

To the Chairperson, Senate Legal and Constitutional Affairs Committee

# Submission on the: "Human Rights and Anti-Discrimination Bill 2012"

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Dear Senators,

I am writing to express my strong opposition to the "Human Rights and Anti-Discrimination Bill 2012" on the grounds that it violates natural justice, endangers freedom of speech, and threatens freedom of religion and religious expression in Australia. Therefore I submit that the bill must be rejected in its entirety.

Briefly, these are the grounds for my complete and total opposition to the proposed legislation:

## **1) VIOLATES NATURAL JUSTICE**

The bill overturns the long-established principle of natural justice, ie: "innocent until proven guilty".

Section 124 of the bill places the "burden of proof" on the accused person to 'prove' their innocence of certain alleged charges. This is a gross violation of natural justice, since it reverses the normal and long-held principle that one's accusers should prove beyond reasonable doubt the facts and validity of their complaint or accusation against you.

Note that application of such a reversed onus of proof would have the effect, in certain recent public controversies, of forcing two members of parliament to have the burden of proof thrust upon them to prove their innocence (ie: Craig Thomson MHR and Peter Slipper MHR).

Many other people, who may often be completely innocent of any wrong-doing, would be forced into expensive court proceedings to defend themselves and prove their innocence, without their accuser being required to prove their accusations. Many individuals and organisations would find it financially prohibitive to effectively prove their innocence. And even then they would likely suffer severe, irreparable defamation of their character and reputation.

The long established legal principle that one is "innocent until proven guilty" militates against such unjust or unfair accusations, and therefore, we must not allow the Federal Government to get away with this travesty.

## **2) VIOLATES FREEDOM OF SPEECH**

The bill endangers freedom of speech in Australia, in that it makes the government and its apparatchiks the arbiter of what is or is not acceptable expression in our society. The bill attempts to legislate attitudes and thoughts, by outlawing some attitudes and thoughts and by invoking certain artificial "attributes" or "rights" (as discussed below). As one observer on 'The Drum' blog notes, the obvious risk of such "big brother" legislation is that... "open, honest discussion used to improve our society would in effect, cease to exist". By attempting to punish people merely for acts of free

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expression, the Federal Government is violating our freedom of speech and thought. This is not a legitimate role of government in a free and democratic society, where each person should be responsible for his or her own conscience and should not be too precious about any supposed feelings of being "offended" or "insulted".

Despite certain "exemptions" or "exceptions" in the bill, an innocent person could still be falsely accused by a misguided or vindictive party, and then have the burden of proof thrust on them to prove their innocence. Inevitably freedom of speech will be smothered by the fear and the resulting self-censorship reminiscent of totalitarian societies.

### 3) PURPORTS TO CREATE NON-EXISTENT RIGHTS

The bill purports to create new rights such as the right not to be "offended", "insulted" or "humiliated"... (Section 19). The bill redefines "discrimination" to encompass "unfavourable treatment", which includes "conduct that offends, insults or intimidates the other person." And it creates so-called "protected attributes" (or sacred cows) about which we cannot talk or intend to make any discrimination, including such things as a person's:

- (e) gender identity,
- (k) political opinion
- (o) religion, or
- (q) sexual orientation.

Thus the bill purports to create non-existent rights and then gags our thoughts and expressions in relation to those supposed rights. The truth is that whether or not a person is "offended" or "insulted" is purely a subjective matter related to their own feelings and thoughts. Such supposed "hurt" is not determined by another person or their thoughts or behaviour.

As the Honourable James Spigelman AC QC so rightly observed on 'The Drum' (Dec 11, 2012):

*"It appears to me the new bill contains a subjective test of being offended."*

It is not the role of government or courts to prescribe or proscribe our thoughts and attitudes, especially in regards to things like "gender identity, political opinion, religion or sexual orientation".

