To Whom It May Concern,

Please accept this submission in response to the exposure raft of the Religious Discrimination Bill 2019. It has two parts, the first about the impact of the Bill on LGBTIQ people in Tasmania and the second on the impact of the Bill on section 17(1) of the Tasmanian Anti-Discrimination Act. There are six attachments to this submission. We are happy for the submission and attachments to be made public.

Best wishes,
Rodney Croome

Equality Tasmania

Equality Tasmania (formerly the Tasmanian Gay and Lesbian Rights Group) is Tasmania’s leading advocacy group for LGBTI people and has been since it was formed thirty years ago. In that time we have advocated successfully for a range of reforms, including the decriminalisation of homosexuality, Tasmania’s strong Anti-Discrimination Act, Tasmania’s ground-breaking relationship laws, improved policies in schools, health and policing, and marriage equality. We regularly consult with the Tasmanian LGBTIQ community to determine our campaign priorities and to inform submissions like this one.

Our position on the Religious Discrimination Bill

We support legislation to protect against discrimination on the grounds of religious belief, practice and affiliation. The Tasmanian Anti-Discrimination Act has such protections and they have worked well for over a generation. However, we cannot support the proposed federal Religious Discrimination Bill because at several points it undermines existing protections for LGBTIQ Tasmanians and other Tasmanians vulnerable to hate and discrimination. This submission elaborates on these problems.
PART ONE: Defending Equality
The impact of the Religious Discrimination Bill on LGBTIQ Tasmanians

Prior to the release of the Religious Discrimination Bill, the Federal Government said the Bill would be a shield for people of faith, but it is actually a sword against existing discrimination protections for LGBTIQ people. No LGBTIQ Australians have as much to lose as LGBTIQ Tasmanians because our discrimination protections are the strongest. This part of our submission consider how the Religious Discrimination Bill will take our away the rights LGBTIQ Tasmanians and our allies have fought so hard for.

At a glance: the Religious Discrimination Bill undermines the legal rights of LGBTIQ Tasmanians in three ways

- Weakening section 17(1) of the Tasmanian Anti-Discrimination Act allowing LGBTIQ Tasmanians and others to be humiliated, intimidated, insulted or ridiculed in the name of religion
- Making it easier for faith-based organisations to deny commercially available facilities to same-sex couples.
- Making it harder for companies to promote inclusive workplaces by allowing employees to make demeaning statements against other employees in the name of religion
- Making it harder for LGBTIQ Tasmanians to seek safely seek health care by allowing health care professionals to refuse us service in the name of religion

Overriding existing Tasmanian offensive language protections for LGBTIQ people

- Section 17(1) of the Anti-Discrimination Act prohibits language that humiliates, intimidates, insults or ridicules LGBTIQ Tasmanians and others
- It is the same level of protection as that offered to racial minorities by section 18C of the Race Discrimination Act, but Tasmania is the only state that offers this protection to LGBTIQ people
- Under section 17(1) landmark cases have been taken against hateful anti-LGBTIQ materials including the case taken by Robert Williams against a flyer distributed by James Durston in Hobart which suggested homosexuality is a health hazard and a sin
- If section 17(1) is weakened it will harder to take action against this kind of homophobic material.
- The attack on section 17(1) has been excused by reference to a case against a Catholic booklet. It is claimed the case was against Catholic doctrine when, in fact, it was against the booklet’s suggestion that same-sex couples “mess with kids” and aren’t whole people. The case was dropped and the booklet continues to be distributed
- More about section 17, and about the Catholic booklet case, below.

Allowing discrimination in the provision of services by faith-based schools

- An additional issue for Tasmania in particular, is the expansion of the rights of religious schools to discriminate in the provision of marriage-related facilities, goods and services under the Marriage Act.
• These exceptions are drafted in the positive, making it more likely to be inconsistent with and therefore override the Tasmanian Anti-Discrimination Act provisions in section 51 and 51A.
• The effect will be to allow publicly-funded faith-based organisations to deny commercially available facilities to same-sex couples.
• This will be a particular problem for same-sex couples living in small centres with limited services.
• In April 2019 the Tasmanian Parliament voted against an amendment to the Anti-Discrimination Act entrenching exactly this form discrimination.
• That was in no small part because these kinds of discriminatory provisions send a message to the community that discrimination is acceptable.

Allowing demeaning language and undermining inclusive workplaces

• The Tasmanian Anti-Discrimination Act does not have exemptions allowing hate speech in the name of religion, or discrimination and hate speech by religious or other organisations.
• This has helped create much more inclusive workplace cultures for LGBTIQ Tasmanians.
• For example, Baptist welfare agency, Baptcare, received an LGBTIQ award in 2018.
• The Religious Discrimination Bill will undermine this culture of respect and inclusion by allowing demeaning speech between employees and against clients in the name of religion, especially in large organisations.
• This will make it much harder to tackle the ingrained prejudices against LGBTIQ Tasmanians that continue to limit our ability to participate in and contribute to our workplaces.

Allowing discrimination in health care

• There are currently no exemptions in the Tasmanian Anti-Discrimination Act allowing health care to be withheld from LGBTIQ people.
• This has fostered better health care access and outcomes for LGBTIQ Tasmanians.
• The Religious Discrimination Bill will undermine this by allowing Tasmanian health care practitioners to refuse their services to LGBTIQ people if it offends their religious beliefs.
• This could mean a transgender person is refused health care related to gender transition, a gay man is refused a prescription for Prep or a child is refused health care because their parents are in a same-sex relationship.

What is really behind the attack on equality for LGBTIQ Tasmanians and why we oppose it?

We believe the Religious Discrimination Bill is an attempt to write special rights and privileges for religion into Australian law. It is a backlash to marriage equality and other important steps forward for the Australian LGBTIQ community. It is also a backlash to Tasmania’s transformation from the state with the worst LGBTIQ laws in Australia, to the state with the best. It undermines both the letter and the spirit of Tasmania’s world-class LGBTIQ anti-discrimination laws. It gives permission to prejudice and hate to destroy the lives of LGBTIQ. It tries to turn back the clock to a time when discrimination was acceptable in Tasmania. We will do all we can to convince the majority of Australians why the Federal Government’s attack on LGBTIQ equality is unacceptable and must be stopped.
PART TWO: Protecting the Vulnerable and Holding the Powerful to Account

The proposed federal override of Section 17(1) of the Tasmanian Anti-Discrimination Act

Section 17(1) of the Tasmanian Anti-Discrimination Act protects all Tasmanians from humiliating and intimidating language. The Federal Government’s has proposed a Religious Discrimination Bill that would render this provision inoperative (override it) by providing a defence if humiliating and intimidating language is in the name of religion. There has been much myth-making about section 17(1). This part of our submission tells the truth about this provision. In particular it shows how section 17(1) protects those who are vulnerable to stigma and prejudice, and how it holds the powerful and privileged to account.

What is Section 17(1)

- Section 17(1) prohibits conduct which offends, humiliates, intimidates, insults or ridicules another person on fourteen grounds including race, age, disability, sexual orientation, gender identity and relationship status
- Conduct does not breach section 17(1) if it is a public act done in good faith for academic, artistic, scientific or research purposes, or any purpose in the public interest
- It is also not a breach if it could not have been anticipated by a reasonable person to have caused offence.
- The wording of section 17(1) reflects section 18C of the Race Discrimination Act, except section 17(1) covers many more attributes

Many different social groups benefit from Section 17(1)

- Over a third of complaints are on the ground of disability.
- Another third are complaints on the grounds of race, gender and age.
- The remaining third of complaints are on the remaining ten grounds.
- Complaints on the ground of sexual orientation and gender identity make up about five to ten per cent of complaints.

For more on this see Attachment One

Much good has come from section 17(1)

- Two landmark cases under section 17(1) were from disability advocate, Judy Huett. One was against Prue MacSween for her derogatory comments about children with disability “holding back” other children. The other was against the Daily Telegraph for its implications that people with disability are lazy
- Both cases were resolved in conciliation, to the satisfaction of all parties
- This illustrates the importance of section 17(1) for allowing members of stigmatised minorities to have their voices heard, and to work with powerful institutions to find inclusive solutions (see notes on the Delaney/Porteous case below)
- A high-profile case involving sexual orientation was taken by Robert Williams against an anti-gay flyer distributed by James Durston
- The flyer asserted that homosexuality was hazardous to health and sinful
- The Anti-Discrimination Tribunal found the flyer was in breach of section 17(1)
- That decision was appealed to the Supreme Court on the basis of “religious freedom”, but the Tribunal decision was upheld by the Court
A flyer like this would be much harder to challenge under Tasmanian law if the Religious Discrimination Bill was passed.

Here are two de-identified case studies of racist language where complaints were made under section 17(1): 

**O** made a complaint on behalf of a local football club of racism during matches involving racist comments from both players and spectators. This included being called ‘niggers’, ‘fucking Africans’ and ‘black cunts’.

