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**NACLC Submission to the Attorney-General**

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**Areas for increased protection in discrimination law:**  
***Consolidation of Federal Discrimination Legislation***

**April 2011**

## 1. INTRODUCTION

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### A. OVERVIEW OF THIS SUBMISSION

This is the second<sup>1</sup> submission on the consolidation of Federal discrimination laws jointly made by the National Association of Community Legal Centres (**NACLC**) and a number of community legal centres (**CLCs**) across Australia.

This submission focuses on legal tests contained in discrimination legislation and areas where protection from discrimination should be increased. Where necessary, a number of our key recommendations are supported by a justification and case studies.

### B. 'ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES' AND 'ABORIGINAL PEOPLES'

Throughout this submission, Aboriginal and Torres Strait Islander peoples are referred to as 'Aboriginal peoples'. NACLC acknowledges the diversity in culture, language, kinship structures and ways of life within Aboriginal and Aboriginal and Torres Strait Islander peoples, and recognise that Aboriginal peoples and Torres Strait Islander peoples retain their distinct cultures irrespective of whether they live in urban, rural, regional or remote parts of the country. The use of the word 'peoples' also acknowledges that Aboriginal peoples and Torres Strait Islander peoples have a 'collective, rather than purely individual dimension to their livelihoods'.<sup>2</sup>

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<sup>1</sup> The first submission is Access to Justice and systemic issues, NACLC, March 2011

<sup>2</sup> Australian Human Rights Commission, *Social Justice Report 2009* (2009), page 6, [http://www.hreoc.gov.au/social\\_justice/sj\\_report/sjreport09/index.html](http://www.hreoc.gov.au/social_justice/sj_report/sjreport09/index.html).

## 2. SUMMARY OF RECOMMENDATIONS

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### A. OVERARCHING RECOMMENDATIONS

1. The aim of any consolidation of federal discrimination law should be to promote substantive equality within the Australian community and to enshrine Australia's international human rights obligations into domestic law. The Preamble to the Act should reflect this intention.
2. The international human rights instruments that Australia is a party to should be annexed to the Equality Act – namely the Convention on the Elimination of All Forms of Racial Discrimination (**CERD**), the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**), the International Covenant on Civil and Political Rights (**ICCPR**) and the Convention on the Rights of Persons with Disabilities (**CPRD**).
3. The Government should consolidate the current federal discrimination legislation into an Equality Act.
4. The Government's anti-discrimination law consolidation project should not reduce current protections against discrimination contained in federal legislation.

### B. HARMONISATION AND DIRECT / INDIRECT DISCRIMINATION

5. The consolidation project should aim to decrease the complexity of the law and make the law more accessible to people affected by discrimination.
6. The Government should adopt the unified definition put forward by the revised report by the Discrimination Law Experts' Roundtable.
7. The unified definition should include at (b) in the revised definition the words 'relevant circumstances'.

### C. BURDEN OF PROOF

8. The burden of proof should shift so that once a prima facie case has been raised by the complainant, the respondent must prove that the conduct was justified and not unlawful (consistent with section 136 of the *Equality Act 2010* (UK) and section 361 of the *Fair Work Act 2009* (Cth)).

### D. OBLIGATIONS TO MAKE REASONABLE ADJUSTMENTS

9. The obligation to make reasonable adjustments should be extended across all protected attributes.

## **E. EXPANDING PROTECTION FROM DISCRIMINATION**

10. Protected Attributes should be expanded to include:

- (a) Sexual orientation
- (b) Gender identity, including gender presentation
- (c) Intersex identity
- (d) Irrelevant criminal record
- (e) Homelessness /low socio economic status
- (f) Being a victim or survivor of domestic violence
- (g) Religious belief/activity
- (h) Political belief/activity
- (i) Trade Union membership and Industrial Activity
- (j) Physical Features
- (k) Carer and Family responsibilities

## **F. INTERSECTIONAL DISCRIMINATION**

11. The definition of unlawful discrimination should include discrimination 'on the basis of the intersection of two or more of these attributes'.

## **G. AREAS OF LIFE COVERED**

12. Discrimination law should apply to political, economic, social, cultural or any other field of public life.

## **H. HARASSMENT AND VILIFICATION**

13. Harassment should be made unlawful across all protected attributes. Harassment provisions should also allow a complainant to identify they have been harassed 'on the basis of the intersection of two or more attributes'

14. All protected attributes should be included in protection from vilification modelled on section 18C of the *Racial Discrimination Act 1975 (Cth)* in a consolidated federal Equality Act.