The Hon James Spigelman aptly quotes an expert in jurisprudence, Professor Jeremy Waldron, who wrote :

*"Laws restricting hate speech should aim to protect people's dignity against assault. Dignity in that sense may need protection against attack, particularly against group-directed attacks ..."*

*However, I do not believe that it should be the aim of these laws to prevent people from being offended. Protecting people's feelings against offence is not an appropriate objective for the law..."*  
(from "The Harm in Hate-Speech", a book by Professor Jeremy Waldron,)

The Hon James Spigelman further notes:

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*"I agree with Professor Waldron. His detailed analysis supports the proposition that declaring conduct, relevantly speech, to be unlawful, because it causes offence, goes too far. The freedom to offend is an integral component of freedom of speech. There is no right not to be offended."*

*"I am not aware of any international human rights instrument, or national anti-discrimination statute in another liberal democracy, that extends to conduct which is merely offensive."*

#### **4) VIOLATES FREEDOM OF RELIGION**

Freedom of religion is particularly under threat from this bill, since it purports to create a right not to be discriminated against or given so-called "unfavourable treatment" because of one's "gender identity, political opinion, religion or sexual orientation". But virtually all religious practice or religious organisation involves certain ethical standards and moral attitudes, which are deeply held and central to that religion and its adherents.

If we as a society are to allow freedom of conscience, including freedom of religious beliefs and practice, then we must realise that it is necessary for religions to maintain their ethical standards and beliefs and morals, by promoting their views and practices, and also by restricting who may or may not join in that religion or participate in its missions, enterprises and associations. Specifically, this means preventing persons of dubious or contrary morals and ethics from being part of the religion or its various institutions and enterprises.

Yet the Federal Government would force religious organisations and their adherents to put up with certain immoral or contrary "gender identity, political opinion, religion or sexual orientation" in various situations under S.17 and S.19 of the bill, subject to certain "exceptions", which the Federal Government is proposing to "review" in three years time (S.47).

The "exceptions" mainly relate to core religious areas like the appointment of priests and ministers, and in relation to some religious bodies and educational institutions.

But the bill provides no "exceptions" for the provision of aged-care facilities where Commonwealth funding is used. So the Federal Government is using this bill to force Christian churches and other religions to accommodate, in religious-based aged care, people of unacceptable or questionable "sexual orientation" or "gender identity" or incompatible religious beliefs.

I personally object to having some of my beloved Christian sisters and brothers subjected to this foolish law, which seems hell-bent on undermining the Christian values and ethos that Christian believers want in their Christian nursing home. I certainly do not want such folly forced on me or my wife when we eventually have to enter an aged care facility. Why is the Federal Government seeking to effectively discriminate against elderly Christians who want a morally decent Christian environment in their twilight years?

The wide sweep of the bill's application to everyday life is shown in Section 22 which applies it to "all areas of public life" including (but not limited to):

- (a) work and work-related areas;
- (b) education or training;
- (c) the provision of goods, services or facilities;
- (d) access to public places;
- (e) provision of accommodation;
- (f) dealings in estates or interests in land (otherwise than by, or to give effect to, a will or a gift);
- (g) membership and activities of clubs or member-based associations;
- (h) participation in sporting activities (including umpiring, coaching and administration of sporting activities);
- (i) the administration of Commonwealth laws and Territory laws, and the administration or delivery of Commonwealth programs and Territory programs.

And, even where there may be some "exceptions" at present, the "burden of proof" will be on religious organisations or their adherents to prove that they have an "exception". And in regards to "religious bodies and educational institutions", the religious organisation will have to prove that "the discrimination consists of conduct, engaged in in good faith, that... conforms to the doctrines, tenets or beliefs of that religion" (S.33).

## **IN SUMMARY**

I am strongly opposed to the "Human Rights and Anti-Discrimination Bill 2012", for several reasons, some of which I have summarised above. PLEASE REJECT THE BILL, OR AT THE VERY LEAST REMOVE THE OBJECTIONABLE CLAUSES AS I HAVE OUTLINED ABOVE.

Dated: 17<sup>th</sup> December 2012

Yours sincerely,  
Kenneth Higgs