**G** made a complaint on her own behalf and on behalf of her grandchildren. She alleged that her grandchildren were being called names, picked on every day and have been told that 'black children should not have been born'. She alleges that her grandson is scared to go to school.

**Section 17(1) has fostered a better Tasmania**

- The Anti-Discrimination Act was passed just a year after homosexuality was decriminalised and was Tasmania’s commitment to never again demonise a vulnerable minority.
- Today, religious schools conduct LGBTI, disability and race anti-bullying and inclusion programs.
- Public, anti-gay hate that was ubiquitous before 1998 has virtually disappeared.
- The same, dramatic increase in inclusion has been seen for other social minorities.
- Tasmania has also seen none of the religious extremism that has plagued the other states, thanks to laws like section 17(1) providing a shield against such extremism.

**Tasmanian Government policies are consistent with section 17(1)**

- State Government policies that prevents bullying or promotes inclusion are consistent with section 17(1).
- For example, the Tasmanian Government’s school anti-bullying program is based on relevant sections of the Anti-Discrimination Act, including section 17(1).
- The recent Stop and Prevent Bullying Communique supported by the State Government and the community sector also draws its legitimacy from section 17(1).

**Tasmanians support section 17(1)**

- In 2016 and 17, there were two attempts to water down section 17(1).
- The State Government attempted to allow a religious exemption for sections 17 (and section 19 which prohibits incitement to hatred).
- An independent member of the Upper House attempted to water down section 17(1) by removing the terms “offend” and “insult.”
- Both initiatives failed in the Upper House because a majority of Upper House members were convinced that section 17(1) provides important protections for vulnerable Tasmanians.

*For more on this see Attachment Two* 

**This similar to the 18C debate**
• Section 18C of the Federal Race Discrimination Act prohibits the same offensive conduct as section 17(1)
• In 2013 the Abbott Government sought to replace the words “offend, insult or humiliate” in section 18C with the term “harass” which would have substantially eroded the existing protection
• The Morrison Government’s Religious Discrimination Bill seeks to water-down section 17(1) in a similar manner
• The 2013 amendment was blocked in the Senate by Labor, Centre Alliance and Jacqui Lambie
• We believe the Religious Discrimination Bill’s override of section 17(1) is a backdoor path to revisiting the amendment of 18C and should be resisted for the same reasons as the failed amendment of 18C

There other many other laws that prohibit humiliating and intimidating language

• Offensive, humiliating and insulting language is prohibited under a large number of statutes
• These include legislation covering everything from childcare to motor vehicle registration
• Since 1858 it has been an offence punishable by imprisonment to insult a member of parliament
• It would the height of hypocrisy for law-makers to retain a protection they deny to others

For more on these statutes see Attachment Three

Having exemptions just for religion undermines Australian values

• Allowing humiliating and intimidating speech only in the name of faith privileges one form of speech and one form of belief above all others
• All citizens should have equal rights and responsibilities under the law regardless of whether they are people of faith
• When one group has special rights not available to others it undermines the credibility of the law and is an attack on basic Australian values like equality of opportunity and a fair go for all
• The church child abuse scandal shows the damage done when faith leaders feel they should not be held to the same standard as everyone else

Tasmania will be a crueler place if section 17(1) is weakened

• If section 17(1) is weakened it will no longer offer the protections outlined above
• Worse, it will send the message that it is okay to humiliate and intimidate people on the basis of who they are
• It is quite possible Tasmania will see an upsurge in this kind of conduct, making it a crueler and less kind place to live

Answering the critics of section 17

Is section 17(1) subjective?

• Section 17(1) does not allow someone to complain simply because they feel “offended”.
• Whether someone is “offended, humiliated, intimidated, insulted or ridiculed” must be something that would be anticipated by “a reasonable person”.
• A growing number of court decisions have established what a reasonable person would anticipate.
• The reasonableness threshold is higher than it is for the many similar offences, including that of offending politicians.
• Furthermore, conduct does not breach section 17(1) if it is a public act done in good faith for academic, artistic, scientific or research purposes, or any purpose in the public interest.

Why not allow a religious exemption when there are other exemptions already?
• As stated, there are already exemptions that apply to section 17(1) for academic, scientific and artistic purposes, or for acts in the public interest, so why not religious purposes?
• Too often prejudices are expressed under the cover of religion.
• For example, physical disability is said to be “a mark of sin” and mental disability is blamed on “demonic possession”.
• Women are told to “cover their bodies” or risk assaults against them.
• LGBTI people, unmarried partners and single parents are said to be “sinful and broken”.
• Ensuring equal protection for these groups means guarding against hateful speech under cover of religious values.

Does Section 17(1) infringe free speech or freedom of religion?
• After James Durston, the author of the anti-gay flyer mentioned above, was found to have breached section 17(1), he appealed to the Supreme Court arguing his free speech and freedom of religion were being infringed.
• Justice Brett found that section 17 does not infringe these rights, and that it is valid under the Australian Constitution.
• Justice Brett made a careful and rigorous argument that freedom of religion and freedom of speech are not unfettered rights, and that the Tasmanian Anti-Discrimination Act strikes the right balance between these rights and the right of citizens to live free from hate.

Will section 17(1) actually be overridden?
• The Federal Government has defended its attack on section 17(1) by saying it is not “an override”.
• This may be technically true - the High Court may need to declare section 17(1) to be invalid to the extent it is inconsistent with the new federal law for the former to be “overridden” - but the point is semantic.
• The Religious Discrimination Bill clearly limits the operation of section 17(1) so that it is effectively weakened.
• Section 17(1) will effectively be rendered inoperative under the Religious Discrimination Bill.

Wasn’t a bishop hauled before the tribunal to answer for his faith?

The facts about Martine Delaney and Archbishop Porteous?
• Supporters of Tasmanian Catholic Archbishop, Julian Porteous, have claimed he was “hauled” before the Tasmanian Anti-Discrimination Commission for simply stating Catholic doctrine on marriage. That is untrue. Here is what actually happened:
• In 2015 Archbishop Porteous distributed a booklet about the Catholic Church’s view on marriage titled “Don’t Mess With Marriage”.
• In September that year, Martine Delaney lodged a complaint under sections 17 and 19 against parts of the booklet.
In particular, her complaint was against the booklet’s suggestion that same-sex relationships “mess with kids”, and the booklet’s failure to distinguish between Catholic doctrine and scientific fact.

Martine Delaney had a long history of taking cases against materials that incited hate against LGBTI people, most of which were successfully resolved in conciliation.

Ms Delaney said at the time the goal of her complaint against “Don’t Mess With Marriage” was not to silence the Church but to foster a more mature and respectful debate about marriage equality.

The Archbishop was asked to attend one voluntary conciliation session.

The Archbishop later told a Senate religious freedom inquiry this session was “valuable” and “good” because “I think I understood the other position more clearly as a result of it” (Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into Freedom of Religion and Belief, June 5, 2018, p29).

In the conciliation session, Ms Delaney presented the Archbishop with a version of “Don’t Mess With Marriage” that included her minimal edits.

When it was clear the Archbishop would not change a single word, Ms Delaney withdrew her case.

The booklet continues to be distributed.

What this history shows is that

- The complaint was not against Catholic doctrine, but against the demeaning way that doctrine was presented.
- The Archbishop was not “hauled” anywhere and the process was not onerous.
- The complaint was not litigious and did not seek to censor the Church because it was withdrawn when it became clear not progress could be made.
- The Archbishop’s main problem seems to be that his actions were held to the same standard as everyone else.

For more information see Attachments Four, Five and Six (with six being Martine Delaney’s suggested amendments to the booklet).

What is really behind the attack on section 17(1)?

As we have seen...

- Section 17(1) has allowed members of many different social groups to have their concerns heard, and has brought together people with diverse views to find mutually-satisfactory solutions to their disagreements.
- Section 17(1) has made Tasmania a demonstrably better place.
- Section 17(1) is not unusual in prohibiting offensive conduct, and does not place special burdens on free speech or freedom of religion.

So, why is it under attack?...

- The one feature of section 17(1) that makes it different to other laws that prohibit offensive language is that it generally protects those who are disadvantaged, stigmatised, marginalised and vulnerable from those who are powerful and in positions of authority.
- Section 17(1) is under attack precisely because it protects the vulnerable and holds the powerful to account.

The Federal Government’s attack on an inclusive Tasmania must be dropped.

