

Senate Enquiry Submission: *Human Rights and Anti-Discrimination Bill 2012*

Australia is privileged to have one of the most successful and robust democracies the world over. This is a success that is underpinned by the fundamental freedoms that we have enjoyed for many generations as a result of our national heritage, such as the freedom of speech and the freedom of religion. Our Constitution upholds the vital importance of freedom of religion in section 116, and while our Constitution does not specifically provide for freedom of speech it has been implied in the Constitution as a necessary element of a representative democracy which is the system of government established by our Constitution.

While I can understand the rationale behind wanting to protect individuals from offence and insult so as to have a more inclusive and welcoming society it is my submission that doing so comes at too great a cost, and will serve to weaken the freedoms that have been noted above. I have been encouraged to see that others, such as the Honourable former Chief Justice of the NSW Supreme Court James Spigelman, have drawn a similar conclusion.

It is one thing to seek to protect people's dignity from assault, but to seek to protect people from being offended is in my view is beyond what is appropriate for the law. In fact, I would go so far as to say that the freedom to offend others is a fundamental component of freedom of speech, and to remove this freedom would significantly undermine that freedom. For this reason it is my submission that section 19 of the Bill should be amended to omit the words 'offend, insult' because they go beyond the ambit of protecting people's dignity and attempt to protect the feelings of individuals, and thus undermine freedom of speech and also of religion.

As a law student at the University of Tasmania, and having recently studied criminal law, it is also of concern to me that this Bill also seeks to withdraw two fundamental rights of individuals who are charged with an offence. One is the presumption of innocence and the other is the right to proper legal representation. To even attempt to do so is in my view indefensible and very disappointing. There is nothing in the offences covered here that justifies such an extreme measure. Provisions that do so, such as s 124 should be removed from the Bill.

Finally, the importance of freedom of religion, as upheld by our Constitution, needs to be recognised in this Bill to avoid curtailing this freedom. Genuine practice of religious beliefs and preaching of such messages will at times be sure to cause offence to those who may disagree, but the freedom to offend and to forgive are an integral part of freedom of speech and should not be interfered with by law.

Thank you for taking the time to read and consider my submissions.

Matthew Sakaris