15. A complaint should be able to bring a vilification complaint 'on the basis of the intersection of two or more protected attributes.'

16. The Equality Act should provide for civil remedies for instances of vilification on the basis of any protected attribute or attributes.

17. The Equality Act should criminalise acts of incitement to hatred against a particular group of persons on the basis of an attribute or attributes protected under the Act.



### 3. DEFINING DISCRIMINATION

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#### B. HARMONISATION AND DIRECT / INDIRECT DISCRIMINATION

Discrimination law is complex, especially around the definition of discrimination which varies across all federal legislative provisions. NACLC believes that an aim of the consolidation project should be to develop a uniform definition of discrimination federally.

For many years community legal centre workers have helped increase the communities' understanding of discrimination law and to help people affected by discrimination. This experience leads us to observe that while people are readily able to identify that they have been discriminated against, fitting this conduct within the current legal tests is often technical and difficult.

NACLC believes that in order for discrimination law to be effective in providing redress as well as reflecting values and preventing discrimination, legal definitions must be accessible and less complex than the current law. NACLC believes that a clear unified definition would also help educate the community about the nature of unlawful discrimination and would increase accessibility to the law.

As highlighted by the revised Discrimination Law Experts' Roundtable Report, NACLC believes that the distinction between 'direct' and 'indirect' discrimination has unnecessarily increased complexity in discrimination law. In particular, indirect discrimination causes problems for both lawyers and people affected by discrimination. There has been extensive commentary that the current definitions of direct and indirect discrimination have led to legal findings that are arguably against the objects of the Acts.<sup>3</sup>

The use of a comparator in discrimination law has limited the potential for discrimination cases to succeed and has distracted the judiciary from the core question as to whether unfavourable treatment has occurred and the reasons for that treatment. In many cases there is no comparator, or questions over the characteristics of the comparator become technical discussions on which a case can succeed or fail.<sup>4</sup> In NACLC's view this is undesirable in legislation designed to protect fundamental human rights.

In principle NACLC supports a unified definition of discrimination if it does not reduce current protections. We note that there is a precedent for a single definition in section 9 of the *Racial Discrimination Act 1975*.

NACLC has had the benefit of the revised Discrimination Law Experts' Roundtable Report and in particular, their revised discrimination definition:

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<sup>3</sup> See Dr. Belinda Smith 'From Wardley to Purvis- How far has Australian anti-discrimination law come in 30 years' (2008) 21(1) Australia Journal of Labour Law 3-29 and Human Rights and Equal opportunity Commission *Submission of the Human Rights And Equal Opportunity Commission (HREOC) to the Senate and Constitutional Affairs Committee on the Inquiry in to the Effectiveness of the Sex Discrimination Act 1984 (Cth) In Eliminating Discrimination and Promoting Gender Equality* 1 September 2008.

<sup>4</sup> See for example, *Purvis v New South Wales (Department of Education and Training)* (2003) 217 CLR.

*Discrimination includes*

- (a) *any distinction, exclusion, preference, restriction or condition that is made on the basis of a protected attribute which has the purpose or effect of, and*
- (b) *any condition, requirement or practice that has or may have the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal footing, of equality of opportunity or treatment.*

NACLC endorses this definition in reducing complexity and providing clearer protection from discrimination. NACLC believes that in practice this definition would be easier for people to use than the current formulations of direct and indirect contained across each piece of federal legislation. We particularly wish to emphasise the importance of including protection in relation to requirements, conditions, practices which may appear neutral on their face and prevent the achievement of equality of particular groups in the community. In our view this unified definition provides coverage in relation to both direct and indirect instances of discrimination.

We recommend that the definition at (b) includes 'relevant circumstances' as recommended by the Human Rights and Equal Opportunity Commission in their Submission on the Sex Discrimination Act.<sup>5</sup>

**Recommendation:** The consolidation project should aim to decrease the complexity of the law and make the law more accessible to people affected by discrimination.

**Recommendation:** The Government should adopt the definition put forward by the revised report by the Discrimination Law Experts' Roundtable.

**Recommendation:** The unified definition should include at (b) in the revised definition the words 'relevant circumstances'.