The Religious Discrimination Bill undermines both the letter and the spirit of Tasmania’s world-class anti-discrimination laws. It gives permission for the kind of prejudice and hate that will diminish Tasmanian society. It tries to turn back the clock to a time when discrimination was acceptable in Tasmania. This is why we will continue to do all we can
to protect section 17(1), and any other Tasmanian discrimination provision that is threatened.
ATTACHMENT ONE: taken from the submission of Equal Opportunity Tasmania to the federal religious freedom inquiry, 2017

Protection from offensive conduct under Tasmanian law

Within my own jurisdiction, the Anti-Discrimination Act 1998 (Tas) (the Tasmanian Act) includes very similar wording to that currently contained in section 18C. I do not believe that these provisions have been used frivolously, nor do I consider that there is evidence to suggest that they have operated to impede the proper exercise of the right to freedom of expression in this State.

Tasmanian discrimination law provides for a civil process for complaining of and addressing discrimination and offensive conduct that is within jurisdiction. It operates concurrently with federal discrimination law, including the RDA.

Section 17(1) of the Tasmanian Act prohibits a person (or organisation) from engaging in conduct that that offends, humiliates, intimidates, insults or ridicules another person on the basis of the following attributes:

- race;
- age;
- disability;
- sexual orientation;
- lawful sexual activity;
- gender;
- gender identity;
- intersex;
- marital status;
- relationship status;
- pregnancy;
- breastfeeding;
- parental status; and/or
- family responsibilities.

Complaints made under section 17(1) of the Tasmanian Act are subject to the requirements of section 22. Section 22 restricts the reach of certain prohibited conduct under the Tasmanian Act to specified areas of public activity. These areas include employment; education and training; the provision of facilities, goods and services; accommodation; membership and activities of clubs; administration of any law of the State or State program; awards, and/or enterprise agreements or industrial agreements.

There are two requirements to prove conduct in breach of section 17(1):
there must be conduct that offended, humiliated, intimidated, insulted or ridiculed a person on the basis of one or more of the attributes listed; and

the conduct must be such that a reasonable person would have anticipated that the other person would feel offended, humiliated, intimidated, insulted or ridiculed in all the circumstances.

Section 17(1) does not simply provide for an individual to complain because they were offended. It is a prohibition on conduct that offends, humiliates, intimidates, insults or ridicules another person in circumstances that ‘a reasonable person, having regard to all the circumstances, would anticipate that the other person would be offended, humiliated, intimidated, insulted or ridiculed’. This test creates a significant threshold to the application of the section and provides an objective test of the impact of the action.

A complaint alleging a breach of section 17(1) will be dealt with by the Commissioner if it is within jurisdiction and the alleged conduct discloses a prima facie case (that is, if the conduct alleged were to be proven it would meet the test set out in section 17(1) and relevant case law). The question of whether or not the alleged conduct is proven is not a matter for the Commissioner, but for the Tribunal in the event the complaint cannot be resolved.

Table 1 provides information on the total number of complaints received by my office in 2014–15 and 2015–16 in which allegations of offensive, insulting, intimidating, humiliating or ridiculing conduct have been made. You will note that in 2015–16 allegations of such conduct based on race represented 12.0% of all complaints.

Table 1: Allegations of offensive, insulting, intimidating, humiliating or ridiculing conduct

<table>
<thead>
<tr>
<th></th>
<th>2014–15</th>
<th>2015–16</th>
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<tbody>
<tr>
<td>Total complaints</td>
<td>142</td>
<td>150</td>
</tr>
<tr>
<td>Complaints in which offensive conduct alleged or identified</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disability</td>
<td>46</td>
<td>50</td>
</tr>
<tr>
<td>Gender</td>
<td>13</td>
<td>18</td>
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<tr>
<td>Race</td>
<td>11</td>
<td>18</td>
</tr>
<tr>
<td>Age</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td>Family responsibilities</td>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td>Sexual orientation</td>
<td>11</td>
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<td>Relationship status</td>
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<td>Marital status</td>
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<td>5</td>
</tr>
<tr>
<td>Gender identity</td>
<td>6</td>
<td>2</td>
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</table>


2 Ibid.
Section 19 of the Tasmanian Act prohibits a person, by public act, from inciting hatred toward, serious contempt for, or severe ridicule of, a person or group of persons on the grounds of a range of attributes, including race.

Section 19 is not subject to the requirement that the conduct occur in an area of activity listed in section 22 and is applicable to any public act.

Table 2 provides information on the total number of complaints received by my office in 2014–15 and 2015–16 in which allegations of incitement have been made. You will note that incitement based on race was identified or alleged in 7.3% of complaints received by my office in 2015–16.

Table 2: Allegations of incitement by attribute

<table>
<thead>
<tr>
<th></th>
<th>2014–15</th>
<th>% of all complaints</th>
<th>2015–16</th>
<th>% of all complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total complaints</td>
<td>142</td>
<td></td>
<td>150</td>
<td></td>
</tr>
<tr>
<td>Complaints alleging incitement</td>
<td>53</td>
<td>37.3%</td>
<td>43</td>
<td>28.7%</td>
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<tr>
<td>Disability</td>
<td>35</td>
<td>24.6%</td>
<td>24</td>
<td>16.0%</td>
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<tr>
<td>Sexual orientation/lawful sexual activity</td>
<td>9</td>
<td>6.3%</td>
<td>9</td>
<td>6.0%</td>
</tr>
<tr>
<td>Religious belief, affiliation or activity</td>
<td>5</td>
<td>3.5%</td>
<td>10</td>
<td>6.7%</td>
</tr>
<tr>
<td>Race</td>
<td>4</td>
<td>2.8%</td>
<td>11</td>
<td>7.3%</td>
</tr>
</tbody>
</table>

By virtue of section 55, the provisions of both section 17(1) and section 19 do not apply if the conduct is:

(a) a fair report of a public act; or
(b) a communication or dissemination of a matter that is subject to a defence of absolute privilege in proceedings for defamation; or
(c) a public act done in good faith for –
   (i) academic, artistic, scientific or research purposes; or
   (ii) any purpose in the public interest.

The effect of section 55 is to provide a defence against conduct within the scope of sections 17(1) or 19 when reporting public acts or if an act is undertaken in good faith for professional reasons or for public purposes. It is important, however, to recognise that

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3 Anti-Discrimination Commissioner, Tasmania Annual Report 2015-16 (2016) 71
section 55 can only be enlivened in respect of sub-section (a) if the report is 'fair' and, in relation to sub-section (c) if the act is done in 'good faith'. In all circumstances, it is up to the respondent to make the case for the exception.

Further, just as with section 18D of the RDA, the question of whether or not the defence applies is a matter for decision by the Tribunal rather than the Commissioner as it requires consideration of competing evidence and determination of facts and interpretation and application of law to those determined facts.

It is my view that section 55 provides the appropriate balance of the right to equality before the law and the right to freedom of expression.

It is my experience that complaints made under the Tasmanian Act—or discrimination law more generally—are not made lightly or about insignificant matters. The is borne out by the data in Tables 1 and 2 above and by the following summaries. To the contrary, in many cases, the complainant alleges abusive and threatening behaviour for some time before taking the step of lodging a formal complaint under discrimination law and it is relatively common for allegations to involve descriptions of repeat or ongoing offending by the same person.

The following provides de-identified summaries of the nature of reports and complaints received by my Office which involve allegations of offensive conduct on the basis of race.

O made a complaint on behalf of a local football club of racism during matches involving racist comments from both players and spectators. This included being called 'niggers', 'fucking Africans' and 'black cunts'.

P and his family are newly arrived migrants from Bhutan. After moving into rental accommodation, P and his family have been subjected to verbal abuse; they have had a bag of rotten meat left on their doorstep; water balloons have been thrown at the house including through an open window; ice cream, beer bottles, whole fish, fish heads and soiled nappies have also been thrown at the house. Most recently four of the alleged respondents entered P’s yard. They banged on his door and windows and yelled at his daughter in the bathroom, asking her for sexual favours including saying ‘come and suck my dick you bitch’. P’s request to his real estate agent to move out of the property has been denied. P and his family endured this behaviour for over three months prior to making a complaint under the Tasmanian Act.
L, who is of east Asian background, was subject to racially insulting behaviour and abuse at a bus mall by two young women and a man. One girl bowed to him with her hand clasped together and then pulled her skin outwards from her eyes in a manner L took to be ridiculing his racial background. When L reacted, he was screamed and sworn at by the man in a severe, aggressive manner including racist comments and abuse.

T was verbally abused on the basis of race whilst getting petrol from a petrol station. The respondent allegedly yelled ‘hurry up you fucking whore’ and ‘go back to where you came from you big fat fucking whore’. T was very shaken by the abuse and has suffered ongoing distress. She would like to feel safe in public and for people to live free of racial and sexual abuse.

M is Aboriginal and complained that he was playing football and a player from the opposition team said to him ‘I would like to knock your head off, you black cunt’. When M got angry he was sent off, but the player who made the comment was allowed to stay on the field.

S is Fijian Indian. She and her family have experienced insults and other offensive behaviour by their neighbours. This includes being called a ‘f..’ black bitch. One of the S’s daughters has been subject to racial taunting on the bus home from school. This has included being called a ‘black whore, a black mole, a fat black bitch and a black nigger’. Her daughter’s friends have also been told that if they married her they would have ‘ugly feral black children’. The taunts take place on most school days on the bus home.

