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Understanding vilification and discrimination – what can and can't be said from the pulpit

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Introduction

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➤ Our focus areas

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Not for Profit & Charity

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Employment & Discrimination

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What is Discrimination?

•Jurisdictional Issues

- Sex Discrimination Act 1984 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Racial Discrimination Act 1975(Cth)
- (ACT) Discrimination Act 1991
- (NT) Anti-Discrimination Act 1992
- (NSW) Anti-Discrimination Act 1977
- (QLD) Anti-Discrimination Act 1991
- (SA) Equal Opportunity Act 1984
- (TAS) Anti-Discrimination Act 1998
- (VIC) Equal Opportunity Act 2010
- (WA) Equal Opportunity Act 1984

•Not to mention International Law!!!



1. What is Discrimination?

- It is illegal to discriminate in certain areas (eg. education, employment, accommodation, or the delivery of goods or services) on the basis of...

- Protected Trait or Attribute

- Sex/Gender
- Sexual Orientation
- Race
- Religion
- Disability
- Age
- Marital Status
- Pregnancy
- Association

- The Comparator Test



2. What is Discrimination?

- Direct or Indirect

- Direct Discrimination is where one treats or proposes to treat the person with an attribute less favourably than it would someone who does not have that attribute.

- Indirect Discrimination is where a condition is placed on access to a good or service that someone with a trait would be unable to meet.

- Always ask for the comparator



3. Defences Available to Churches?

- Religious Exemption – Differs between jurisdictions and area
 - It is important to note that there are specific exceptions for the employment and education spheres
 - For discrimination in Queensland generally, the exemption is found in:
 - Section 37 of the Sex Discrimination Act 1984 (Cth); and
 - Section 109(d) of the Anti Discrimination Act 1992 (QLD)
 - Practices of a religious body that conform to the doctrines of the religion or are necessary to avoid injuring the religious susceptibilities of adherents
 - ? How does this apply to individuals?



4. *Christian Youth Camps Limited v Cobaw Community Health Service Limited [2014] VSCA 75*).

- A campsite run by the Brethren movement was asked to host a camp for suicide prevention for same-sex attracted people.
- They refused and got sued under the Victorian legislation.
- The court held that:
 - CYC was not a religious body for the purposes of the exemption
 - The relevant doctrine was “plenary inspiration”, not any particular stance regarding same sex relationships.
 - Even so, the doctrine and belief structure did not require non-adherents to comply with it’s beliefs.
 - And, even so it would need to be shown that the proposed action would be an affront to the reasonable expectation of the adherents of the religion.
 - As the camp was not a church site, but a camp regularly used by secular persons including those in same sex relationships, holding the camp could not reasonably be an affront to the sensibilities of the adherants.



5. What is Vilification?

- (QLD) Anti-Discrimination Act 1991 s 124A(1)

(1) A person must not, by a [public act](#), incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality or gender identity of the person or members of the group.

(2) *Subsection (1)* does not make unlawful—

(a) the publication of a fair report of a [public act](#) mentioned in *subsection (1)* ; or

(b) the publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or

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

WHAT ABOUT FREEDOM OF SPEECH???



6. What is a “Public Act” in QLD?

(a) any form of communication to the public, including by speaking, writing, printing, displaying notices, broadcasting, telecasting, screening or playing of tapes or other recorded material, or by electronic means; and

(b) any conduct that is observable by the public, including actions, gestures and the wearing or display of clothing, signs, flags, emblems or insignia.

(2) Despite anything in subsection (1), a public act does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.



7. *Menzies and Anor v Owen* [2014] QCAT 661

- Not a pastor, but invoked Christianity in the relevant context – a shire councilman
- Mr Menzies published a report tabled in Council that stated words to the effect of:

(quote)

...Fact or Fiction?...

73% of homosexual men surveyed had at some time had sex with boys 16 – 19 years or younger!

Homosexual teachers are 90 to 100 times more likely to be involved sexually with pupils!...

Homosexual males are 500 times more likely to have AIDS (90%) of all cases).

I believe that this proves, that you should not allow sodomites anywhere near schools, scouts, churches or government or railways in fact I cannot think of anywhere on this planet I could recommend them to.



8. *Menzies and Anor v Owen* [2014] QCAT 661

- He was sued, and the suit was ultimately successful despite several appeals.
- Throughout the proceedings, among other technical arguments, he argued that s124A(1) restricted his constitutional right to freedom of speech.
- The Queensland Court of Appeal held that s124A(1) was not unconstitutional.



9. Catch the Fire Ministries Inc v Islamic Council of Victoria Inc (2006) 235 ALR 750

- An AoG pastor was preaching about Islam at a seminar for Christians held at a YWAM base.
- The pastor and his ministry were sued under the Victorian legislation. They lost, and appealed.
- The Court upheld the appeal, and ruled that what is said at a religious seminar by a true believer in one religious faith concerning the perceived inadequacies of the tenets of another might be regarded as said bona fide and reasonably for a genuine religious purpose of 'witnessing' to adherents of the other persuasion.
- Interesting, the court determined the same outcome as in *Owen v Menzies* regarding constitutional validity.



10. Racial and Religious Tolerance Act 2001 (VIC)– section 8

Religious vilification unlawful

- (1) A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons. Note: "engage in conduct" includes use of the internet or e-mail to publish or transmit statements or other material.
- (2) For the purposes of sub-section (1), conduct—
 - (a) may be constituted by a single occasion or by a number of occasions over a period of time; and
 - (b) may occur in or outside Victoria.



11. ‘Threewisemonkeys’ and Durston Case Study (Tasmanian Anti Discrimination Tribunal Decision)

- Mr Durston published a pamphlet called ‘Threewisemonkeys’ in which it was conveyed that:
 - homosexuality should not be tolerated;
 - gay people were more likely to die of disease, and in traffic accidents, than heterosexual people.
 - scripture rejected homosexuality as abominable
 - gay people died on average aged in their 40s; and
 - Lesbians are 435 times more likely to be the victims of murders, 932 times more likely to die from suicide and 466 times more likely to die in traffic accidents.
- He was sued under the Tasmanian legislation.



12. ‘Threewisemonkeys’ and Durston Case Study (Tasmanian Anti Discrimination Tribunal Decision)

- The word “incite” should be given its ordinary and plain meaning, namely, to urge, spur on, animate, stimulate or prompt to action.
- It is not necessary to prove that the publisher intended the publication to incite persons to hatred, serious contempt or severe ridicule. The test is whether the public act is capable of such incitement.
- The public act must be capable of inciting intense dislike or hostility towards a person or group of persons, or grave scorn or extreme derision of such persons. The conduct must be capable of arousing reactions at the extreme end of the scale.
- The aspect of the conduct complained of must be assessed within the context of the entire statement or publication.
- The proper approach is to consider how an ordinary, reasonable person would respond to the publication.

Take Homes (in summary)

To Do:

- **Respect** is Key:
 - in **preaching**
 - in **expression**
 - in **sharing** with others
- Live according to your beliefs as long as this does not harm others or encourage others to harm others



Take Homes (in summary)



Do not :

- Treat someone **less favourably** because of a protected attribute
- Engage in behaviour that **harms** others, particularly on the basis of a protected attribute
- Publish, preach, act or otherwise engage in behaviour that encourages others to harm, hate, have severe ridicule or severe contempt for others, particularly on the basis of a protected attribute.

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Any Questions?



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