### C. BURDEN OF PROOF

As outlined in NACLC's earlier submission, the burden of proof should shift so that once a prima facie case has been raised by the complainant, the respondent must prove that the conduct was justified and not unlawful (consistent with section 136 of the *Equality Act 2010* (UK) and section 361 of the *Fair Work Act 2009* (Cth)).<sup>6</sup>

**Recommendation:** The burden of proof should shift so that once a prima facie case has been raised by the complainant, the respondent must prove that the conduct was justified and not unlawful (consistent with section 136 of the *Equality Act 2010* (UK) and section 361 of the *Fair Work Act 2009* (Cth)).

<sup>5</sup> Human Rights and Equal opportunity Commission *Submission of the Human Rights And Equal Opportunity Commission (HREOC) to the Senate and Constitutional Affairs Committee on the Inquiry in to the Effectiveness of the Sex Discrimination Act 1984 9CTh) In Eliminating Discrimination and Promoting Gender Equality* 1 September 2008 page 65.

<sup>6</sup> Access to Justice and systemic issues, NACLC, March 2011.



#### **D. OBLIGATIONS TO MAKE REASONABLE ADJUSTMENTS**

In order to achieve substantive equality and the protection of human rights NACLC believes the obligation to make reasonable adjustments should exist across all the protected attributes.

We agree with the revised Discrimination Law Experts' Roundtable Report that there is no basis for distinguishing between protected attributes in relation to reasonable adjustments. We believe that making it a requirement to make reasonable adjustments across all the attributes is consistent with making the law less complex and easier to use.

<p><b>Recommendation:</b> The obligation to make reasonable adjustments should be extended across all protected attributes.</p>
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## E. EXPANDING PROTECTION FROM DISCRIMINATION

### Protected Attributes

To recognise the diversity of the Australian community, and to fulfil our obligations under the international human rights instruments that Australia is a signatory to, the consolidation legislation should include an expanded list of grounds of unlawful discrimination.

NACLC recommends that the following attributes be protected in the Equality Act:

- (c) **Sexual orientation**
- (d) **Gender identity, including gender presentation**
- (e) **Intersex identity**

### Case Studies

*Toni is a transgender woman living in the inner city. Toni needed to attend a residential drug rehabilitation centre as she had been struggling with alcohol and opiate dependency. Her support worker called the local clinic, this clinic happened to be run by a religious based charity. The clinic informed Toni's support person that there was an opening for Toni and that they would hold a place for her. When Toni presented at the clinic she was refused service. When asking why she was told there was no spot for her. Toni was sure that this refusal was based on the fact that she is a transgender woman.*

*Gloria and Maree were partners who applied to rent a house through a real estate agent. They both had good jobs and rental references and were told informally by the real estate agent that their application looked strong. A few days later their application was refused. When Gloria questioned the real estate agent she stated that the landlord had "conservative opinions". Gloria and Maree strongly felt that they had been denied the property because of their sexuality.*

*Veronica sought assistance from a community legal centre after she had unsuccessfully sought to have gender reassignment surgery funded through Medicare. As this area was not covered by federal discrimination law, Veronica was not able to lodge a discrimination complaint in relation to this denial. Lack of access to discrimination law remedies in this instance impacted directly on Veronica's equality of access to medial services.*

Federal discrimination law prohibiting discrimination on the basis of sexual orientation and gender identity would create consistency with state and territory



discrimination laws, where this form of discrimination is prohibited. It would remove the current arbitrary nature of protection from discrimination that depends on the status of the discriminator, as to whether it falls under state or federal law.

As a matter of principle, the Federal Government and its agencies should be subject to the same prohibitions on discrimination that apply to state and territory government agencies, corporations and individual people.

As a signatory to the International Covenant on Civil and Political Rights, and a supporter of the United Nations General Assembly Statement of Human Rights, Sexual Orientation and Gender Identity, Australia should have federal laws prohibiting discrimination on the basis of sexual orientation and gender identity. The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity provide that 'states shall adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity'.<sup>7</sup>

NACLC urges the Attorney-General to consider the responses to the AHRC's consultation regarding federal protection from discrimination on the basis of sexual orientation and sex and/or gender identity when preparing the exposure draft of the consolidated equality legislation.

NACLC would recommend the use of the term sexual orientation to cover people who identify as lesbian, gay or diverse orientations. The definitions should refer to how the person self identifies and should include discrimination on the basis of perceived or imputed sexual orientation and include association provisions. We do not believe an exhaustive definition should be included, to ensure maximum coverage for a whole range of identities.

