



Dealing with Issues Relating to Gender Change & Sexuality

Ashleigh Fanning, Associate

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Overview

- Introduction
- Queensland's legal position: an update
- Other States' legal position
- Practical Implications for Pastoral Counselling & Sunday Services
- Is there a need?
- Exemptions

1. Introduction

- › Over the last few years, Australia has seen legislative reform in the areas of discrimination and vilification for practices affecting LGBTQA+ persons.
- › A lot of this legislation was targeted towards health care providers and to address hate-crimes stemming from the rise of neo-Nazism (and trans/homophobic rallies etc.)
- › There has been a call for federal reform for our discrimination legislation to broaden the scope.

- › Several legal experts have expressed concerns as to the drafting of these new laws and proposed new laws.
- › Fine line to walk with constitutional freedoms.
- › Current legislation places churches in slight grey areas however, any faith-based health providers are clearly covered by these laws.
- › Further reform is likely to come in the future.

2. Queensland's Legal Position

- › In Queensland, every person has the right to enjoy their human rights free from discrimination (s15 *Human Rights Act 2019* (Qld)).
- › Therefore, laws, programs and policies should not be discriminatory or be enforced in a way that is discriminatory.
- › It is unlawful to discriminate against a person on the basis of the gender identity or sexuality (*Anti-Discrimination Act 1991* (Qld)).
- › The Queensland Human Rights Commission states: “Gender Identity is a person’s innermost concept of self as male or female, both or neither, how an individual perceives themselves, and what they call themselves.

- › Under the *Anti-Discrimination Act*, ‘gender identity’ is defined as *when a person*:-
 - › Identifies, or has been identified, as a member of the opposite sex by living or seeking to live as a member of that sex; or
 - › Is of indeterminate sex and seeks to live as a member of a particular sex.
- › ‘Sexuality’ is defined as *heterosexuality, homosexuality or bisexuality*.
- › The Act also includes unfavourable treatment of a person on the grounds of an impairment.
 - › Gender Dysphoria is a recognised impairment and in certain circumstances, an discriminatory treatment of a person with Gender Dysphoria may fall under gender identity discrimination, impairment discrimination, or even both

› Direct Discrimination:

where a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially difference.

› Indirect Discrimination:

where a person imposes, or proposes to impose, a term that a person with an attribute does not or is not able to comply, and with which a higher proportion of people without the attribute comply or are able to comply, and that is not reasonable.

- › Not all unfavourable or unfair treatment would be considered discrimination under discrimination law.
- › The *Anti-Discrimination Act* covers areas of public life such as school, work, receiving goods/services, etc.
- › The Act does not cover the ‘private life’ such as conversations between friends however, we must approach this with caution if we are employed or volunteers of churches as we might be seen to be representing the organisation in those conversations.

- › In Queensland, there are two (2) types of vilification which is prohibited by law:-
 1. *Unlawful* vilification: a 'civil' action which involves a complaint to the Qld Human Rights Commission
 2. *Serious* vilification: a crime and is therefore dealt with by police.

So, what is required to prove these two types of vilification?

Unlawful vilification:

- a. A public Act;
- b. Capable of inciting;
- c. Hatred, contempt or severe ridicule of a person or group of persons; and
- d. Gender identity is a substantial reason for the incitement.

Serious vilification:

- a. A public act;
- b. Knowingly or recklessly;
- c. Incites;
- d. Hatred towards, serious contempt for, or severe ridicule of;
- e. A person or group of persons;
- f. On the ground of sexuality of the person or group;
- g. In a way that includes:-
 - i. Threat of physical harm to property or person; or
 - ii. Inciting others to threaten physical harm to property or person.

- › Unlawful request for information is also against the law in Qld.
- › This includes both verbal or written requests.
- › An unlawful request will be where the information is used to discriminate against the person. For example:
 - › Prospective employer asking whether they've had gender reassignment surgery or are intending to.
- › It may also extend to requests for gender identity or sexual orientation in an intake process for employees, volunteers or congregants.

- › Queensland banned 'gay conversion therapy' in the health sector in August 2020.
- › Conversion practices include any techniques or interventions that are based in ideology that being LGBTQA+ is a disorder that needs 'fixing'.
- › At this stage, the prohibition only applies to conversion therapies provided by a health service provider however, advocacy groups are calling for it to be extended to all service providers including religious service providers (e.g., adoption centres, foster agencies)
- › This year, the United Nations has released a report that calls out Australian religious exemption laws which allow discrimination against LGTBQA+ people in faith-based schools and by faith-based service providers.
- › Later this year, the Australian Law Reform Commission will also be providing recommendations in this space but will have more of a focus in schools.

- › Currently no restriction on the teaching of religious beliefs in this area so long as it does not incite hatred, contempt or ridicule of LGBTQA+ people as discussed.
- › The teaching of religious beliefs need to be conducted in ‘good faith’.

3. Other States' Position

- › Currently: Victoria, South Australia and Western Australia do not have the same anti-vilification laws.
- › NSW has passed anti-vilification laws that come into effect on or about 3 November 2023. These are almost identical to Qld.
 - › The NSW Premier has stated that these laws will not infringe on the ability to express religious beliefs through a sermon and does not ban an individual seeking “guidance through prayer... with their own consent.”
- › NSW is also looking to introduce a ban on conversion therapies, like Qld, where it would be illegal to change or suppress a person identifying as gender diverse or trans.
- › We would anticipate similar legislation to follow in Victoria, SA and WA.

- › Current States that have banned gay conversion therapies:-
 - › Queensland;
 - › Victoria;
 - › ACT;

 - › NSW to follow shortly.

4. Practical Implications

- › As Churches, there may be implications not just in our pastoral counselling but in our Sunday services as well.
- › Where preaching or prayer is perceived to be disguising a form of counselling or conversion practice falls into grey areas but may breach anti-conversion or anti-vilification laws (Corporate prayer).
- › There is a fine line to be walked with these new laws so as not to impede on the constitutional freedom of religion and freedom of speech.
- › Little to no case law in this space at present.

5. Is There a Need?

- › The United Nations released a statement identifying that gay conversion therapy, and vilification, causes significant psychological and social harm.
- › Further, the practice violates international, and Australia, human rights legislation.
- › Many advocacy groups are calling for federal reform in this area.

6. Exemptions

- › In States where vilification on the basis of gender identity and sexuality has been banned:-
 - › Where a person who is alleged to have committed unlawful vilification, they will need to show that their conduct was:
 - › Done reasonably; and
 - › In good faith for academic, scientific, research or religious discussion, or other purposes in the public interest or a fair report of a public act.
 - › There is **no** defence for serious vilification.
- › Section 37 of the *Sex Discrimination Act 1984* (Cth), religious bodies have the following exemption from sex discrimination:-
 - › Ordination of ministers, including their training, education, selection or appointment;
 - › Any other act or practice of a body established for religious purposes where the act or practice conforms to the doctrines, tenets and beliefs of that religious or is necessary to avoid injury to the religious susceptibilities of adherents of that religion;
 - › This one doesn't apply where it is in connection with Commonwealth funded aged care.



QUESTIONS?



Contact



Name: *Alistair Macpherson*

Position: *Managing Director*

Email: *alistair.macpherson@corneyandlind.com.au*

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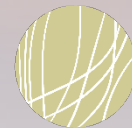
Next Webinar

Tuesday

14th of November 12:30pm

DGR Status: A Refresher for Churches

https://us02web.zoom.us/webinar/register/WN_He8OILvqTNunEx2bf3ye2Q#/registration



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