

How to be discriminating about anti-discrimination

Andrew Cameron & Tracy Gordon

Discrimination is an ugly phenomenon. When someone misses out on a job, or is abused or not served in a shop because of their sexuality, or disability or gender, our society suffers. The dignity and humanity of those who are discriminated against suffers. The dignity and humanity of those who perpetrate the discrimination suffers. In fact, the dignity and humanity of us all suffers. (Lee Rhiannon)¹

discrimination: the perceiving, noting, or making a distinction or difference between things...the making of distinctions prejudicial to people...the power of observing differences accurately...(Oxford English Dictionary)

Lee Rhiannon made the comments above in a speech launching a NSW Greens Private Member's Bill which seeks to change NSW anti-discrimination law and which, if passed, will give private schools and some religious organisations less say over who works for them.²

Currently, the Anti-Discrimination Act (1977) includes exemptions for private educational authorities, religious welfare agencies, and employers of up to five employees. The exemptions grant special privileges to such employers. The Greens' Amendment Bill (2004) proposes to remove those exemptions and privileges, so that all employers, including private educational authorities, would be required to employ job applicants irrespective of:

- * disability
- * responsibilities as a carer
- * age
- * gender

* transgender status

* marital status

* ‘homosexuality’³

The 1977 Act certainly seems a bit rough at first sight. By exempting some employers from anti-discrimination toward this list of very different people, the Act seems to say that some employers may ‘discriminate’, in the sinister sense of making “distinctions prejudicial to people”. But Acts of Parliament never explain the reasoning behind them. What might account for some of the exemptions?

1. It makes sense for a small employer to claim the exemption for a disabled job applicant, since it might cost too much to fit out a workplace for a disabled person.

2. It also makes sense for a private Christian school, which seeks to convey a Christian account of sex to students, to expect its teachers to both promote and practice the Christian account of sex. (In Christian thought, sex is for marriage, and single people honour God by refraining from the excellent gift of sex until they are married.)

But for Rhiannon, we must remove discrimination in all its manifestations—hence the Bill. She is particularly opposed to idea of teachers in Christian schools being required to both promote and practice the Christian account of sex:

Private and religious schools have used their exemption from the Anti-Discrimination Act to adopt discriminatory employment practices. The exemption has been used by the Catholic Education Office to sack teachers who live in *de facto* relationships or who are gay or lesbian.

“The Greens-proposed changes to the Bill will help create truly diverse workplaces and educational institutions,” she says. But what she fails to notice is that ‘discrimination’ is also simply “the power of observing differences accurately,” a perfectly innocent activity. The Greens, presumably, do this all the time. Major shareholders in mining and oil companies, cigarette company lobbyists, industrialists and loggers are unlikely to find a job at Rhiannon’s Erskineville HQ. People are indeed diverse, and in order to work together, there must be some latitude to allow them to congregate according to likeness of outlook. The Greens obviously practise ‘discrimination’ in *this* form, all the time.

At this point, politicians have a habit of saying “stop: politics is different”. But this is precisely the point about Christian schools. Like a political party, the Christian school exists to convey a certain outlook about how to live. That is not sinister, for since time immemorial all schools have done so. In our time, the message about many things, including sex, may be sufficiently different to that of State schools as to motivate some Christian parents to band together and pay for the teachers of their children. In this respect, the Christian school is simply a time-honoured expression of the freedom of religion. If the State decides to overrule the choice of teachers, then the school’s uniqueness is effectively erased, parents have no alternative avenues by which to educate their children as they see fit, and the State assumes total control over all education. The Greens have not noticed how completely they are, at this point, “imposing their values on others”—an activity they would presumably abhor.

These comments also apply to the provision of social, charitable or welfare services by religious organisations, which will also fall under the Green’s amendments. As well as the provision of primary and secondary education by religious bodies, they also have religious tertiary education in their sights. We should note that the amendments do *not* relate to:

- * the ordination, training or education of potential priests and ministers; or
- * people employed within “a body established to propagate religion”.

However, there would seem to be potential ambiguity over theological colleges, which are private tertiary educational authorities.

It may well be that the 1977 Act needs tidying up. Presumably, a truly Christian organisation would willingly and voluntarily submit itself to a requirement to cater for the disabled, or for someone in sole care of a child (although again, small employers might have problems here). Also, just as the Greens may well employ a *repentant* industrialist, so also do Christian organisations willingly employ those who have homosexual feelings, but who honour sex as being for marriage alone.

We’ll keep you posted.

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¹ Lee Rhiannon, MLC, 22nd March 2004, accessed at http://www.lee.greens.org.au/speeches/LGBTI_bill_launch.htm

² This briefing is only a preliminary response to the Bill, which can be viewed at <http://www.lee.greens.org.au/campaigns/LGBTI/equality.pdf>. We will probably use future briefings to say more.

³ We place 'homosexuality' in inverted commas because as far as we have found, the 1977 Act makes no distinction between someone who has homosexual feelings, and someone who practises homosexuality.