

Secretary
Senate Legal and Constitutional Affairs Committee
Parl House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

Re: Inquiry into the Human Rights and Anti-Discrimination Bill 2012

Thank you for your invitation of 23 November 2012 for Civil Liberties Australia to make a submission. We have pleasure in doing so.

Executive summary:

The proposed legislation is not necessary, would be counter-productive in several ways, and is at odds with what the overwhelming majority of Australians want. For those reasons, we propose the Committee rejects the Bill entirely, and recommends that it not be proceeded with. We propose the Committee asks the Government to immediately begin preparations for an Australian Bill of Rights (however named). We make further administrative recommendations also for the Committee's consideration.

Not needed:

Current state-based legislation deals appropriately with the subject area of discrimination. There already exists adequate federal legislation covering 'gaps'. This is another attempt by the federal government to impinge on state rights and responsibilities without adequate reason: it is a federal response to isolated state cases which may not have been decided the way some legal bureaucrats perceived they should have been decided. Making law on the basis of one case is poor legislating.

The proposed laws have dumb and dangerous definitions:

Including "offends" in the proposed law will demonise common speech, as a former State Chief Justice, James Spigelman, has so correctly pointed out. Australians don't want their MPs to turn them into criminals and defendants in court because of colourful language. We have a tradition for robust language which this new law would throttle. Get out of our minds, get out of our mouths. Leave us alone! With all the anti-terror laws over the past 11 years, you've done enough damage to freedoms in Australia. Just stop it. And particularly stop creating offences which reverse the onus of proof, like these proposed offences do. At minimum, new laws should do no harm: this proposed law will do harm...to free speech in Australia.

Create more problems than they solve:

The current law is relatively settled, because of precedent. Some of that precedent is itself fairly new. The proposed new laws will make many more facets – areas where common speech interfaces with the (proposed) legal system. Because there will be more interfaces, there will be exponentially more opportunity for people to feign offence. These proposed laws will be a feast for lawyers and the legal system without commensurate benefit to average Australians.

Who benefits? (or, to seek truth, follow the money)

The people who will most benefit from these laws will be exactly the type of people proposing them: Julia Gillard (lawyer), Nicola Roxon (lawyer), Tony Abbott (lawyer), etc, plus the bureaucrats from the Attorney-General's Department (lawyers) where these devious laws have been devised. Will 99.99% of the Australian people benefit if these proposed laws are passed? No. Why pass laws which benefit the few at the expense of free speech of the many?

Who or what suffers?

The free speech of Australians will suffer. Aussies will be inhibited. People will become vaguely aware they must not "offend"...so they will self-censor their speech. If the Australian Government purposely set out to censor Aussie lingo, they could not have done a better job than these proposed laws. The laws represent an overt contempt by those in power for ordinary Australians and the way they live their lives and the way they speak. Civil Liberties Australia notes that MPs will retain full rights to free speech in the parliament, whereas the speech of ordinary Australians will be more restricted. This smacks of hypocrisy.

Who loses?

Technically, the laws will entice litigation into the federal jurisdiction, out of state courts and tribunals, because it will be easier and more financially rewarding in damages to take a case under federal law. But the best law is law and justice closer to the people, that is in the states and territories. These proposed laws actually remove justice one level from the people. Barristers will benefit greatly: higher fees in higher courts!

Cynical and hypocritical naming of the Bill

Civil Liberties Australia notes that the new Bill would have a shortened, customary form – because of how it is titled – of "Human Rights Act 2012". This is a most cynical and hypocritical action by an Australian Government. It begs the question whether this entire process was merely to enable the government to claim it has a "Human Rights Bill" or "Human Rights Act". At least have the decency, if the Australian Parliament decides to pass this legislation, to rename the Bill so that such a huge deceit is not perpetrated on the people.

Positive proposal...what the Government could do to solve the problems:

The issues supposedly demanding new legislation – to which this draft Bill is a response – would be solved if Australia had its own Bill of Rights (or REAL "Human Rights Act", or Charter of Rights and Responsibilities). As members of the Committee will be aware, the Australian Government undertook a year-long consultation with the Australian people by a four-person body which visited and heard the opinions of nooks and crannies throughout Australia, and commissioned a huge and technically robust survey, which showed Australians overwhelmingly wanted a Bill of Rights. The consultation unanimously recommended that the Australian Government enact a Bill of Rights. The Australian Government refused to do so.

We note that there would be no need for this legislation at all if the Australian Government would react to the Human Rights Consultation appropriately. We further note in passing that the Australian Government created a three-person Refugee Committee and gave it three months to report: it did not visit all states and territories and the outback, it did not conduct a survey, and in no way did it do anything remotely resembling the conceptual integrity or the democratic nature of the Human Rights consultation process. Yet the Government implemented its recommendations in full, instantly on the production of its report. What is about democratic process that this Australian Government doesn't understand? Why does this Government think the people are wrong, they shouldn't have rights, and they shouldn't be allowed to speak as freely as they are accustomed to do?

We propose that the Senate Legal and Constitutional Affairs Committee makes two recommendations on this reference to it:

1. the proposed draft legislation be abandoned totally, and
2. the Australian Government immediately begin a further consultation process to have an Australian Bill of Rights ready for enacting by the next Parliament, in 2014.

In addition:

Further, we again raise the issue that the process involved in this proposed legislation is abuse of the power of the bureaucracy and the Parliament over the people of Australia. There was no consultation process in the beginning when the "consolidation" of legislation occurred. By the time the "consolidated" proposal became public knowledge, the words were set in near-cured concrete, if not stone.

The way the Attorney-General's Department (AGD) handles issues like this legislation is appalling. The AGD demonstrates no understanding of the "human rights" of Australians to be fully consulted as early as possible on laws which will affect them. The AGD believes it is a law unto itself.

We recommend the Senate Legal and Constitutional Affairs Committee requires the AGD to disclose what equivalent processes for future legislation and "consolidation" – say for calendar 2013 – are under way now, so that civil society has a better – and proper – opportunity of deciding how it will be governed. We proposed that the Committee asks for the equivalent listing in December each year, for the year ahead. Such a process would facilitate the Committee's work, as well as potentially giving Australians more say in the laws that govern us.

We further recommend that Committee asks that the Senate undertakes an examination of the number of references to Senate Committees, and seeks to determine whether the staffing – particularly research and legal expertise – available to Committees is adequate, or whether changes are required to any of: a. the referral system; b. the Committee system, or c. the number, expertise and pay levels of Secretariat staff.

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