G made a complaint on her own behalf and on behalf of her grandchildren. She alleged that her grandchildren were being called names, picked on every day and have been told that ‘black children should not have been born’. She alleges that her grandson is scared to go to school.
V was fishing. Three people—two men and one woman—arrived and V asked them not to smoke near him or throw their cigarette butts into the water as it was littering and they were toxic to the fish.

The younger of the two men said that V was ‘a stupid fucking nigger’ and ‘should fuck off back to Africa’.

A long verbal exchange took place in which the younger man continued to assault and abuse V. He made numerous threats of physical violence before punching V in the head. V attempted to push the man away and then the older man grabbed V from behind. V managed to break free of both attackers. V was followed to his car and they continued to threaten V with physical harm and racially abuse him.

S and his girlfriend were involved in an incident outside a greengrocer’s shop. After buying some basic goods S and his girlfriend were confronted by a group of eight to ten young kids who called him a ‘Chinese cunt’. The young people then proceeded to assault S, smashing his glasses. This continued until he was bleeding badly. S’s girlfriend begged them to stop but they ignored her.

Two people came up behind H’s wife and swore at her and shook her violently saying words like ‘fuck you’. They did not ask for money; just yelled and attacked. H believes that the incident occurred because of his nationality or skin colour. H got his wife free and then they tried to catch him. The attackers managed to head butt H. A car stopped for a while then drove off. H and his wife then managed to cross the road and get away. H and his wife are still terrified and don’t feel safe. His wife cannot sleep at night.

M and two friends were walking home from the bus stop. It was dark and there were few street lights. There were lots of celebrations happening that night. As they came to an alley way they were confronted by a group of teenagers. M and her friends were frightened and expected that they would do something. M told us that she had been subject to racial abuse that many times she had lost count. The teenagers started shouting at M and her friends, spitting out vulgar words. No physical threats were made.
N and her son G were leaving a shopping centre and were confronted by three young men on the other side of the road. One threw a rock at them that nearly hit G in the face. The young men stared at them so they fled back to their house and reported feeling terrified.

Z advised that the previous evening she had been approached by a young woman employed in door-to-door sales. The sales person had been the victim of a racist attack a few doors down. This included being abused and threatened because of her skin colour. She was particularly frightened by the sight of Ku Klux clan and white supremacist images ‘decorating’ the house.

W made a complaint about her neighbours who have swastikas and a white power sign displayed on their property.

In these summaries, race and sex discrimination across a spectrum of seriousness are clearly demonstrated.

In some circumstances, making a complaint under the Tasmanian Act is viewed as an avenue of last resort after attempts have been made to follow up matters through internal complaints mechanisms or finding that the behaviour has continued after doing so. In the case of P cited above, four reports were made to Police prior to them providing advice on ways in which P could act to stop what were clearly distressing actions by his neighbours.

In other cases, I have received complaints from people who were simply going about their daily business and were abused or harassed in a way that was unacceptable by today’s standards. L, for example, was walking through a bus mall. T was simply filling her car at the petrol station. It is often the random and unprovoked actions of this kind which leave a lasting legacy with individuals and which can impact on their confidence, their feeling part of a shared community and their freedoms.

Taken together, I consider that the provisions contained within the Tasmanian Act making specified conduct unlawful send a strong message that racism is unacceptable in this State.

It sets a community benchmark for acceptable public behaviour and provides guidance on appropriate public conduct.
Amendment of the *Anti-Discrimination Act 1998* (Tas)

In August 2016, the Tasmanian Government released a draft Bill which, among other things, proposed to introduce amendments to the Tasmanian Act that would ensure exceptions available under the Act applied in circumstances where an alleged breach of the incitement\(^1\) and prohibited conduct\(^2\) provisions involved a public act done for religious purposes.

The inclusion of these provisions (without any other amendments), would have extended the grounds on which a respondent could assert that a defence applies if their conduct was found to have breached section 17(1) or section 19 of the Tasmanian Act.

The effect of the proposed changes would have been to allow, specifically for religious purposes, attribute-linked offensive, humiliating, ridiculing, insulting or intimidating public conduct, and permit public speech or actions that are capable of inciting hatred, serious contempt or severe ridicule on the basis of a person’s race, disability, religious belief, affiliation or activity or sexual orientation or lawful sexual conduct.

If adopted the changes would have permitted a person to assert that their actions were based on religious views or doctrines—irrespective of how out-dated or inconsistent with a modern pluralist society, international laws or community standards—those views or doctrines might be.

In responding to the draft Bill\(^3\), my Office indicated that to privilege or give special status to acts done for religious purposes in this way represented a fundamental curtailing of the right to equality and the right to freedom from discrimination and would go well beyond what is necessary to protect freedom of religion or freedom of expression.

To privilege religious speech and actions in such a way suggests that the rule of law—the principle that every person and organisation, including government, is subject to the same law—should apply where a religious purpose can be argued. This would give special status to people of religion and religious organisations. As we argued at the time, to displace the rule of law to privilege religion in a secular state is a serious step indeed.

Inciting or offensive or derogatory acts against those who access a legal right to abortion, for example, would be capable of being permitted under the proposed defence. The same would apply to the views of religious people on any number of public issues, including their views about members of other religions, racial minorities, euthanasia, the role of women in society, the ‘purpose’ of disability, and single-parent or same-sex adoption or fostering.

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2. *Anti-Discrimination Act 1998* (Tas) s 17(1).
Effectively, any action arguably stemming from any religious belief would be capable of being covered by the exception.

In effect, the provisions of the draft Bill would have privileged religious views in public debate without providing equivalent protections to those who challenge those views. In circumstances where a complaint is made by a person of faith against someone who has been critical of the views of a church or religious body, for example, the respondent to that complaint would be unlikely to be able to avail themselves of the defence. Protection would not be extended to those who held equally strong, but opposing, views to those of religious people.

While some may argue that this is consistent with freedom of expression, thought and belief, or freedom of religion, it was pointed out that the international human rights law framework does not make these rights paramount. As outlined earlier in this submission freedom of religion includes the right to ‘manifest one’s religion or beliefs’ is balanced by limitations necessary to protect the fundamental rights and freedoms of others.4

Further, the internationally protected freedom of expression (found in article 19 of the ICCPR) is expressed as carrying with it ‘special duties and responsibilities’5:

It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Our submission also argued that for the protections to be enlivened it would be necessary to determine whether the conduct was genuinely for ‘religious purposes’. The issue then arises as to how this might be proven. Should, for example, a magazine article identified by a complainant as the basis for complaint be exempt because it was written by a church official or is it necessary to determine whether the views have some genuine basis in religious ideology regardless of their author? Would posting an article on a religious website, for example, be sufficient to establish that the conduct or view was linked to religious purposes?

In many circumstances, there would insufficient information in a complaint to determine whether the alleged respondent is associated with a religious group or otherwise links the conduct to a religious viewpoint. This may be particularly so in circumstances where the views of religious proponents are deliberately presented in a way that minimises the author’s link to a religious body or are presented from a ‘non-religious’ perspective.

The proposed Bill was ultimately rejected by the State’s Upper House.


5 International Covenant on Civil and Political Rights, Article 19.
ATTACHMENT THREE

Need to retain section 17(1) in its current form

There has been no consultation at all on the proposed change to section 17(1). This provision provides important protection for marginalised groups from conduct that many would characterise as targeted bullying.

These terms are found not only in section 17(1), but also in section 17(3) of the Act, which deals with sexual harassment. To ensure clarity and consistent interpretation, the same terms should be retained. The term ‘offensive’ also reflects the language of the Sex Discrimination Act 1984 (Cth) and the Racial Discrimination Act 1975 (Cth). The term ‘insulting’ also reflects the language of the Racial Discrimination Act. As well as interpretation by the Anti-Discrimination Tribunal and the Supreme Court of Tasmania of the meaning in sections 17(1) and (3) of the Anti-Discrimination Act 1998, these terms have been considered by federal courts. Maintaining consistent language assists people in both understanding their rights and their obligations under the law.

The provision has been used extensively and, in most cases, the complaints involving alleged breaches of section 17(1) that have not been rejected by the Commissioner have been resolved through free conciliation processes overseen by the Commissioner. These have included a significant number of complaints relating to conduct targeting people with disability (including intellectual disability), women (including pregnant women and mothers), older people, and gays and lesbians.

No proper consideration has ever been given to amending section 17(1) and no consultation on such a proposed change has ever been conducted. Such a consultation would be an opportunity for people who have relied on the provision and those who have been parties to complaints to express their views in a formal process. This would provide the Parliament with a valid basis for its consideration of changes. Without hearing from those who have been directly affected (other than in an ad hoc way), Parliamentarians are not fully apprised of all the relevant considerations.