NACLC would recommend the use of gender identity to reflect the gender by which the person self identifies with. This would include people who identify as transgender or transsexual, or people who identify as one gender when they are genetically the other gender. The legislation should also provide coverage to people who do not identify as being of either gender, and would cover the category of gender presentation.

NACLC also believes that intersex identity should be separately identified as a protected attribute.

**(f) Irrelevant criminal record**

**Case Study**

*Bob worked as a senior manager in a bank. About eight years ago he was caught by the Police for a low range drink driving offence. His licence was suspended immediately although at the time he did not realise this. He continued to drive and was subsequently caught. He was found guilty of the two*

<sup>7</sup> Yogyakarta Principles: the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org).

*offences. After his conviction he moved house to be closer to his elderly parents and looked for a new job with other banks and financial institutions. He had several successful applications where he was offered a position, and he was asked to complete a Police check as a condition of confirming his employment. When these were completed his offers of employment were withdrawn. Bob knew that from his experience in employing people in banks that his criminal record was not relevant to the position as it did not relate to any form of dishonesty or offence in relation to money, but he knew that this was the reason why the offers were withdrawn. As a result he remained on a Centrelink income and was unable to obtain work in his area of expertise.*

Discrimination on the basis of irrelevant criminal record can prevent people from getting and maintaining employment and housing. There has been a significant increase in the number of criminal record checks done, and criminal record checks have become a routine stage in recruitment for a wide range of occupations.

This form of discrimination can prevent the rehabilitation of offenders. As noted by the Homeless Persons Legal Clinic in its position paper on discrimination on the basis of criminal records:

*Discrimination is particularly detrimental when it prevents former offenders from securing employment. If a person cannot obtain employment because of an irrelevant criminal record, it immediately limits their other opportunities in the community. Moreover, an individual who is unable to secure gainful employment is more likely to resort to low level offences like begging and theft. Research in the United Kingdom has shown that employment can reduce re-offending by between a third to a half. Discrimination also exacerbates social exclusion and stigmatisation of former offenders. An inability to 'make a fresh start', or the experience of unequal treatment when attempting to 'go straight' creates barriers to reintegrating into the community.<sup>8</sup>*

The AHRC can conduct an inquiry when it receives a complaint of discrimination in employment on the basis of criminal record, but there are no enforceable remedies if discrimination is established.<sup>9</sup>

NACLC recommends that 'irrelevant criminal record' should be an area for full protection in federal discrimination law.

**(g) Homelessness /low socio economic status**

**Case Study**

*'The hospital thought I was in casualty because I wanted drugs, although I had an injury that was clearly visible (broken hand). Turned away by security (I*

<sup>8</sup> PILCH Homeless Persons Legal Clinic, *Position Paper on Discrimination on the basis of Criminal Record*, [www.pilch.org.au/hplc](http://www.pilch.org.au/hplc).

<sup>9</sup> S 31 Australian Human Rights Commission Act 1986 (Cth).



*never got to see the Triage nurse). Police are constantly pulling me over as a result of my appearance'.*

*'Although I can't prove it, I applied for more than 40 flats in 4 weeks and didn't get one. Some places (share accomm) also said "no" once I said I was on a benefit'.<sup>10</sup>*

In 2006, the Homeless Persons Legal Clinic conducted a series of detailed consultations with over 180 homeless Victorians about their experience of discrimination. The results of these consultations demonstrate that discrimination is a common experience for homeless people in a number of areas of their life. Direct discrimination is based on unfair and inaccurate assumptions about a homeless person's lifestyle, character, ability to pay for goods and services. Discrimination also occurs indirectly when requirements are imposed to access goods and services, which homeless people are unable to meet.

There is no protection from discrimination on the grounds of homelessness in any state or territory or at a federal level.

Some jurisdictions also include low socio-economic status as a prohibited ground for discrimination. NACLC submits that both homelessness and low socio-economic status should be protected attributes in an Equality Act.

#### **(h) Being a victim or survivor of domestic violence**

Experiencing domestic violence or taking steps to escape family violence can put employment and accommodation at risk. As former Minister for Housing and Minister for the Status of Women, Tanya Plibersek MP, stated recently, 'women should not have to suffer the consequences of losing their connection with the workplace – either because they have been a victim of violence or because they have chosen to take action to stop it'.<sup>11</sup>

Ms Plibersek was speaking in the context of the introduction of the first domestic violence clauses in the University of NSW enterprise agreement. Having clauses recognising the impact of domestic violence are a welcome innovation and should be widely promoted and encouraged. However, in recognising the gendered nature of violence, NACLC submits that there is also a role for recognition of status as victim/survivor of domestic violence as a prohibited ground of discrimination within a category of sex discrimination.

