

FACT SHEET

Anti-Discrimination Amendment Bill 2016

The Anti-Discrimination Amendment Bill 2016 (the Bill) proposes amendments to the *Anti-Discrimination Act 1998* (the Act). The proposed amendments are intended to clarify the existing exceptions in the Act to allow for genuine public debate and discussion on important issues whilst preserving the current protections against offensive conduct and incitement of hatred and contempt.

Section 17(1) of the Act provides that a person must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute referred to in section 16(e), (a), (b), (c), (d), (ea), (eb) and (k), (f), (fa), (g), (h), (i) or (j) in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted, or ridiculed. These attributes are gender, race, age, sexual orientation, lawful sexual activity, gender identity, intersex, disability, marital status, relationship status, pregnancy, breastfeeding, parental status, and family responsibilities.

Section 19 of the Act prohibits the incitement of hatred towards, serious contempt for or severe ridicule of a person or group of persons on the ground of race, disability, sexual orientation or lawful sexual activity or religious belief, affiliation or religious activity.

Section 55 of the Act provides an exception to sections 17(1) and 19. It states that the provisions of sections 17(1) and 19 do not apply in relation to certain conduct, including a public act done in good faith for academic, artistic, scientific or research purposes or for any purpose in the public interest.

The Bill proposes changes to section 55 of the Act to make it clear that the exception includes public acts done for religious purposes.

The Bill also seeks to address concerns that the current threshold for acceptance of a complaint under the Act is too low. The Bill proposes:

- To introduce a new provision, section 64(1A) – to require the Anti-Discrimination Commissioner to reject a complaint made under section 17(1) if he or she is satisfied that:
 - A reasonable person, having regard to all the circumstances, would not have anticipated that the person by or in respect of whom the complaint is made would be offended, humiliated, intimidated, insulted or ridiculed by the conduct; or

- By virtue of section 55, the provisions of section 17(1) do not apply to the conduct.
- To introduce a new provision – subject 64(1B) – to require the Anti-Discrimination Commissioner to reject a complaint made under section 19 if he or she is satisfied that:
 - the public act does not constitute incitement of, as the case may be, hatred towards, serious contempt for, or severe ridicule of the person or persons by or in respect of whom the complaint is made on whichever of the grounds referred to in section 19(a), (b), (c) and (d) is relevant to the complaint; or
 - By virtue of section 55, the provisions of section 19 do not apply to the public act.
- To amend section 71 to require the Anti-Discrimination Commissioner to dismiss a complaint if he or she is satisfied from the findings of an investigation, that it is a complaint that the Anti-Discrimination Commissioner, exercising reasonable judgment, ought to have rejected under the proposed new section 64(1A) or (1B) (referred to above); and
- To amend section 99 to require the Anti-Discrimination Tribunal to dismiss a complaint if it is satisfied that it is a complaint that the Anti-Discrimination Commissioner, exercising reasonable judgment, ought to have rejected under the proposed new section 64(1A) or (1B).

The Bill does not repeal or make any changes to sections 17(1) or 19 of the Act.