

SUBMISSION TO EQUAL RIGHTS AND ANTI DISCRIMINATION BILL 2012

I migrated to Australia in 1975. I became an Australian citizen. I am a member of a small Christian denomination with about 40,000 active members in Australia. This denomination has one particular theological position that makes its members potentially subject to serious discrimination – we do not work on the Sabbath (Saturday). It could be expected that as an immigrant and as a member of this Christian denomination that I would be supportive of this Bill. However, I consider that the Bill is seriously deficient in several aspects.

I do not have the legal ability to understand all the legal nuances of the proposed Bill. So what I have written below I ask that the Senate Commission reads relevant to particular clauses in the Bill.

OFFENDING AND INSULTING OTHER PEOPLE

It is basic to the operation of civilized society that we behave appropriately towards each other. I remember that some years ago there was an “art exhibition” in Melbourne that exhibited a piece entitled “Piss Jesus”. This is deeply offensive to me. My response is that I need to persuade other people to my Christian views. There is no place in Australia for this art work to be illegal just because it is offensive to me. It presumably was not offensive to the artist and probably not to many non Christians. We must protect the right of Australians to proclaim their views about all religions without fear of legal retribution. Freedom of speech and freedom of the media are fundamental to our democracy and I fear that this Bill will take away those freedoms. The various libel and slander laws are sufficient protection for individual reputations.

So we need to be mature, to be resilient. We do not need legal answers to bad manners and uncouth behaviour. If criminals can call the police a variety of vulgar names that the courts now consider normal talk then surely religious, cultural, racial, etc groupings do not need this Bill within the context of their personal (non work, non accommodation etc) lives.

Offending and insulting other people should be deleted from this Bill.

BURDEN OF PROOF

In NSW the OH&S Act 2000? required the employer to prove their innocence and not the prosecution to prove the employers’ guilt. Great for getting convictions, terrible for justice. This Bill must always require the plaintiff to prove that the defendant is guilty of discrimination. Such is the basis of our judicial system, and for good reason.

COSTS

Because of the subjectivity that is inherent in any legal system that is based on the emotions or perceptions of a particular person(s) it is important that the defendant not be at a disadvantage because of legal costs. There was a case in Victoria a few years ago where two pastors (not of my denomination) incurred significant costs because they were accused of offending Muslims. I remember that the pastors fund raised to pay their costs. I do not know who paid the Muslims’ costs. This is not justice. It is an erosion of our democracy that the threat of legal costs becomes a weapon to silence people proclaiming their views. So in all prosecutions under this Bill both sides costs must be paid for by the taxpayer to maintain a level playing field. It may be easy to argue that large corporations can afford legal costs but it cannot be sustained that most Australian

have say \$100,000 spare to spend on lawyers. I realise that for the taxpayer to pay all legal costs has the potential to create a significant Commonwealth budget expense but that is the price we pay for democracy.

ASSISTANCE IN PREPARING A CASE.

The Bill provides for the applicant to be assisted in preparing a case against the defendant. This assistance must also be provided to the defendant to ensure a level playing field – similar principle to COSTS above.

SUMMARY

The right of freedom of speech within the boundaries of good manners is essential to Australia. I fear that this Bill will be misused to stifle that freedom. The Bill may have validity within employment or accommodation etc scenarios but it has no validity in the context of our personal behaviour. If I perceive that people use offensive personal words or writing against me because of my belonging to a very small minority Christian denomination then so be it. If I need legal protection for this then I am the one with the problem.

In overview this is a well intentioned but deficient Bill that requires reworking to protect our democracy.

Stephen Kinhead