20 December 2012

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

Dear Senators

Exposure Draft of Human Rights and Anti-Discrimination Bill 2012

The proposed Human Rights and Anti-Discrimination Bill 2012 goes too far in restricting individual freedom, by stating that:

- unfavourable treatment includes conduct that merely 'offends' or 'insults' another person (ss 19(2)); and
- racial vilification includes conduct that merely 'offends' or 'insults' another person or group of people (51(2)).

To offend or insult someone is not, in most cases, serious enough to invoke legal redress. The consequence should be more tangible before a legal remedy is available. The concept of 'hurt feelings' should be reconsidered, and only invoked in the most grievous of situations.

It is an ordinary part of life that we will be occasionally offended or insulted. This is an inherent consequence of being social animals, and living among people of differing opinions.

The law should not generally protect people from being offended or insulted. To feel offended or insulted should not be an actionable wrong, except in extreme cases. For government to say 'you must not hurt another person's feelings' is venturing deeply into the realms of 'nanny state', and unreasonably impinges on freedom of speech.

Robust public debate about important issues should not be silenced by a fear of legal proceedings for merely offending or insulting someone.

The only conduct that should be unlawful under the bill is, in my view:

- conduct which intimidates (e.g. fear of physical violence);
- unfavourable treatment that actually denies an opportunity the person would otherwise have had (e.g. refusal of employment, refusal to provide services, refusal of membership, refusal of entry), with appropriate exceptions;
- unfavourable treatment that unreasonably imposes a requirement on a person;
- conduct which incites hatred or violence ('hatred' being used deliberately, so that the threshold for unlawfulness is high);
- sexual harassment;
- if the concept of offence or insult is to be retained - conduct which constitutes *harassment*, that is, the conduct is pursued deliberately, repeatedly and unwelcomely against a particular person (with exceptions for genuine public debate in good faith).

This would provide adequate protection for persons with the specified attributes.

The bill has the potential to strangle public life and discussion. Persons with protected attributes could potentially use it to silence anyone who offends or insults them in public life. Candid discussion will only ever take place in private behind closed doors, which is surely unhealthy for a free and open society.

The best response to offence or insult is to put forward a reasonable argument in response, not to sue the offender. Statements which actually defame are already covered by the law of defamation.

Yours faithfully

Duane Sewell