

15 December, 2012

Senate Legal and Constitutional Affairs Committee
P O Box 6100
Parliament House
Canberra ACT 2600

Committee Secretary,

Re: *Human Rights and Anti-Discrimination Bill 2012*

The 179 pages of the “Exposure Draft” take the proposed *Human Rights and Anti-Discrimination Bill 2012* in a direction unprecedented in Australia’s legal history and if passed into law will severely limit basic human rights in this country. To discriminate in the terms of the “exposure draft” is to demonstrate unfavourable treatment to an individual because he/she has a “protected attribute”.

It is designed to curb freedom of speech, reverse the onus of proof, list particular “attributes” as having special legal protection at the expense of others and undermine the right of association.

However, at another level, this proposed law is designed to seriously and negatively impact Australian culture and in particular the humour and irony embedded in the vernacular and enshrined in the Australian way of life. Australians, as a people, offer an acceptance of minorities, home to people of diverse nationalities and languages and freedom of religious practice. Let us not lose these positive attributes under the weight of this restrictive proposed legislation. In this submission I will deal with the aspect in the draft bill of freedom of speech.

The proposed legislation leaves writers and commentators in a state of “self-censoring” living in fear of offending or discriminating against an unknown person or persons (S.19(2)). Writers are referred to by their readers as “brave” for expressing opinions or holding a point of view under threat of legal action for “unfavourable treatment”. This effectively shuts down open debate which is the hallmark of a free and well-informed society. However, the greatest impact will be on the use of irony and humour.

On the Australian Government web-site, “Humour is seen in the Australian use of slang, and across media from cartoons in print, as sketches on radio, as comedy series on television, in films and with witty observations of life in Australian literature and film.” <http://australia.gov.au/about-australia/australian-story/austn-humour>

Born of its founding history, Australia has a rich past in many types of humour such as black humour, anti-authoritarian humour and self-mocking satirical humour often directed at racial minorities such as “Wogs Out of Work” (1990), “They’re a Weird Mob”(1966).

Under the regulation and self-regulation of the press - the gifts of the comic writer, the creative commentator - will be seriously damaged if this proposed legislation comes to pass. Under the proposed bill a complainant only has to allege that another person’s conduct has offended, insulted or intimidated him/her. It will then be up to the accused to prove otherwise. S.124 is seriously oppressive, at it reverses the onus of proof, and there is no objective basis on which to judge whether the complainant was offended or insulted. It is purely subjective. There goes the Aussie humour!

This is the reason that writers and commentators deserve to have their right to free speech protected, including freedom to express different types of humour including that directed to minorities, racial groups and free opinions, rather than calling for such creative undertakings to be subjected to measurement against “protected attributes” whatever they are this week!

Let us all work towards maintaining laws that protect Australian humour and satire and freedom of speech for writers and social commentators to creatively express ideas and foster healthy debate in the public square. I oppose the proposed consolidation of anti-discrimination laws.

Gabrielle Walsh