

Thank you to Senator Pratt for her question.

In respect of the questions regarding section 55 of the Tasmanian *Anti-Discrimination Act*, I respond as follows:

- **What application might it / or did it have in the Porteous case?**

Section 55 could have provided an additional defence to Archbishop Porteous, should the complaint have proceeded and not been withdrawn by the complainant.

Section 55 ensures that an act done in good faith for any purpose in the public interest cannot breach section 17(1) of the Tasmanian *Anti-Discrimination Act*. In my view, the conveying of an honestly held opinion regarding marriage as understood by a religious leader to his followers, particularly in the context of a national debate which was taking place at that time, would likely fall within section 55 – even if (which I doubt) it offended section 17(1) of the Tasmanian *Anti-Discrimination Act* in the first place.

That view is supported by the comments made by Justice Brett of the Tasmanian Supreme Court in *Durston v Anti-Discrimination Tribunal (No 2)* [2018] TASSC 48 who stated:

- The words “offend, insult, humiliate or intimidate” in section 17(1) have a more restricted meaning in law than the literal meaning of the words would suggest: [63]. They require conduct to have “profound and serious effects and not to be likened to mere slights”: [63].
- Section 55 limits the proscriptions in section 17, and should be construed broadly: [70]
- Section 55 serves to protect freedom of speech. Its requirement for ‘good faith’ permits honest debate, even if it causes offence, insult etc., if the freedom of speech has been exercised contentiously: [74].

Section 17(1) itself also includes an objective test, such that the conduct must have occurred “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.” That is, if a reasonable person would not be offended etc. by the conduct, it cannot contravene section 17(1) in the first place: see *Freeman v Cornish Mount No 24 Pty Ltd t/as Men's Gallery* [2019] TASADT 5, [63].

- **Was it used to allow debate in the Postal Survey – was there other material in the course of the survey that needed to be withdrawn?**

I do not know the answer to this question.

- **Did section 17 actually prevent debate during the survey?**

No.

- **Has it been used in other cases – or in any religious cases?**

Sections 17 and 55 have been discussed in other cases, although in the time available I have not been able to do extensive research on this point.

For example, in *Freeman v Cornish Mount No 24 Pty Ltd t/as Men's Gallery* [2019] TASADT 5, a woman complained about advertising showing a scantily clad woman. The Tribunal rejected that a reasonable person would find it offensive, therefore it did not breach section 17. The Tribunal also found that the statement was made in good faith for a public purpose, namely to advertise the business. This again shows the breadth of conduct protected by section 55, notwithstanding someone may find it offensive.

Yours sincerely,

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