

Dear Sir/Madam,

Below is my submission in relation to the draft Anti-Discrimination Bill 2012.

Addition of 'offence' to section 19(2)(b)

I advise that the inclusion of "offence" in section 19(2)(b) is an extremely poor idea. Offence is by its nature a purely subjective reaction to conduct by another person, and can never be a fair measure of conduct which society deems so immoral as to warrant punishment.

For instance, say I as an atheist declare "God does not exist". A religious person overhears my conduct of speaking my opinion, and holding a different opinion, is offended by it. I am now guilty of an offence under the draft Bill, should that religious person choose to take action against me under the Bill.

Suppose the situation was reversed, and I, an atheist, overhear a religious person declaring "those that renounce God will go to Hell". Presume I would be offended by this statement. I can now take action against this person for holding a different view to my own, against which he has no defence.

Either situation would deal with "protected attributes" of the person making the complaint, as defined under section 17(1).

Hopefully these examples illustrate the ridiculousness of making it an offence to "offend" another person. Such a change will be used and abused by the litigious and intolerant against the ordinary citizen, to stifle debate and free speech.

Reversal Onus of Proof

Some other problems of the Bill are that the onus of proof is now reversed under s.124, so that in combination with s.8 where multiple reasons for conduct are taken to mean only one (the one required for the allegation to 'stick'). This skewing of the requirements of proof to the advantage of the accuser are prima facie unjust.

Special Measures

The hypocrisy of "special measures to achieve equality" being excluded from what is discrimination is another flaw of the Bill. "Special measures" is a euphemism for positive discrimination for a particular minority group, which by its nature is also negative discrimination against all others outside that group. If the principle that discrimination is morally wrong is valid, there can be no exceptions for the advantage of particular groups of people, or for the administrative convenience of the government. Not to mention the absurdity of the premise that the government can actually achieve equality among its citizens through positive discrimination.

Missing Defence of Truth and other unclear Defences

This Bill lacks adequate defences to an allegation of unlawful conduct. At present s.23 gives a very unclear possible defence, based on conduct being made for an undefined 'legitimate aim', and then relying on a weighing up of many factors, such that an individual would have no real knowledge of what conduct was protected by the section (unless they had already been subjected to an allegation for the particular conduct and successfully defended it with this section). So section 23(3)(b) legitimate aims need to be clearly defined, and section 23(4) needs to be simplified and have irrelevant factors removed.

The Bill is missing an additional but necessary defence of truth, ie that the alleged unlawful conduct (whether it insults or offends the complainant) is lawful if true or substantially true. Any citizen should have no fear of speaking the truth, irrespective of how others may react to hearing it, and if they can prove their conduct (being a statement or publication) is true, they should have nothing to fear from the Act.

Kind Regards
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