#### **(i) Religious belief/activity**

<sup>10</sup> PILCH Homeless Persons Legal Clinic, *Position Paper on Discrimination on the basis of Homelessness* [www.pilch.org.au/hplc](http://www.pilch.org.au/hplc).

<sup>11</sup> Plibersek, T., Speech for the Launch of domestic violence clauses, UNSW 15 April 2010, <http://www.adfvc.unsw.edu.au/workplace/Speech%20by%20Tanya%20Plibersek.pdf>.



### Case Study

*Nada worked at a mobile phone shop. She wore a hijab and was a Muslim. She started to be subjected to treatment at work that she did not think had anything to do with her work performance. She felt it was because of her religion and the fact that she wore a hijab. This was confirmed when her boss told her that she could not wear her hijab to work. She resisted this and was subject to increased bullying at work. She sought legal advice from a community legal centre that advised her that there was limited protection in relation to this type of discrimination at a federal level. It was likely that the matter could not be successfully resolved legally.*

Protection from discrimination on the basis of religious belief or activity is a major area of discrimination not currently covered by federal discrimination law. This has been a significant problem in addressing increased discrimination against people of Muslim backgrounds<sup>12</sup>. While some religions may be recognised in some jurisdictions under 'ethno-religious', Islam does not easily fit into this definition. Discrimination on the basis of religion is one of the growing areas which is not covered. Any new federal legislation should include religious belief/activity as a protected attribute.

#### **(j) Political belief/activity**

Article 26 of the International Covenant on Civil and Political Rights refers to the prohibition from discrimination, and effective protection from discrimination, on grounds that include religion and political or other opinion.

The AHRC can conduct an inquiry when it receives a complaint of discrimination in employment on the basis of religious belief or political opinion.<sup>13</sup> However, there are no enforceable remedies if discrimination is established, and the only sphere of public life covered is employment.

#### **(k) Trade Union membership and Industrial Activity**

To ensure consistency across Commonwealth legislation this should be a protected attribute in line with the *Fair Work Act 2009*.

#### **(l) Physical Features**

Physical features should be included to reflect the definition in the *Equal Opportunity Act 2010* (Vic), which includes a person's height, weight, size or other bodily characteristics.

<sup>12</sup> Australian Human Rights Commission, IsmaU Report, 2003.

<sup>13</sup> S 31 Australian Human Rights Commission Act 1986 (Cth).

**(m) Carer and Family responsibilities**

Carer or family responsibilities should be included in the list of protected attributes.

## F. INTERSECTIONAL DISCRIMINATION

Intersectional, or compound, discrimination is where a person's identity includes more than one attribute of potential discrimination – for example, a person with a disability who is Indian, or an Aboriginal woman. As is well critiqued, discrimination law in Australia fails to adequately recognise and deal with the way in which individuals may experience complex forms of discrimination.

As CLCs assist clients facing many forms of discrimination, we often assist clients who experience intersectional discrimination.

### Case Studies

*An Aboriginal elder from northern NSW was forced to leave his community and move to a large town so that he could access dialysis treatment, which he requires three times a week. Many non-Aboriginal people who live outside his town and who require regular medical treatment are able to use community transport services to take them to the hospital and accordingly are able to remain in their communities. However, the community transport service does not travel to many of the Aboriginal communities, including to the Aboriginal elder's town. Unable to drive, the elder had no choice but to leave his community. The man is not being discriminated against because of his disability – as community transport is provided to others who require dialysis. Nor is he being discriminated against because of his race, as other Aboriginal people can access community transport when they are healthier and able to walk or drive to another town. It is really the intersection between these two attributes that have led to the discrimination.*

*Joan worked in a small business for many years. The owner of the business started to employ younger women in the organisation and began to treat Joan in a derogatory manner. Eventually he began to verbally abuse her and call her old and ugly. She left her job and lodged a discrimination complaint. Under the current legislation, Joan argued that it was age discrimination, but as she explained to the CLC lawyer, it wasn't just because of her age that she was taunted and told that she was ugly; it was because she was an older woman. There was a particular impact on Joan as a woman, due to the emphasis placed on a woman's appearance, that could not be understood by merely comparing a man in her situation. There was no way under current law that Joan could express the intersectional nature of the discrimination she experienced.*



The current approach in federal discrimination legislation is to identify a 'ground' of discrimination in an 'area' of life. Where an individual wishes to claim more than one form of discrimination, they must take action separately under each ground and each form of discrimination is examined in isolation with a comparator without that characteristic.

