

Race Discrimination Unit
Education and Partnerships Section
Australian Human Rights Commission
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Civil Liberties Australia thanks you for the opportunity to make a submission to the '*Freedom of religion and belief in the 21st century Discussion Paper*'.

Our comments, relating to certain sections of the Discussion Paper, are set out below.

1: Evaluation of 1998 HREOC Report on Article 18: Freedom of Religion and Belief

CLA believes freedom of belief and freedom not to believe is fundamental in a democratic society. However this freedom comes with a responsibility attached and there is a line to be drawn between laws which prevent racial vilification and laws which unfairly inhibit freedom of speech. Racial vilifications laws, such as the Racial Discrimination Act 1975, are important steps by the Government to managing incitement to religious hatred based on ethnic origin and are essential in any civilized society to inhibit the unjustifiable activity of discrimination on the basis of race.

While there is no excuse for actions which incite racial discrimination or hatred, such despicable actions must be clearly distinguished at law from those which invite comment about religion. People must be free, in any medium, to engage in debate and challenge perceptions, to promote a free exchange of ideas and opinions and be able to communicate philosophies in an open and frank way.

For example, the legal position of blasphemy in Australia is unclear. Blasphemy is defined as oral or written publication of words about the Christian religion that outrage the feelings of persons sympathetic to Christianity and are so scurrilous or profane as to go beyond the limits of decent controversy. The recognition of the possible existence of blasphemous libel in Australia is evidenced by the reference to such an offence in the Crimes Act 1958 (Vic), Defamation Act 1974 (NSW), and Crimes Act 1900 (NSW), amongst others. Such laws place religion in a privileged position when compared to other schools of thought, including other religions, and inhibit freedom of speech and discussion.

The Australian Law Reform Commission (ALRC) stated in its report on Film And Literature Censorship Procedure in 1991 that, in a society in which there are many religions, it is not appropriate to give the special protection that blasphemy affords to only one of these and to extend the law of blasphemy would involve a determination of which organisations are religions.

The potential presence of offences such as blasphemy goes to the question of the role governments have in fostering freedom of belief, the freedom not to believe and freedom of speech and discussion in a democratic society. The law of blasphemy privileges one form of belief over all others, and potentially excludes it from critical comment and scrutiny. In doing so it inhibits the operation of free speech and marginalises differing voices.

As such any laws which privilege a particular point of view and protect such views from the light of scrutiny should be repealed as they unfairly inhibit free discussion in society. Furthermore any notion of the existence of a common law blasphemy offence in Australia should be repudiated specifically by legislation; the new legislation should rule out common law blasphemy actions in any jurisdiction in Australia.

2: Religion and the State – the Constitution, roles and responsibilities

As stated above, freedom of belief, freedom to not believe and freedom of speech are fundamental aspects of a functioning democracy.

While freedom of religion is protected by the constitution, other equally significant freedoms are not.

There is no codified guarantee of fundamental liberties under Australian law (in fact, there is no codification of what Australians' liberties and rights are, even outside of the law). CLA supports the concept of Australia having a charter of rights and responsibilities, like the European Convention on Human Rights, the New Zealand Bill of Rights, or equivalent instruments from other western democracies. There should be a court where the rights and liberties of less-powerful Australians can be established, quickly and at little cost.

A charter of rights which was correctly drafted and included these other important freedoms would recognize and provide a legally-accepted base upon which such universal freedoms, including the freedom to believe, the freedom not to believe and freedom of speech, can be asserted. It would further promote more effective policy making by governments, which presumably would be required to comply with such a charter.

In effect the charter should act as a form of contract between the citizens and the state, derived from community consultation and passed through the government by the people's representatives. It should as a consequence provide a mechanism by which citizens can assess the excess (or otherwise) use of authority by Government. Individual concern (or satisfaction) with such use of authority can be expressed via elections.

4: Security issues in the aftermath of 11 September 2001

CLA believes that Australia's legislative response to the threat of terrorism has been disproportionate, and has fundamentally abrogated the rights and liberties of Australians.

CLA notes that Attorney-General, the Hon Robert McClelland MP, has committed to major changes in anti-terrorism law in 2009, and particularly to abolishing the current sedition laws. This is an important step to demonstrating commitment to the relationship between law and religious or faith based communities, and civil liberties.

Speaking at a press conference in late December 2008, he stated that the reforms included:

Firstly, with counter-terrorism offences, ensuring that they cover psychological as well as physical harm; ensuring that the offences apply equally to threats of terrorism, as they do to an act of terrorism; and creating a new offence covering terrorist-related hoaxes.

Secondly, the Government will introduce a national security legislation monitor to review the practical operation of counter-terrorism legislation.

Thirdly, the Government will establish a parliamentary joint committee on law enforcement by extending parliamentary oversight to include the Australian Federal Police. And the Government will also establish mechanisms to enable the Parliamentary Joint Committee on Intelligence and Security to review aspects of the conduct of the AFP when intelligence or security matters arise.

Fourthly, the Government will extend the mandate of the Inspector-General of Intelligence and Security, Mr Ian Carnell, who currently has jurisdiction in respect of intelligence agencies, to also inquire into the conduct of other agencies when asked to do so by the Prime Minister.

Fifthly, the Government will implement the recommendations of the Australian Law Reform Commission on federal sedition laws. These include changing the title of the offences from sedition to urging violence, and clarifying and modernising the elements of the offence consistent with the recommendations of the ALRC.

CLA is looking forward to reading and providing comments on the A-G's discussion paper and exposure draft, which is due for release in the first half of 2009.

The government's move to abolish the antiquated elements of sedition law should be mirrored by abolition of the equally-anachronistic blasphemy laws. Both are rooted in centuries-old notions of kings (and queens) heads rolling during times of enormous religious difference between papist and protestant armies. These laws have no resonance in the 21st century, where widespread education and access to communication tools is available to virtually everyone.

The antidote to harsh words spoken against the state, or against a particular religion or religiosity, is a flood of free speech so that choirs of disparate voices can counter extremism, of any variety (anti-religion, pro-religion or against a particular religion or belief set).

Australian have always put their faith in freedoms; whatever restricts freedom restricts our nation and our nature. Sedition and blasphemy laws are constraints on the freedom of speech of Australians.

Submitted by:



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