Offend or offensive

There are a number of Acts of the Tasmania Parliament that use the concept of ‘offend’, many of which make actions that offend or are offensive subject to criminal sanctions or fines. For example:

- Section 12(1)(c) of the Police Offences Act 1935 (Tas) makes it an offence to, in a public place, ‘use any … offensive … language’. A person found to guilty of breaching subsection (1) faces penalties of up to 3 penalty units¹ (currently $471) or

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¹ The current value of a penalty unit is $157.  
imprisonment of up to 3 months. (See also section 13 which prohibits behaving in an offensive manner, section 20 which deals with such behaviour at public meetings.)

- Section 114 of the *Electricity Supply Industry Act 1994* (Tas) makes it an offence to ‘engage in offensive or intimidatory behaviour towards an authorised officer, an electricity officer, or anyone else engaged in the administration of this Act…’ The penalty that can be imposed for a breach of this provision is a fine of up to 20 penalty units (currently $3,140).

- Section 96 of the *Environmental Management and Pollution Control Act 1994* (Tas) makes it an offence for an authorised officer or a council officer to ‘address offensive language to any other person’. The penalty that can be imposed for a breach of this provision is a fine of up to 40 penalty units (currently $6,280).

Other laws use the term ‘offensive’ to describe prohibited behaviour. For example:

- The *Births, Deaths and Marriages Registration Act 1999* prohibits the registration of a name that is ‘obscene or offensive’. It does not provide an objective test of ‘offensive’.

- Similarly, section 47 of the *Electoral Act 2004* (Tas) permits the Electoral Commission to reject an application for the registration of a political party if ‘the name of the party or the ballot paper name is obscene, offensive or frivolous’. Section 84 of the same Act permits the Commission to reject an application for the registration of a person who has changed their name to one that is obscene or offensive. It does not provide an objective test of ‘offensive’.

- Section 5 of the *Business Names (Commonwealth Powers) Act 2011* (Tas) specifies that it remains within the legislative power of the Tasmanian Parliament to pass laws that prohibit or restrict the ‘use of business names that are undesirable, offensive or confusing’. There is no objective test provided for the term ‘offensive’.

- Section 192 of the *Criminal Code 1924* (Tas) provides that a person can be charged with stalking if they pursue a course of conduct that includes ‘sending offensive materials … or leaving offensive material where it is likely to be found … or … publishing or transmitting offensive material by electronic or any other means …’

- Section 81 of the *Liquor Licensing Act 1990* (Tas) authorizes police to bar a person from a licensed premises if the person ‘behaves in an offensive … manner’.

None of these expressly apply an objective test to whether or not conduct is offensive. By contrast, the prohibition in section 17(1) of the *Anti-Discrimination Act 1998* (Tas) of ‘conduct that is offensive … on the basis of’ specified protected attributes does not expose a person to the possibility of a fine or imprisonment and it is expressly subject to an objective test of what is ‘offensive’.
Section 21 of the Police Offences Act 1935 (Tas) prohibits a person from doing ‘any act or behave[ing] in a manner that a reasonable person is likely to find indecent or offensive in all the circumstances …’ This provides an objective test similar to that found in section 17(1) of the Anti-Discrimination Act 1998 (Tas). Unlike section 17(1), this provision does, however, give rise to a police offence punishable by a fine of up to 50 penalty units or imprisonment for up to 12 months.

There is a significant body of case law in relation to section 17(1) that guides the Commissioner in assessing complaints alleging a breach of this provision. Similarly, there are a number of court decisions in relation to the relevant provisions of the Police Offences Act 1935 (Tas) that guide police in determining whether or not to charge a person with an offence under those provisions.

Insult or insulting
There are similarly a number of Acts of the Tasmanian Parliament that prohibit conduct that is insulting, again many carry a criminal sanction or penalty. For example:

- Section 12(1)(d) of the Police Offences Act 1935 (Tas) makes it an offence to, in a public place, ‘use any … insulting words or behaviour calculated to provoke a breach of the peace’. A person found to guilty of breaching subsection (1) faces penalties of up to 3 penalty units (currently $471) or imprisonment of up to 3 months. (See also section 13 which prohibits insulting another person, section 20 which deals with such behaviour at public meetings.)

- Section 3 of the Parliamentary Privilege Act 1858 (Tas) empowers each House of Parliament to punish ‘by imprisonment’ any person who engages in the ‘insulting of any Member’, or attempt to compel a Member by ‘insult’ to declare in favour of or against any proposition to be brought before the House, or publishing or sending a Member ‘any insulting or threatening letter’. The Act does not provide an objective test for ‘insult’ or ‘insulting’.

- Section 39B of the Ambulance Service Act 1982 (Tas) imposes a penalty for using ‘insulting language to … the Commissioner; or … a person who is providing ambulance services’ and others. The penalty imposed is a fine ‘not exceeding 100 penalty units [currently $15,700] or imprisonment for a term not exceeding 3 months, or both’.

- Section 21 of the Animal Farming (Registration) Act 1993 (Tas) imposes a penalty for using ‘insulting language to … an officer who is performing a function or exercising a power under this Act or a person assisting that officer’. The penalty that can be imposed is a fine ‘not exceeding 50 penalty units [currently $7,850]’.

- Section 26(1) of the Australian Consumer Law (Tasmania) Act 2010 (Tas) makes it an offence to ‘use … insulting language to an authorized officer engaged in the exercise of any powers under this Act’. The penalty that can be imposed is a fine of up to 20 penalty units (currently $3,140).
There are similar provisions in a range of other Tasmanian laws, including, for example:

- *Child Care Act 2001*, section 43 (10 penalty units).
- *Consumer Affairs Act 1988*, section 16 (10 penalty units)
- *Coroners Act 1955*, section 66 (50 penalty units)
- *Corrections Act 1997*, section 53 (10 penalty units or imprisonment for a term not exceeding 6 months)
- *Emergency Management Act 2006* (Tas), section 60 (100 penalty units or imprisonment for a term not exceeding 3 months, or both)
- *Environmental Management and Pollution Control Act 1994* (Tas), section 95 (40 penalty units)
- *First Home Owner Grant Act 2000* (Tas), section 35 (100 penalty units)
- *Gaming Control Act 1993* (Tas), section 135 (50 penalty units)
- *Genetically Modified Organisms Control Act 2004* (Tas), section 29 (10 penalty units)
- *Guardianship and Administration Act 1995* (Tas), section 87 (40 penalty units or imprisonment for up to 2 years or both)
- *Integrity Commission Act 2009* (Tas), section 80 (2,000 penalty units)
- *Launceston Flood Risk Management Act 2015* (Tas) section 31 (100 penalty units)
- *Motor Vehicle Traders Act 2011* (Tas) section 51 (200 penalty units for an individual, and 1,000 penalty units for a body corporate)
- *Sentencing Act 1997* (Tas) section 36AA and 42A (10 penalty units or imprisonment for up to 3 months, or both)

None of these specify an objective test for ‘insult’ or ‘insulting’.

Again, in contrast, the prohibition in section 17(1) of the *Anti-Discrimination Act 1998* (Tas) of ‘conduct that is ... insulting ... on the basis of’ specified protected attributes does not expose a person to the possibility of a fine or imprisonment and it is subject to an objective test of what is ‘insulting.

**Intimidate or intimidating**

There are similarly a number of Acts of the Tasmanian Parliament that prohibit conduct that is intimidating, again many carry a criminal sanction or penalty. For example:

- Section 48(4)(b) of the *Agricultural and Veterinary Chemicals (Control and Use) Act 1995* (Tas) makes it an offence to ‘... intimidate ... an inspector or a person assisting an inspector under subsection (3)’. The penalty that can be imposed is 50 penalty units [currently $7,850].

- Section 41A of the *Animal Welfare Act 1993* (Tas) makes it an offence to ‘intimidate ... an officer’. The penalty that can be imposed is a fine of up to 100 penalty units ($15,700) or a term of up to 6 months imprisonment for an individual, or a fine of up to 500 penalty units ($78,500).
There are similar provisions in other State laws. See, for example:

- *Dangerous Goods (Road and Rail Transport) Act 2010* (Tas), section 107;
- *Explosives Act 2012* (Tas), section 39 (200 penalty units for a body corporate, or 100 penalty units or imprisonment for up to 3 months for an individual);
- *Gaming Control Act 1993* (Tas), section 135 (50 penalty units);
- *Mineral Resources Development Act 1995* (Tas) section 10 (50 penalty units);
- *Sex Industry Offences Act 2005* (Tas) section 7 (500 penalty units or imprisonment for up to 5 years, or both);
- *Threatened Species Protection Act 1995* (Tas) section 52 (50 penalty units).
ATTACHMENT FOUR: Martine Delaney’s most recent article on the facts of the Porteous case

[Title] Stop The Lies: The Trans-Woman At The Centre Of The Religious Freedoms Bill Speaks Out

[Bio] Martine Delaney is a long-time LGBTI equality advocate

[Published] New Matilda, September 30th 2019

[Text]
The Federal Government’s rationale for overriding the Tasmanian Anti-Discrimination Act is that the Archbishop of Hobart was hauled before a discrimination tribunal for simply stating Catholic doctrine on marriage. Every word of that rationale is a lie. This article is about what actually happened.

