

Exposure Draft of Human Rights and Anti-Discrimination Bill 2012.

Submission By Steven John Davis

Introductory Comments

I am grateful for the opportunity to submit comments on the Human Rights and Anti-Discrimination Bill. I am also one who supports the consolidation of Commonwealth anti-discrimination legislation. Creation of a consolidated Act would undoubtedly lead to greater comprehension and accessibility of anti-discrimination legislation by the wider public and institutions etc.

While broadly supportive my immediate response is to raise two concerns and these has been recently highlighted by the NSW Chief Justice and now chairman of the ABC, James Spigelman who has spoken out against the Government's proposal (See Media Reports Tuesday 11th December 2012 For example: <http://www.theaustralian.com.au/business/legal-affairs/abc-chairman-jim-spigelman-slams-alp-laws-that-make-it-illegal-to-be-offensive/story-e6frg97x-1226534081839>)

Two Concerns

It seems clear to me that the proposed Bill

1. poses a serious threat to freedom of religion and freedom of speech

and that

2. the Bill proposes that discrimination be widened to include offence or insult.

Further Comments

The Bill has a fundamental flaw in that it appears to fail to allow for 'good or appropriate' discrimination.

Associated with this point is that there is a fundamental failure to outline the importance of balancing the right to non-discrimination with other human rights including religious freedom and freedom of association.

I do not understand the need or apparent requirement set out in the Bill that the protections for religious freedom, known as 'exceptions', which apply to religious bodies and educational institutions, have to be reviewed every three years. This is unnecessary and provides great uncertainty and I believe will cultivate confusion.

I am also very concerned that the Bill apparently defines discrimination to include behaviour that **offends or insults**. This is very different to inciting hatred or vilification and also I believe will increase the likelihood of vexatious claims.

Additionally it appears to me that it moves the onus of proving there was no unlawful discrimination. It would now be incumbent upon the respondent if a complainant establishes a prima facie case, leading again to concerns of nuisance claims.

Again, as I examine the Bill it appears to expand substantially the number of attributes that will be protected to include things like gender identity and sexual orientation.

Thanking you for the opportunity

Steve Davis

11th December 2012