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21st December 2012

The Committee Secretary
Senate Legal and Constitutional Affairs Committee
Parliament House
Canberra ACT 2600

Submission On Human Rights and Anti-Discrimination Bill 2012

Dear Sir/Madam,

We wish to make our objections to the proposed ***Human Rights and Anti-Discrimination Bill 2012*** to be put before Federal Parliament. The Bill is too long and involved to be commented upon in detail, especially by a person without a legal background and, accordingly, we will address but a few of the outstanding points.

1. **The Bill as proposed threatens basic freedoms:** including Freedom of Speech, Freedom of Opinion, Freedom of Choice, Freedom of Expression, Freedom of Religion, and Freedom of Association. These are all freedoms which are fundamental to our form of democracy and which are explicitly or implicitly provided for in the UNCHR of which Australia is an early signatory. As such, we believe that government legislation should aim at protecting and enhancing these basic rights, not curtailing or diminishing them.

2. The Bill includes behaviour that "insults or offends" within the scope of the definition of discrimination. **There are five principal objections to this**:

   a) The first relates to the highly *subjective* nature of the term "insult". What might insult some will not insult others. What is to stop me being insulted by another person's rejection of my deeply held beliefs? This can certainly lead to vexatious claims and extensive and expensive litigation which has already occurred in Victoria. The aim of this litigation was to stifle dissenting ideas.

   b) The second objection is whether there is any serious harm arising from insulting behaviour. The act of "insulting" per se involves no menace. There are no UN provisions against "insult". The person insulted suffers no harm other than possible hurt feelings. What to one person is a critical analysis of a point of view might be an insult to the person holding that view.

   3) The third objection relates back to the first; where will this stop? Will the legislation be later extended to "hurt feelings" or "outrageous carryings on"?

   4) It is impossible to anticipate what might be construed as offensive to another person. Therefore freedom of speech is further curtailed by creating an environment of fear and apprehension which does nothing to improve social harmony.

5) This legislation could become a tool for suppression of truth. The freedom to speak the truth - which is always offensive to somebody - is not only a civil liberty in a free country, it is also the guardian of all other freedoms. Suppression of truth, even if it is offensive to some, leads inevitably to deception becoming unassailable.

3. **The reversal of the onus of proof** from the complainant to the defendant is contrary to our system of justice in which innocence is assumed until guilt is proven; the prosecution has to prove its case, not the defence. This Bill seeks to reverse this. We have been assured that this 'reverse onus' will only apply where a prima facie case has been established. If the Victorian law is any indication, this is no assurance at all. A complainant only has to present his/her complaint to the Human Rights authority and the matter will be investigated at no cost to the complainant. Meanwhile, from that point, the defendant has to mount his/her defence at his own cost. Anybody who thinks that there will be no requirement placed upon the defendant before a prima facie case has been established does not understand the effect of even an unsubstantiated accusation. It can be devastating and costly, even if it is subsequently withdrawn. The scope in this Bill for vexatious claims is great indeed, particularly as it appears to contain no sanctions against makers of claims which are manifestly false, malicious or vexatious.

4. **The Bill also seriously threatens the right of Freedom of Association**. Any group of likeminded people who choose to associate to pursue an interest, provided that the pursuit of that interest is not in breach of the law, should be free to do so and should be free to limit membership of the group to people who share the group's interest. To make it an offence for the group to exclude people who do not share the group's aims and objectives would open up a veritable can of worms; bridge clubs required to take in poker players; a women-only share trading club required to take in a male horse race enthusiast. This might sound trivial, but it is upon such trivialities that vexatious claims can be made, especially if there is another agenda behind the claim.

5. **Religious Freedom** is one of the few rights implied in the Australian Constitution. To make the structure and basis for peoples' deeply and sincerely held religious beliefs subject to government granted 'exceptions' and to make those 'exceptions' subject to periodic government review attacks the very foundation of the right to religious freedom. Furthermore, it is patronising for any government to assume to lay down conditions under which its citizens may exercise their Freedom of Religion. While the Bill appears to make concessions to the mainstream religious organisations, smaller religious groups are vulnerable and less able to defend their position.

6. The proposed legislation would be another significant step towards **Sharia-compliance**. Any critical statement about Islam, no matter how respectfully stated or well-substantiated, is strictly forbidden under Sharia law. The Australian Federation of Islamic Councils advocated the establishment of Sharia courts (legal pluralism) in their submission to the recent government inquiry into multiculturalism. As the Grand Chamber of the European Court of Human Rights has already ruled: "a regime based on Sharia clearly diverges from the Convention of Human Rights and Fundamental Freedoms values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women.." (Refah Partisi vs Turkey, 2003).

   Islam discriminates heavily against women and non-Muslims. Freedom to vigorously oppose the imposition of Islamic law, (especially as it was made by people who, as a condition to

receiving Australian citizenship, have sworn an oath to uphold *Australian law*), is essential to defend the most basic principle of democracy: the equality of all people under the law.

7. Notwithstanding the claim that this Bill simplifies and combines several areas of law, the reverse is the case. **The Bill is long and complex.** We wonder how many politicians have studied it in detail or given intelligent consideration to its likely societal impact – the inevitable, unintended, adverse consequences. Australia already has laws of libel. Limiting freedom of speech and robust public analysis of different worldviews is a serious step towards totalitarianism.

To expect a layman to be able to understand, let alone conform to, the law it seeks to introduce is naïve at best. To seek to regulate behaviour where such behaviour does no harm is without point and only reinforces the perception that those who govern feel compelled to control even when such control is unnecessary. Furthermore, it provides new scope for malcontents to harass otherwise harmless individuals or organisations in the general community. The 'grievance industry' is a sad but real phenomenon in society and we are firmly convinced that this legislation will only feed its growth.

Yours faithfully,

Kerry & Karen Bos