Recently, Federal Attorney-General, Christian Porter, unveiled the government’s draft Religious Freedoms Bill that includes an override of the offensive language provision (section 17) of the Tasmanian Anti-Discrimination Act.

In media interviews, Mr Porter has cited a discrimination complaint I made against Tasmania’s Catholic Archbishop, Julian Porteous, as the prime example of why the legislation’s needed.

Mr Porter claimed the complaint was made against the Archbishop over statements of doctrine, “…no more than statements, Christian statements about their preference for a traditional view of marriage.” (7.30, ABC, 29/08/19)

Since that interview, this claim has been backed by political commentators like Gerard Henderson who said the Archbishop’s offence was “… just stating the Catholic position on marriage.” (ABC Insiders, 01/09/19)

Even the Archbishop, in an opinion piece, wrote he was brought before the Anti-Discrimination Commissioner for “simply circulating Catholic teaching” among the Catholic community.” (The Australian, 23/08/19)

The message, from all these people, was that the complaint was taken to silence the Archbishop, to limit his freedom of religious expression, and that federal legislation is needed to stop such actions.

In relation to my complaint, none of the above claims are true. It is deliberate misinformation to continually publish them as fact.

It’s also concerning that neither interviewing journalists, nor political commentators, have taken the time to discover the facts, or question these statements.
It is especially concerning as the complaint is being offered up as a major reason for legislation which will expose some of Australia’s most vulnerable people to very real harm.

Here’s what actually happened.

In 2015, as Australia’s marriage equality debate heated up, the Australian Catholic Bishops Conference distributed a booklet nationally, through its churches, schools and online.

“Don’t Mess with Marriage”, sub-titled “... a pastoral letter to all Australians”, claimed to simply and uncontroversially set out the Church’s reasons for opposing marriage equality. Yet it caused an uproar, across the country.

Thousands of angry, hurt, LGBTIQ Australians – and their families, colleagues and friends - took to social media, wrote to papers, highlighting the harm the booklet was doing. There were student protests, walk-outs, at least one Catholic school principal visiting a family to apologise for the booklet, priests doing the same. Why the anger?

The booklet presented dogma – Catholic doctrine – as fact. It frequently failed to mention particular statements were Catholic belief, not actually universally-accepted fact. It used questionable, cherry-picked research to lend an unwarranted sense of factual authority.

The resulting document told us, as fact, same-sex-attracted people are, somehow, “not whole”; their relationships no more than friendships and inferior to heterosexual marriage in quality and importance; that they raise unhealthy children; and, most offensively, that same-sex parenting is “messing with kids”.

The bishops had to know that, for almost every Australian, “messing with kids” directly refers to paedophilia.

As evidenced by the outpouring of anger and hurt, the booklet was widely viewed as something other than simply a statement of Catholic doctrine, by and for Catholics. For thousands of Catholics, it was a demeaning attack on the worth of same-sex-attracted people and their families.

In response to many weeks of public outcry, much of it from Catholic communities, the bishops did nothing – apart from continuing to distribute the booklet.

So, around September 2015, I lodged my complaint.

From the outset, the substance of the complaint was very clear: I was not against Catholic bishops putting the Church’s view on marriage. I was against them stating their view as fact, as well as the demeaning and unnecessary references they used to make their case.

Initially, Archbishop Porteous released some pre-recorded video statements, holding the line that the booklet was simply Catholic doctrinal advice, for Catholics, and continued distributing the booklet.
A few weeks later, the Archbishop finally spoke to the media, mentioning he’d like the opportunity to discuss these issues with me. I immediately sought a conciliation meeting.

Ever since, the Archbishop – and countless politicians and journalists – have spoken of him being “dragged into conciliation for no reason.” Christian Porter suggests this is a prime reason for the proposed Bill.

Archbishop Porteous, though, describes the conciliation process differently –

"...valuable at that level to have that personal interaction with the complainant and ... I think I understood the other position more clearly as a result of it. I think that was good". (Archbishop Porteous, to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into the Status of the Human Right to Freedom of Religion or Belief, Parliament of Australia, Canberra, 5 June 2018)

At conciliation, I offered the bishops a written statement, assuring them I was committed to ensuring the Church was able to voice its opposition to marriage equality, and to express its beliefs on marriage.

Personally, I found the Church’s position on secular marriage law absurd, but I completely respected the right to hold those beliefs.

I simply asked them to express those beliefs in a manner which made it clear they were statements of Church doctrine, not fact, and to re-word the more offensive phrases so they weren’t as overtly accusatory and demeaning to LGBTIQ Australians and their families.

I would have been happy with a booklet that I wholeheartedly disagreed with, so long as it didn’t imply a factual link between same-sex relationships and sexual abuse.

I also offered a possible solution - an edit of the booklet, to achieve the above.

They declined. Instead, they wanted only a joint statement, where we expressed our sadness at being misunderstood, and undertook to be nicer in future. And, the bishops would be free to keep handing out the booklet.

I declined, and withdrew.

My complaint was never about silencing the Church, limiting religious freedom, or winning marriage equality. It was always about working out a better way.

I hoped the Archbishop and I could set a very public benchmark for a grown-up national debate on marriage; where it wasn’t acceptable to score points by demeaning the value of another human being.

The bishops wouldn’t do this. And, we now know, that national debate was damaging to so many.
Worse, today, a complaint taken with the hope of creating respectful debate is being wrongfully used to justify privileging religious belief above any other human right.

Tasmania’s laws against hateful and offensive language have helped many people assert their human dignity in the face of stigma and prejudice.

The bulk of them have been people with disabilities.

For their sake, and the sake of the more inclusive Tasmania our laws have created, it’s time for lies about the Porteous case to stop.

It’s time to put the wellbeing of vulnerable people ahead of the hurt feelings of an Archbishop who balked at being held to the same standards as everyone else.

[Link]
ATTACHMENT FIVE: taken from the submission of Equal Opportunity Tasmania to the federal religious freedom inquiry, 2017

Complaint made by Ms Delaney
A complaint received under Tasmania’s Anti-Discrimination Act against the Catholic Archbishop of Hobart, Julian Porteous, is often cited as an example of the overreach of discrimination law in relation to religious belief or activity.

For reasons of clarity, the following provides a summary of the factual matters in this case prepared by the former Anti-Discrimination Commissioner, Ms Robin Banks, to a question on notice from the Senate Select Committee public hearing on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill in relation to the complaint made by Ms Martine Delaney.

Summary of complaint
On 28 September 2015, Ms Martine Delaney made a complaint under the Anti-Discrimination Act 1998 (Tas) to the Commissioner about certain statements in a booklet, Don’t Mess with Marriage, authorised by the Australian Catholic Bishops Conference and circulated in Tasmania with a letter from the Most Rev Julian Porteous, Archbishop of Hobart. In her complaint, Ms Delaney alleged these specific statements were in breach of the Act on the basis they offended, humiliated and insulted same-sex attracted people and the children of same-sex partners.

In particular, Ms Delaney asserted:

1. Use of the term ‘friendships’ to describe same-sex relationships as distinct to the relationship between a man and a woman are offensive, humiliating and insulting to same-sex attracted people because it implies that their relationships are devoid and incapable of the depth of love, intimacy, commitment and personal fulfilment found in a conjugal union.

2. That a statement in the booklet to the union of a man and woman in marriage ‘makes them whole’ implies same-sex attracted people can never be whole people, especially when viewed in light of the booklet’s main message: that they should not be able to marry.

3. Use of the phrase ‘messing with kids’ is deeply offensive to same-sex couples raising children because it is commonly used to discuss and imply the sexual abuse of children.

4. The booklet states marriage is a ‘fundamental good, a foundation of human existence’, associated with ‘social stability’. It also says allowing same-sex couples to marry will ‘destabilise marriage’ and ‘undermine the common good’. It was Ms Delaney’s view that the clear meaning is that same-sex attracted people and their relationships, and their aspiration to be treated equally, are inimical to all that is good, and are threatening to not just Catholic doctrine, but to the very fabric and future of humanity.
Basis on which the complaint was accepted
Ms Delaney’s complaint was accepted on the basis that the allegations disclosed a possible breach of section 17(1) of the Anti-Discrimination Act 1998 (Tas). Section 17(1) of the Act makes it unlawful to engage in conduct that is offensive, humiliating, intimidating, insulting, or ridiculing on the basis of attributes, including sexual orientation.

