

21 December 2012

The Senate Legal and Constitutional Affairs Committee  
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Dear Members of the Committee,

I am writing about the proposed changes to the Anti Discrimination Act.

I refer to submissions from religious groups and individuals like those from *Australian Family Association Western Australia*, *FamilyVoice Australia*, and *The Fellowship of Congressional Churches* or *Benedictine Community of Christ the King* who insist on strengthening religious exemptions from anti-discrimination law.

Writing in more religious exemptions for anti-discrimination law would be akin to putting the fox in charge of the hen-house. The recent gay marriage debate in our country has shown that religious groups, like *Family Voice Australia*, *The Australian Christian Lobby* and many individuals hide behind their religion as a socially acceptable way to spread hatred and indulge in homophobia. To me, this isn't just cowardly and unacceptable: it is nothing more than an unconscionable abuse of one of our most important freedoms – the freedom of conscience.

Surely the purpose of anti-discrimination law is to make it illegal for people to discriminate, not provide a legally protected excuse for acts of bastardry under the guise of “religious freedom”.

If an organisation, be it secular, religious, commercial or not-for-profit has a legitimate reason for a specific discrimination, then that organisation should be required to apply for an exemption to anti-discrimination law approved before it practices discrimination. That license for discrimination should subject to regular review and regular reporting of use of this license.

For instance, it might be appropriate for an airline to only hire individuals that can reach the overhead lockers for cabin staff positions. In my view that airline should be permitted to apply for, and receive an authority to discriminate based on height. This exemption would only apply to cabin-crew positions. If that airline then fired a cleaner for being too short to reach the top of a window without aid of a ladder, that company should be subject to penalties for discrimination.

In my view, it is time to move away from automatic blanket exemptions for religious organisations to ‘specific approved exemptions’, subject to regular review. I can understand why the Catholic Church may seek an exemption concerning the sex or marital status of priests. But why should it be legal to fire gardener because he is gay at Catholic School, while it's illegal to fire the same gay gardener at a secular private school? Why should it be legal for religious schools to expel a gay student with an exemplary academic record and no record of misconduct for being gay? How is it ok for a school to be allowed to fire a biology teacher because they accept the scientific fact of evolution rather than fairytale of creationism?

These examples may appear to be straw-men, but they're all real-world examples of ways religious organisations have used the automatic religious exemptions to anti-discrimination law. This is simply intolerable in a civilised society.

It is essential that any organisation receiving direct government funding, holding a government contract or receiving any tax exemptions be bound by anti-discrimination law. The first-generation of "legal gays" is about to require aged care. It is not ok to force our gay elders back into the closet because of the religious bent of the owners of an aged-care home. The committee should seek to outlaw discrimination against individuals, especially in facilities that become that individual's "home". The aged need special protection against discrimination because they are especially vulnerable to it.

I would also suggest the committee needs to ensure that the anti-discrimination acts cannot become a weapon for litigious individuals or groups who would seek to silent others by claiming "offense" on the basis of their religion.

I am concerned that parts of this bill might have the unintended consequence of outlawing insult. As Rowan Atkinson explained: "The clear problem of the outlawing of insult is that too many things can be interpreted as such: criticism, ridicule, sarcasm, merely stating an alternative point of view to the orthodoxy." People who disagree with a statement are likely to feel challenged by it. These feelings of being challenged usually result in the person whose beliefs are being challenged to feel offended or insulted.

In the section of the proposal which deals with religious vilification goes too far. Religious truth claims, for instance imply that some religions are true, some are false. It is my position that they're all false, but that's hardly the point. A "true believer" will be offended if another "true believer" claims that their true beliefs are wrong, or misguided.

A Muslim will be offended if a Christian says that Jesus is God. Of course a Hindu will be offended if a Muslim claims that only Islam is the final and true religion. Of course an atheist will be offended if a Jew insists that God exists. Of course a Christian will be offended if a Muslim says Jesus did not die on the cross and rise again. How could any devout believer not feel offended by the simple truth that there was no creator – that we are the result of the scientific fact of evolution?

And, how long will be until a gay-hate group, hiding behind the facade of an evangelical Church seeks remedy under anti-discrimination law against gay groups for existing? One can only assume that Sydney Mardi Gras, or Melbourne's MidSumma Festival is highly offensive to anti-gay campaigners on religious grounds.

Now that we have discussed my most pressing concerns, let me move onto the parts of this bill I find to be positive steps forward.

I agree with changing the 'marital status' to 'relationship status', especially since the Parliament still excludes the LGBTI community from marriage. This change will ensure that same-sex and other LGBTI relationships are protected from discrimination. The proposed definition of sexual orientation protects Lesbian, Gay and Bisexual people without using these labels, which makes it more inclusive.

Including gender identity as a protected attribute is very welcome, but the proposed definition could be improved. Any definition protecting transgender people should include gender expression (such as mannerisms, appearance etc). In addition, the definition has the test of living on a "genuine basis" for transgender people – this is problematic and confusing as the term is not defined and contradicts other aspects of the draft Bill. A preferred definition is currently before the Tasmanian Parliament and should be adopted in this Bill.

I welcome the intention to include Intersex people in anti-discrimination law. However, the assumption that Intersex people are partially protected in the draft Bill under Part B of Gender Identity is not correct. Intersex is not a matter of identity, rather it is a matter of biological fact, where an individual may have hormones, chromosomes or sex organs that are either - not wholly male or female; both male or female or neither.

I believe that Intersex Australians should be protected from discrimination through a standalone protected attribute, which will make it clearer to understand for business and Australians that Intersex people are protected.

Clearly anti-discrimination legislation is an important part of law that affects a lot more than the issues I've outlined here. In general I support the intent behind Anti-discrimination law reform, but I'm terribly concerned that there are few oversights and a few unintended consequences from the Bill in its current state.

I would like to thank the committee for taking a look at this issue and for considering the points I've raised.

Regards,

James Andrew Newburrie.