Committee Secretary,
Senate Legal & Constitutional Affairs Committee,
CANBERRA. A.C.T. 2600

Human Rights And Anti-Discrimination Bill 2012 ,

Notwithstanding the undoubted merits of a consolidation of Federal Discrimination legislation, simplifying and unifying unwieldy legal complexities, having studied the draft legislation of the Human Rights and Anti-Discrimination Bill 2012 however, we submit our serious concerns regarding a number of aspects of the present Bill, as we understand it.

1. Of immediate and significant concern is the introduction into the definition of discrimination, of the inclusion of behaviour that **"offends" or "insults**" across a range of protected attributes. Such legislation would impose an unprecedented and possibly internationally unparalleled restriction of the freedom of speech we have until now enjoyed in this country. This would over burden our court system and bankrupt or silence chosen targets with spurious and vexatious claims, as happened in Canada prior to their repealing of similar legislation.

   Article 19 of the United Nations Charter of Human Rights declares: '*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'*

   This instrument embeds as an internationally recognised right the rights all Australians *currently* enjoy to exercise our democratic right of freedom of speech and political debate. Let us keep in mind that any legislation that has the effect of silencing criticism of human behaviour and suppressing truth is more befitting of totalitarian regimes than of the free democratic society that we desire for the nation of Australia. We should never enact laws that promote the activities or behaviour or beliefs of any group as to be above scrutiny or debate.

   In the words of George Washington (1732-1799) "If the freedom of speech is taken away then dumb and silent we may be led, like sheep to the slaughter." Further, we are reminded by the recent oration of the past Chief Justice of NSW Jim Spigelman that "We would be pretty much on our own in declaring conduct which does no more than offend to be unlawful. The freedom to offend is an integral component of freedom of speech. There is no right not to be offended." and ....."None of Australia's international treaty obligations require us to protect any person or group from being offended. <u>We are, however, obliged to protect freedom of speech."</u>

We are therefore of the opinion that amendment should be made to **Clause 19** of the proposed Bill to remove the words, "conduct that offends, insults or intimidates: and the words "religion" and "political opinion" from the list of protected attributes in **Clause 17**.

2. A further deeply disquieting change proposed in the draft legislation as we understand it relates to what amounts to, in **Clause 124,** an horrendous assault upon the principal of the **presumption of innocence**; a clear reversal of the intent of that principal of global jurisprudence and which would move the onus of proving there was no unlawful discrimination, to the *respondent* in a legal

complaint. The Bill in its present state then compounds the injustice by denying non-disabled respondents the right to have legal representation at conciliation conferences.

In our opinion, to endorse such injustice and re-establish the dangerous precedent of "guilty until proven innocent" would be discriminatory of itself and these aspects of the Bill should be expunged.

3. Of further deep concern is the expansion within the Bill of the scope of protected attributes to include areas such as gender identity and sexual orientation. Protected attributes should only be those over which an individual has no choice – age, race, gender etc. and not include ones of choice such as religion, sexual preference etc. Individuals make many choices and choice is not sacred. Legislation is the wrong instrument for encouraging change in community attitudes.

   Additionally, any legislation intending to outlaw discrimination against one group in society should be balanced against the right to non-discrimination with other human rights, including religious freedom and freedom of conscience. The exclusion clause should be expressed in such a clear and unambiguous way as to ensure that discrimination in relation to gender identity or sexual orientation should not be used to deny those with a religious or conscientious moral objection their own right to order their lives within those beliefs. One would hope that in a free society, individual citizens/organisations with a religious or conscientious moral objection would find those rights upheld.

Exemptions should continue to be in place for religious groups and individuals to practice and uphold (within the law) the tenets and dearly held beliefs of their faith, in so far as is reasonable in Australian society. As employers, religious groups should certainly be free to positively select individuals for employment who best support and serve the organisation's aims and uphold the ethos of the religious beliefs of the organisation. Accommodation ought to be made for freedom of conscience across all relevant attributes.

Given the range and legal complexity of issues addressed in this Bill we feel unqualified to further extrapolate other concerns at this time, but we urge the Senate Committee to proceed with great caution lest we as a nation lose those cherished freedoms we have enjoyed until now.

Thank you for this opportunity to make our concerns known.

Yours sincerely,

Mr. & Mrs. D. A. Cronin