Summary of the respondents’ view
The respondents to the complaint provided a joint response to Ms Delaney’s complaint on 17 November 2015. The response:

1. denied any offensive, humiliating, intimidating, insulting or ridiculing conduct on the basis of sexual orientation in connection with education and training against the complainant or the class of same-sex attracted people;
2. indicated that the distribution of the document, Don’t Mess With Marriage, was done in good faith and in the public interest;

Conciliation processes
A process of conciliation was undertaken in relation to the complaint as provided under the Act. Two conciliation meetings were held: on 16 December 2015, and on 18 March 2016. Discussions were conducted in good faith and in a way that was open and respectful of the views of all parties. Proposals for possible resolution were considered by the parties both at the conciliation meetings and out of session (during periods of adjournment for that purpose).

Outcome
Agreement had not been reached on whether and in what terms amendments could be made to the booklet. On 5 May 2016, Ms Delaney withdrew her complaint.

No finding was made in relation to the complaint: it was neither upheld nor dismissed. No finding was made in relation to whether or not the defence available under section 55 of the Act applied in the circumstances. These findings are a matter for the Tasmanian Anti-Discrimination Tribunal, which did not consider this complaint due to its withdrawal.
Attachment Six

Explanatory note
Where additional text has been added to the original, this has simply been inserted in red, in a different font. Where text has either been deleted or altered in any way, the affected original text has been highlighted and is followed immediately by the suggested alternative - which is also in red and a different font.

Respect for all
At this time in history there is much discussion about the meaning of marriage. Some suggest that it is unjustly discriminatory not to allow people with same-sex attraction to marry someone of the same sex. Others believe that marriage is an institution uniting a man and a woman. We wish by this pastoral letter to engage with this debate, present the Church’s teaching to the faithful, and explain the position of the Catholic faithful to the wider community.

The Catholic tradition teaches that every human being is a unique and irreplaceable person, created in the image of God and loved by Him.

Because of this, every man, woman and child has great dignity and worth which can never be taken away. This includes those who experience same-sex attraction. They must be treated with respect, sensitivity, and love.

The Catholic Church opposes all forms of unjust discrimination. We deplore injustices perpetrated upon people because of religion, sex, race, age etc. The Catechism of the Catholic Church calls for understanding for those with deep-seated homosexual tendencies for whom this may well be a real trial. “They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided.” (2358)

Christians believe that all people including those with same-sex attraction are called by God to live chastely and that, by God’s grace and the support of friends, they can and should grow in fulfilling God’s plan. Even those who take a different view to us about the place and meaning of sexual activity can appreciate the particular significance and importance of this institution. We now face a struggle for the very soul of marriage.
Marriage equality & discrimination

Advocates for ‘same-sex marriage’ rarely focus on the real meaning and purpose of marriage. Instead they assume that equal dignity and the principle of non-discrimination demand the legal recognition of same-sex relationships as marriages.

This appeal to equality and non-discrimination gets things the wrong way around. Justice requires us to treat people fairly and therefore not to make arbitrary, groundless distinctions.

The Church believes this appeal to equality and non-discrimination gets things the wrong way around. Our view is that justice requires us to treat people fairly and therefore not to make arbitrary, groundless distinctions.

That we must treat like cases alike and different cases differently.

Only women are admitted to women’s hospitals and only children to primary schools. We have programmes targeted at Aborigines, refugees, athletes, those with disabilities or reading difficulties, and so on.

Thus privilaging or assisting particular people in relevant ways is not arbitrary but an entirely fair response. And if the union of a man and a woman is different from other unions – not the same as other unions – then justice demands that we treat that union accordingly. If marriage is an institution designed to support people of the opposite sex to be faithful to each other and to the children of their union it is not discrimination to reserve it to them.

Thus, we hold that privilaging or assisting particular people in relevant ways is not arbitrary but an entirely fair response. And if the union of a man and a woman is different from other unions, as the Church teaches – not the same as other unions – then justice demands that we treat that union accordingly. In this light, if marriage is an institution designed to support people of the opposite sex to be faithful to each other and to the children of their union it is not discrimination to reserve it to them.

Indeed, in this pastoral letter we argue that what is unjust – gravely unjust – is:

• to legitimise the false assertion that there is nothing distinctive about a man and a woman, a father or a mother;

• to ignore the particular values that real marriage serves;

• to ignore the particular values we believe marriage serves;

• to ignore the importance the Church places on children having, as far as possible, a mum and a dad, committed to them and to each other for the long haul;

• to destabilize marriage further at a time when it is already under considerable pressure; and

• to change retrospectively the basis upon which all existing married couples got married.

If we are right in this assertion and if the civil law ceases to define marriage as traditionally understood, the Church believes it will be a serious injustice and undermine that common good for which the civil law exists.

1 Although we use the language of ‘same-sex marriage’ throughout this pastoral letter, we do not consider that same-sex relationships can ever amount to marriage. As we argue, the meaning of marriage is confined to relationships between a man and woman entered into voluntarily for life to the exclusion of all others and which is open to the procreation of children.
Whether we are right depends upon what marriage really is….

**Emotional tie -v- Comprehensive one-flesh union**

One view of marriage is that it is nothing more than a commitment to love. On this view, marriage is essentially an emotional tie, enhanced by public promises and consensual sexual activity. The marriage is valuable as long as the good emotions last. Proponents of this view of marriage argue that, given that men and women, men and men, and women and women, can have these sorts of emotional ties, all such unions should be recognised as marriages in law. (On this logic marriage could be further redefined to include various types of relationships.)

The more traditional view of marriage, which the Church has always supported, is different. It sees marriage as about connecting the values and people in our lives which otherwise have a tendency to get fragmented: sex and love, male and female, sex and babies, parents and children. This view has long influenced our law, literature, art, philosophy, religion and social practices.

On this view, marriage includes an emotional union, but we hold it goes further than that. The Church teaches that it involves a substantial bodily and spiritual union of a man and a woman. As the Old Testament taught and Jesus and St Paul repeated, we believe marriage is where man and woman truly become “one flesh” (Gen 2:24; Mt 19:5; Eph 5:31) - that it is a comprehensive union between a man and a woman grounded on heterosexual union.

For us, this union is centred around and ordered not only to the wellbeing of the spouses but also towards the generation and wellbeing of children.

So, the Church holds this is true even where one or both spouses are infertile: they still engage in exactly the same sort of marital acts as fertile couples, i.e. that naturally result in a child. It is our view that marriage for them as for other truly married couples is grounded on a total commitment: bodily and spiritual, sexual and reproductive, permanent and exclusive. It is in these senses that the Church sees marriage is comprehensive.

On this traditional view what allows for this special kind of union between a man and a woman in marriage is precisely their difference and complementarity. Our belief is that their physical, spiritual, psychological and sexual differences show they are meant for each other, their union makes them whole, and through their union ‘in one flesh’ they together beget children who are ‘flesh of their flesh’. That they share the sameness of humanity but enjoy the difference of their masculinity and femininity, being husband and wife, paternity and maternity.

Same-sex friendships are of a very different kind: to treat them as the same does a grave injustice to both kinds of friendship and ignores the particular values that real marriages serve.

We hold that same-sex relationships are friendships, of a very different kind to heterosexual marriage: that to treat them as the same does a grave injustice to both kinds of friendship and ignores the particular values the Church believes marriages serve.
The importance of marriage and family

The Catholic Church cares deeply about marriage because it is a fundamental good in itself, a foundation of human existence and flourishing, and a blessing from God. The decision to commit permanently and exclusively to sharing the whole of one’s life with someone of the opposite sex and to raise any children that are the fruit, embodiment and extension of that union, is good in itself, even if no children are conceived. But because we believe children are the natural result of marital life and that they are best reared within the commitment of marriage, we therefore hold that this makes marriage also an essential part of the propagation and nurturing of the human family.

Marriage also joins distinct families to each other, fostering greater communion between people.

The Church teaches that each marriage, from its beginning, is the ‘foundation-in-waiting’ of a new family and each marriage-based family is a basic ‘cell’ of society.

Families also provide the social stability necessary for the future by modelling love and communion, welcoming and raising new life, taking care of the weak, sick and aged. The principal ‘public’ significance of the marriage-based family is precisely in being the nursery for raising healthy, well-rounded, virtuous citizens.

Governments normally stay out of relationships: it is none of their business to say who may be friends with whom and on what basis.

But because of the crucial role marriage plays as the nursery for the future of the community, and its responsibility always to act in the best interests of children governments everywhere recognise and regulate marriage.

Marriage also has a religious significance. The Catholic Church believes that God is the author of marriage and has “endowed marriage with various benefits and purposes” including “the good of the spouses and the procreation and upbringing of children”.3

Christ raised the matrimonial covenant between baptised persons to the status of a sacrament “in which God helps the spouses live out the dignity and duties of their state” and so work out their salvation with Him.4

For these reasons the Church can say that marriage is not only a natural institution but also ‘holy’.5

For these reasons the Church believes that marriage is not only a natural institution but also ‘holy’.

