

19 December 2012

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

### **PROPOSED Human Rights and Anti-Discrimination Bill 2012**

I am deeply concerned about the wording in some Sections of the proposed Human Rights and Anti-Discrimination Bill 2012. I do not believe changes to human rights and anti-discrimination are required here.

A most fundamental negative concept is being launched through this legislation : an accused person will be “guilty until proven innocent”. This replaces a foundational building block of liberal democracy : “innocent until proven guilty”. In our Australian liberal democracy we value “innocent until proven guilty” as it puts the onus on complainants to justify their accusation by convincing others through objective and accessible evidence. Therefore complainants are required to support their accusation with some objective and reasoned argument.

However this proposed Legislation shifts the assumption of “innocent victim” onto the complainant. A complainant only needs to have felt themselves “offended” - ! or “insulted” by something said by the accused, and this is deemed to be a type of evidence? Feeling “offended” is such a subjective and highly individual construct – and an accusation of intended “offence or insult” might be completed unjustified. It is possible for a complainant to *personally interpret* “offence” where there was none. “Reasonably likely to offend or insult” should be removed from proposed legislation. The Government risks encouraging “vexatious litigants” whose sole purpose is to harass and do financial harm to others exercising their freedom of speech.

The burden of proof should be placed onto the complainant and not the accused.

The proposed Legislation, in the abovementioned ways assaults Freedom of Speech. We positively need to protect Freedom of Speech to defend open and honest dialogue in the public space of our liberal democracy. What is proposed - “guilty till proven innocent” and ‘offending or insulting’ being offences at Law, will erode our

freedom of speech and expression, and augur in a repressive creeping totalitarianism which we can do without.

In our multi-cultural society, multi-generational society, we can only live harmoniously if our laws defend freedom of speech and expression which does not undermine the dignity of others. The Proposed legislation does undermine the dignity of an accused person by insisting they are “guilty until proven innocent”.

Rational debate should be defended in our public square, and if all parties are to be heard there will from time to time be offence taken but not intended. The greater value is free and open debate in the public square, and this must be defended by Laws which give it priority.

Louise Brady