

A submission to The Exposure Draft Legislation to the Human Rights and Anti-Discrimination Bill 2012.

In briefly reading through the above mentioned draft I wish to address a few issues relating to human rights and changes occurring in Australian society.

Changes in all societies are a given. Those changes have the potential to strengthen a society and help it to move through seasons of change with strength or they can undermine the basis of a strong society. When introduced changes by some leave others in society feeling insecure and possibly fearful of addressing changes in their society that concern them publicly, then the strength and vitality of that society has been attacked.

I believe in Australia we do uphold basic and universal human rights, values that are recognised around the world as good and basic to life and its enjoyment, and have been over thousands of years, and across most societies. In fact I believe there is a lot of tolerance and probably little disagreement with universal human rights across the length and breadth of Australia.

In this bill, I see a number of other values being raised to a similar status, referred to as "protected attributes." A number of these are values that are not basic to many societies but appear to be delineated in support of minority groups demanding change and demanding these distinctions be given privilege. They are in many cases not universal, but distinct from human rights. I believe the adoption of those which are new to our list of accepted rights are adopted in some cases at significant cost to the longstanding mainstream culture that has undergirded this land and its peoples, including many who have come and chosen to settle here, choosing to leave behind cultures that are not as free.

The intent of this bill appears to me to aim to limit the freedom of speech concerning aspects of life and culture here referred to as *protected attributes* and in doing so blend them with human rights. Some of the topics eg. political opinion, immigrant status, and industrial history, gender identity and marital status to name a few, really concern me.

When coupled with an enlarged meaning of discrimination, articulated in Sect. 19.2b which includes "...conduct that offends, insults or intimidates the other person," this opens up discussion about differences in society to a much greater likelihood of vexatious and subjective claims from people intolerant of open discussion on life issues they are trying to promote in society. I mention this because I noted a bias towards affirmative action, and the protection of those promoting it at a cost of some who may oppose it.

I perceive there is growing opportunism by some in our society to make a greater issue of differences than the majority of people do. Recently as I travelled home with friends we discussed groups who ignore that our phone numbers are on the list of numbers hawkers should not call. They recalled a recent phone call in which the caller wanted to sell them something. When my friend expressed no interest in the objective of the call and wanted to conclude it, the person making the call retorted, "That is because I am Indian isn't it?" Race had nothing to do with my friend wanting to terminate the call which he should not have received. However if this legislation

had been passed, it would potentially leave the one receiving the call open to an accusation of offending the caller based on his perception that it was because of his race. This is potentially very dangerous to innocent people.

The proposed legislation allows people to lodge claims not based on the attributes themselves but by simply being offended in relationship to them (i.e. offended by speech or actions regarding political opinion, immigrant status – eg. an illegal immigrant who is found working when he should not be, or past union activities that have caused significant problems to businesses or other groups in society. What would constitute a significant enough insult, or charge of intimidation for a vexatious litigant to take someone to court. Please consider the potentially serious effect of broadening of such actions and making them a crime in our increasingly diverse society with a less of a common value system now than in decades gone by.

While offending people might be rude, it should not be unlawful. Some people choose to be offended very easily, some are arguably more vexatious than others. This really concerns me, because if we lose freedom of speech, especially among groups of like minded individuals discussing what is going on in the world, eg. a stranger joins a group holding a seminar in which issues of concern among the group are raised. As a result of a topic discussing a protected attribute being discussed, the stranger may claim to be offended when there was no intent to do so, they had not been invited, and by being there they severely limit the ability of participants to discuss a topic about a protected attribute openly. This then would cause a concern by groups to limit who attends and no doubt raise the issue of offence should such a stranger want to participate but was refused.

The major concern here is that if we lose freedom of speech, we lose the right to argue, disagree, to publicly disseminate our views or our beliefs. I have noted how some have been censored because they have disagreed with views considered to be public opinion, such as a challenge to the understood reasons causing global warming and the claimed science behind such views. I have heard climate scientists on both sides of the argument put forth their views. Limiting the views a public figure is allowed to express, makes it appear that some already do not believe in the freedom to put contrary views strongly, even without this legislation. Please protect the freedom to discuss all issues and don't further restrict society from talking openly about issues of concern or of belief.

I noted a proposal in the draft what when a claim of discrimination is made and a prima facie case is established, the onus of proof changes from the complainant to the defendant. This is an unprecedented proposition that one is guilty until proven innocent! (Sect. 124). I see this as a real danger, a very costly and punitive danger to many people who will inevitably be misunderstood. Given that the complainant will incur no costs, it may well encourage frivolous or vexatious claims thus making the process a real punishment, even if the accused was eventually to prove (if it is indeed possible) that they were innocent of the accusation.

While I am thankful that the legislation allows for exemptions and exceptions for churches and a number of religious organisations including places of worship, it states the intent to review these provisions in 3 years. There is a statement that they could be removed or reduced (Sect. 47). It concerns me that in an increasingly intolerant society towards people of faith, that in 3 years, the ability to discuss and practice life and faith according to Christian values may be increasingly limited. I

request the religious freedoms currently permitted, continue to be permitted and not subject to review in such a short time frame, nor should they be reviewed independently of the whole anti-discrimination legislation.

As you consider this anti discrimination legislation, please consider what will strengthen Australian society so that together we as a nation can continue to grow as a diverse body of people, and do so free to interact with each other, and free to disagree with others without the fear that someone less tolerant will drag us before the courts for something they have misheard, wrongly understood or deemed insulting when no ill will was meant at all. Vigorous debate will have disagreements, even among friends there are disagreements. This is normal and healthy. To enshrine in legislation laws that further limit the freedom to continue to speak freely and openly debate issues by proclaiming them protected attributes means we lose the greater right to free speech. This is a huge cost that I foresee fundamentally altering our society to its significant detriment.

Yours faithfully,