In the case of an Aboriginal woman with a disability, this requires consideration of whether a woman has been discriminated against because she is a woman, or because she is Aboriginal, or because she has a disability. In reality, discrimination that is experienced in these examples are not merely sex discrimination plus race discrimination, or sex discrimination plus disability discrimination. In the absence of an explicit discriminatory comment about one of these attributes it can be an impossible task to prove discrimination was linked to any one attribute in isolation of the others, and as a result these cases often fail. It is an experience of discrimination that is based on the intersection of her multiple identities. It cannot therefore be adequately recognised as a complaint that simply identifies race and sex and disability discrimination.

The failure of discrimination law to address this type of discrimination has meant that discrimination law has not been utilised by the most disadvantaged people in our community – that is, people experiencing complex and multiple forms of discrimination.

In order for discrimination law to adequately protect and promote the rights of marginalised and vulnerable groups, an Equality Act should recognise intersectional discrimination as a distinct ground of discrimination. Discrimination law should aim to look at the 'whole person' when considering discrimination and not artificially segment the experience of people experiencing discrimination.

The definition of discrimination should include the ability to claim discrimination on 'on the basis of the intersection of two or more of these attributes'.

**Recommendation:** The definition of discrimination should include discrimination on 'on the basis of the intersection of two or more of these attributes'.

## **G. AREAS OF LIFE COVERED**

NACLC believes that the areas of life protected by discrimination should mirror section 9 of the *Racial Discrimination Act* 1975. Section 9 (1) states that coverage extends to "political, economic, social, cultural or any other field of public life".

**Recommendation:** Discrimination law should apply to political, economic, social, cultural or any other field of public life.

## **H. HARASSMENT AND VILIFICATION**

### Case Study

*A prominent talk back radio host made repeated comments on air equating Muslims with people who committed terrorist acts. He likened Muslims to a cancer spreading in the Australian community. A Muslim listener sought to bring a complaint. As Muslim people could not be defined by the race provision the matter could not be brought under the Race Discrimination Act, and the AHRC declined the complaint. The matter failed under state legislative provisions due to lack of protection for religious vilification.*

*Joe worked as a gardener. He had a younger manager. The younger manager referred to Joe repeatedly as an 'old lady' and made disparaging comments about this age and his racial background in front of other colleagues and clients. He was taunted and one day was physically confronted by his colleagues. Joe was extremely distressed by the comments. He was advised that no complaint could be brought under federal legislation for vilification and harassment on the basis of his age or race, or the intersection of the two.*

Harassment protections should be included across all the protected attributes. There is no justifiable reason for limiting remedies in harassment based on the reason for the harassment. The legislation should also recognise that harassment may occur on the intersection of two or more protected attributes.

**Recommendation:** Harassment should be made unlawful across all protected attributes. Harassment provisions should also allow a complainant to identify they have been harassed 'on the basis of the intersection of two or more attributes'

All federal, state and territories (with the exception of the Northern Territory) have enacted legislation that prohibits incitement to racial hatred (or 'serious racial vilification'). However, the nature of the prohibition (whether acts of vilification attract civil or criminal penalties, or both) varies between the jurisdictions. Further, only Queensland, Tasmania and Victoria have prohibited religious vilification; whereas at the Federal level, there is no express protection against religious vilification.

NACLC believes there is no basis for not providing protection from vilification on the basis of all protected attributes. NACLC also believes that a complainant should be able to make a complaint of vilification on the basis of the 'intersection of two or more protected attributes.'

**Recommendation:** All protected attributes should be included in protection from vilification modelled on section 18C of the *Racial Discrimination Act 1975* (Cth) in a consolidated federal Equality Act.

**Recommendation:** A complaint should be able to bring a vilification complaint 'on the basis of the 'intersection of two or more protected attributes.'

**Recommendation:** The Equality Act should provide for civil remedies for instances of vilification on the basis of any protected attribute or attributes.

**Recommendation:** The Equality Act should criminalise acts of incitement to hatred against a particular group of persons on the basis of any attribute or attributes protected under the Act.