that additional and increased penalties will be included in the Act in a similar way to the situation in the UK.

2. Anti-discrimination laws based on sexual orientation and gender identity

Sexual orientation and gender identity are not 'inherent' attributes as are race and gender. To include these attributes would be to move to an ever-widening range of attributes.

There is no evidence that people are born homosexual or bisexual or lesbian. All of the studies that have been done have been inconclusive and have not been replicated.
The key study is the Australian twins study done by Pillard and Bailey. They found that, if one identical twin is homosexual there is a 25% chance that the identical twin will be homosexual. In the case of fraternal twins this reduced to 10%.
The 'nature versus nurture' argument has long been discussed. Given the nurture component and that fact that 100% of the identical twins are not BOTH homosexual, the only conclusion is that homosexuality is not genetic.
See details and links on this page of our website:
http://www.saltshakers.org.au/component/content/article/58-homosexuality/522-genetics

Research scientist Dr Neil Whitehead has thoroughly researched all of the studies into genetics and sexuality and found no evidence that homosexuality is genetic.
See http://www.mygenes.co.nz/

There are many problems with anti-discrimination laws based on sexuality.
Often a complaint is made and then the 'offending party' has to justify their behaviour.

The current campaign for same-sex 'marriage' has already led to claims of 'discrimination' from homosexual activists. One activist told a reporter on MTR radio that if they were discriminated against by not being giving them same-sex 'marriage' then he - the activist would 'see them in the tribunal.'

Anti-discrimination laws based on sexuality impinge on the genuinely held moral and religious beliefs of Christians. Implementing such laws at a federal level will bring division in the community and will impinge on freedom of religion and expression.

In Victoria, the case of *Christian Youth Camps*, where a Christian camp refused to take a booking from a homosexual group, is very significant. They were found 'guilty' by the tribunal – but it meant

opposing theologians fighting it out in court as to what 'Christian' meant' and what are doctrines of Christianity. The courts are no place for such discussion.
It appears that this was a targeted attack by the group – the camp site is the largest in Victoria and the homosexuals only had a small group – there are many other campsites available that would have – and did – accept them.
CYC is appealing against the decision at the Victorian Supreme Court (Court of Appeal) … at great expense!

Gender Identity is another attribute that is not inherent. Again, there is no evidence that 'gender identity' is innate – in other words, that a person has a female mind in a male body or vice-versa. Of course, the medical intersex cases - where people may have chromosome or genitalia ambiguities - are quite different and are not part of 'gender identity'.

There have been numerous cases were people have been diagnosed with gender identity disorders and had sex-re-assignment surgery only to later realise that it did not solve their emotional problems and that they regretted the surgery. Alan Finch is one such person.
The Monash Gender Identity clinic has been the subject of numerous reviews and much criticism over the past few years for their treatment of such patients.

The situation where employers are forced to deal with a situation where a person can change from being a man to a woman – and even change back again – is unreasonable. Having anti-discrimination laws for this attribute removes the ability of employers and others to make decisions in the best interest of their business.
In one US state where they did enact such legislation, they included a rider that the business only had to cope with three changes in an 18 month period!

3. Addition of other attributes

We do not want to see other 'attributes' added to the anti-discrimination legislation.
Particularly in the area of religious discrimination, numerous cases have impinged on religious freedom.

The Victorian Labor government changed the Equal Opportunity Act to take away the right of Christian schools and organisations to specify that a person must be a Christian – or that they must not be homosexual or living in a *de facto* situation.

This placed incredible burdens on Christian schools and organisations which are acting on their genuinely held beliefs.

Organisations and individuals must be allowed to follow the principles of their religion without being hauled before Tribunals and courts to 'explain'.

In addition the notion of adding 'other attributes' relating to the Fair Work Act, or anything else, is simply increasing the amount of litigation and angst for everyone. We oppose such additions.

4. Vilification legislation - divisive and harmful

Various states have adopted vilification legislation – on race, religion, sexuality etc.
Currently the Commonwealth only has racial vilification laws – and we sincerely hope that no more are added. In fact, we would like to see that law repealed.

Often vilification complaints have been made by groups who want to try and shut down discussion of particular ideas. For instance, two pastors gave a seminar in Melbourne in 2002 on Islam. One man, Pastor Daniel Scot, critiqued the religion, quoting from the Quran and other sources.

Three Muslims complained, although they were not personally mentioned by the pastor. The pastors lost at the Tribunal but eventually won on appeal after a five-year battle. However, the case cost them (and supporters) nearly $500,000. The Islamic group got free legal support from a group set up to provide assistance in public interest cases – but they would not provide help to the two pastors! The 'complainants got in first and they got the help!

In one state vilification case, where we assisted the person complained about, a complaint of 'vilification' based on 'sexuality' was made against a person who had written an article. The organisation complained of being 'offended or insulted'. When the relevant state equal opportunity commission responded, saying that the law didn't cover being 'insulted or offended' – telling the group what the law DID say - the complainant organisation re-submitted their 'complaint… now complaining the author had 'incited hatred' against them! And the state body accepted the complaint!
Thankfully the group dropped the complaint against the author, but pursued it against the newspaper.

A Labor Councillor in Victoria, Rob Wilson, was taken to the Tribunal for making comments about witchcraft and a local witch in his area – a person who had identified themselves as a witch previously. The person took him to the Tribunal – and obtained an 'out-of-court' settlement.
The point is, that people should be able to criticise another religion – and even a person on the basis of their religion - in the fair debate in the public square.

Such legislation has a 'chilling' factor – people become afraid to speak up because they are afraid of such complaints.

Of particular concern at the federal level is the fact that *the Racial Hatred Act* actually does use those words 'insult or offend'. Such a law invites complaints and makes it easy for complainants to 'prove' their case – after all, it is easy to be 'offended'!

We recommend that these words be removed from the *Racial Hatred* Act.

We oppose any form of vilification law. However, it is totally unacceptable to have a law that relies on 'offending or insulting'!

Conclusion

In conclusion, we refer again to the overview….

Don't make a single Act, don't include anti-discrimination laws based on sexual orientation or gender identity – or religion or religious belief, or the *Fair Work Act* etc, don't add any new 'attributes' and don't introduce vilification legislation!

On the positive side (we think those are positive anyway) please DO protect and preserve our freedom of thought, conscience and religion.