

16 Dec. 12

The Committee Secretary

Senate Legal and Constitutional Affairs Committee

Parliament House

CANBERRA ACT 2600

Dear Sir/Madam

Re: Human Rights and Anti-Discrimination Bill 2012

I wish to make a submission in relation to the exposure draft of the Bill as follows:-

Overview.

As presently drafted the Bill fails to properly balance competing human rights. The Bill in fact represents a dangerous erosion of certain rights, in particular the right to freedom of expression and to the freedom of religion and conscience.

Australia has obligations under the International Covenant on Civil and Political Rights to uphold and protect the freedom of religion and conscience [**Article 18**] and the freedom of expression [**Article 19**].

Moreover **section 116** of the Australian Constitution says that the Commonwealth shall not make any law “...prohibiting the free exercise of any religion...”

The current ABC chairman and immediate past Chief Justice of NSW, **James Spiegelman** has recently offered strong criticism of the Bill.[The Australian 11 December 2012]. Mr Spiegelman said, “ *The Bill would impose unprecedented restrictions on freedom of speech, making it unlawful to offend people, leaving Australia isolated from international norms.*” I would respectfully agree with his opinion.

The Government has failed to adequately explain or justify the reasons for its unprecedented attack on our fundamental rights and freedoms. The Bill is likely to have many unintended consequences including an increase in tension between community groups arising out of legal action for perceived “offence” or “insults”.

Freedom of Expression

The robust exchange of viewpoints on matters of public interest is an essential part of our democracy. The alternative is an unhealthy and dangerous censorship of public debate. It is an inevitable part of such debate that people may feel “offended” or “insulted.”

The Bill makes it unlawful to treat another person unfavourably in relation to a long list of “personal attributes” which include sexual orientation and religion. Unfavourable treatment includes conduct that “offends” or “insults”. This is a purely subjective criteria.

It is submitted that there is no right not to be offended. This attack on the right to freedom of expression is unjustified.

Religious bodies

The exemption for religious bodies in clauses 33 of the Bill has been reduced and made more narrow compared to the exemption for religious bodies in section 37 of the Sex Discrimination Act 1984. Section 37 is wider in scope and allows for an exemption in respect of religious “**acts and practices.**” The Bill removes any reference to religious **practices** therefore making it more difficult for religious bodies to defend legal action.

Clause 33 [3] also specifically removes the exemption for Commonwealth funded aged care services provided by religious bodies. The commentary to the Bill discloses that sub-clause [3] was inserted by the Government at the behest of the same sex lobby. Sub-clause [3] represents an attack on the rights of elderly residents to choose an aged care facility which upholds their moral values and sensibilities.

Yours faithfully

Tim Tunbridge.