Thus the Church holds that it, as well as the state, has an interest in the right understanding and support of authentic marriage.

The importance of mothers and fathers
Every child has a biological mother and father. But the importance of mothers and fathers goes far beyond reproduction.

Men and women bring unique gifts to the shared task of raising their children. Mothering and fathering are distinctively different. Only a woman can be a mother; only a man can be a father.

The Church believes that a mother and a father each contributes in a distinct way to the upbringing of a child, and that respecting a child’s dignity means affirming his or her need and natural right to a mother and a father. And there are countless reliable studies that suggest that mothers and fathers enhance – and their absences impede – child development in different ways.

And there are countless studies that suggest that mothers and fathers enhance – and their absences impede – child development in different ways.

The Church acknowledges the difficulties faced by single parents and seeks to support them in their often heroic response to the needs of their children.

It is our view that there is a big difference, however, between dealing with the unintended reality of single parenthood and planning from the beginning artificially to create an ‘alternative family’ that deliberately deprives a child of a father or a mother.

Sometimes people claim that children do just fine with two mums or two dads and that there is “no difference” between households with same-sex parents and heterosexual parents. But sociological research, as well as the long experience of Church and society, attests to the importance for children of having, as far as possible, both a mother and father.

It is the Church’s position that ‘Messing with marriage’, therefore, is also ‘messing with kids’. It is gravely unjust to them. We know that marriages and families are already under very considerable pressure today and that there is already much confusion about what they mean and how best to live marital and family life. The Church devotes much of her pastoral energy to supporting people to live married and family life well and to assisting the victims of marital and family breakdown. This convinces us that a further tearing away at the traditional understanding of marriage and family will only hurt more people – and especially more young people who, because of their vulnerability, demand particular care.
Consequences of redefining marriage

Beyond the effects on spouses and on children, the Church believes redefining marriage to include same-sex relationships will have far reaching consequences for all of us.

The world around us influences the communities in which we live. Cultural and legal norms shape our idea of what the world is like, what’s valuable, and what are appropriate standards of conduct. And this in turn shapes individual choices. That’s one of the main purposes of marriage law: to enable and encourage individuals to form and keep commitments of a certain kind.

But if the civil definition of marriage were changed to include ‘same-sex marriage’ then our law and culture would teach that marriage is merely about emotional union of any two (or more?) people.

But if the civil definition of marriage were changed to include ‘same-sex marriage’ then our law and culture would teach that marriage is merely about emotional union of any two people.

All marriages would come to be defined by intensity of emotion rather than a union founded on sexual complementarity and potential fertility.

Some marriages could come to be defined by intensity of emotion, rather than as the Church believes a marriage should be viewed - as a union founded on sexual complementarity and potential fertility.

Husbands and wives, mothers and fathers, will be seen to be wholly interchangeable social constructs as gender would no longer matter.

Husbands and wives, mothers and fathers, will be seen, by some in our society, to be wholly interchangeable social constructs as gender would no longer matter.

And people who adhere to the perennial and natural definition of marriage will be characterised as old-fashioned, even bigots, who must answer to social disapproval and the law. Even if certain exemptions were allowed at first for ministers of religion and places of worship, freedom of conscience, belief and worship will be curtailed in important ways.

We are concerned that people who adhere to - what the Church holds as - the perennial and natural definition of marriage will be characterised as old-fashioned, even bigots, who must answer to social disapproval and the law. Even if certain exemptions were allowed at first for ministers of religion and places of worship, we believe freedom of conscience, belief and worship might be curtailed in important ways.

Here are a few real life examples that have occurred recently:

• The City of Coeur d’Alene, Idaho, ordered Christian ministers to perform same-sex weddings under pain of 180 days’ imprisonment for each day the ceremony is not performed and fines of $1000 per day; some British MPs have threatened to remove the marriage licences from clergy who fail to conduct ‘same-sex marriages’

• Clergy in Holland, France, Spain, the US and Australia have been threatened with prosecution for ‘hate speech’ for upholding their faith tradition’s position on marriage; the City of Houston,
Texas, has even subpoenaed pastors, compelling them to submit sermons to legal scrutiny when discussing sexuality.

- In Colorado and Oregon, courts have fined bakers who refused on religious or conscientious grounds to bake wedding cakes for ‘same-sex weddings’; in New Mexico a wedding photographer was fined for refusing to do photography for such a ceremony; and in Illinois accommodation providers have been sued for not providing honeymoon packages after ‘same-sex weddings’

- Yeshiva University in New York City was prosecuted for not providing accommodation to ‘same-sex married couples’ and other Catholic university colleges have been threatened with similar actions.

- Catholic adoption agencies in Britain and some American states have been forced to close for not placing children with same-sex couples: for example, Evangelical Child Family Services in Illinois (US) was shut down for its refusal to do so.

- Catholic organisations in some American states have been forced to extend spousal employment benefits to same-sex partners.

- In New Jersey an online dating service was sued for failing to provide services to same-sex couples and a doctor in San Diego County was prosecuted after refusing personally to participate in the reproduction of a fatherless child through artificial insemination.

- Parents in Canada and several European countries have been required to leave their children in sex-education classes that teach the goodness of homosexual activity and its equality with heterosexual marital activity; for example, David and Tanya Parker objected to their kindergarten son being taught about same-sex marriage after it was legalised by the Massachusetts Supreme Court, leading to David being handcuffed and arrested for trying to pull his son out of class for that lesson. They were told they had no right to do so.

- The Law Society in England revoked permission for a group called ‘Christian Concern’ to use its premises because the group supported traditional marriage which the Law Society said was contrary to its ‘diversity policy’.

- In the US, Canada and Denmark pastors or religious organisations have been forced to allow same-sex marriages in their churches or halls: Ocean Grove Methodist Camp in New Jersey (US) had part of its tax-exempt status rescinded because they do not allow same-sex civil union ceremonies on their grounds.

- British MPs have threatened to stop churches holding weddings if they do not agree to conduct same-sex ones.

- The Chief Rabbi of Amsterdam and a Bishop in Spain have been threatened with prosecution for ‘hate speech’ merely for restating the position of their religious traditions.

- The Deputy Chief Psychiatrist of the state of Victoria was pressured to resign his position on the Victorian Human Rights and Equal Opportunity Commission after joining 150 doctors who told a Senate inquiry that children do better with a mum and dad; in several US states and in England psychologists have also lost positions for stating that they favour traditional marriage or families based thereon.

- Having allowed ‘same-sex marriages’, polygamous marriages have been permitted in Brazil and pressure for their legalisation is strong in Canada and elsewhere.
• Businessmen, athletes, commentators, teachers, doctors and nurses, religious leaders and others in several countries who have spoken in support of traditional marriage have been vilified in the media, denied employment or business contracts, and threatened with prosecution.

Thus a view of marriage – as between a man and a woman – which was previously common to believers and non-believers alike, across a whole variety of cultures and times, is increasingly becoming a truth which cannot be spoken. Redefining marriage has consequences for everyone.

Additional References

Time to act

The Church absolutely believes the word ‘marriage’ isn’t simply a label that can be attached and transferred to different types of relationships as the fashion of the day dictates. In our view, it has an intrinsic or natural meaning prior to anything we may invent or the state may legislate. For us, it reflects God’s plan for humanity, our personal growth and that of our children and society. To say that other friendships are not marriages is not to demean those other friendships or the individuals concerned, but merely to recognise that...

In saying that other friendships are not marriages, the Church does not seek to demean those other friendships or the individuals concerned, but merely to clearly state our belief that...

...marriage is the covenant of a man and a woman to live as husband and wife, exclusively and for life, and open to the procreation of children.

We all know and love people with same-sex attraction. They are our brothers and sisters, sons and daughters, friends and neighbours. They need love and support like anyone else. But we believe it is pretending to say that their relationships are ‘marriages’ and is not fair or just to them. As Christians we must be willing to present the truth about marriage, family and sexuality as we hold it to be and to do so charitably and lovingly.

We call upon all those of good will, to redouble their support for the institution of marriage in our community and for the laws and culture that sustain it. We particularly urge you to make your views known to your parliamentary representatives. At this moment in our nation’s history married people must give the testimony of their own lives in this matter. We especially pray for genuine friendship and love in every person’s life, married or unmarried; for a right understanding of the meaning of marriage and the requirements of justice; and for an increasing openness to the powerful witness of married couples in our world.

Other resources

For those who wish to read more we recommend the publications of the Bishops’ Commission for Pastoral Life, available at http://tinyurl.com/pastorallife

Other Church documents include John Paul II, Familiaris Consortio (1981) and Congregation for the Doctrine of the Faith, Regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons (2003), both available at www.vatican.va

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