Peter Magee

The proposed definition of “discrimination” includes “conduct that offends, insults or intimidates”. This would seriously undermine freedom of speech in all areas of public life, including in publications (proposed Section 53). Also, the proposed Section 124 is seriously oppressive in that it would reverse the onus of proof so that the complainant only has to allege that another person’s conduct has offended, insulted or intimidated him/her and how is the accused to prove that it did not? There is no objective basis on which to judge whether the complainant was offended or insulted. The proposed bill only requires a complainant to make an accusation and then the onus is on the defendant to prove his/her conduct was not “unlawful discrimination”. This would be a reversal and complete undermining of a fundamental principle of our legal system, derived from 800 years of common law, that an accused is innocent until proved guilty. The onus of proof should remain on the party making a complaint to prove that the conduct amounts to “unlawful discrimination”.

The new “protected attributes” introduced by S.17, “sexual orientation” and “gender identity”, raise issues about discrimination against citizens or organizations/institutions with sincerely and deeply held beliefs or values in relation to the nature of sexual identity and expression. The currently protected attributes of disability, age, race and sex (as in marital, parental and breast-feeding status) do not raise such issues. In particular, it should not be “unlawful discrimination” to discriminate in relation to “sexual orientation” or “gender identity” in aged care as per proposed Section 33(3). Freedom of thought, conscience, religion and belief in relation to these matters must be properly protected as guaranteed by Australian law and international treaties and instruments. The right to freedom of thought, conscience, religion and belief is guaranteed by the International Covenant on Civil and Political Rights to which Australia is a signatory

Regarding the so called exemptions for churches and religious organizations and exceptions to be reviewed in three years (Section 47) all exemptions only being temporary (Section 85).This is inadequate protection of rights guaranteed under the ICCPR which Australia as a signatory has an obligation to protect. In the Senate Inquiry into the 2012 Marriage Equality Bill, **seven Labor senators** gave a dissenting opinion in opposition to the proposed bill. In relation to the promised exemptions for the churches not to have to celebrate same-sex marriages they **said “The re-assurance ….is hollow and tactical in nature rather than a matter of substance.**” The same can be said of the reviewable exceptions and the temporary exemptions proposed under this bill.

The proposed bill expands the prohibition of discrimination into the social life of citizens. Clubs and member-based associations and competitive sporting activities are restricted to the exceptions proposed by Sections 35 and 36. This seriously undermines the right to freedom of association Australians have long enjoyed and which is guaranteed by the ICCPR. This proposed bill is a slap in the face to democracy and such laws would lead to serious abuse of justice. Is that where the average Australian wants to go? My view is that this proposed bill intends to cultivate a culture of accusation and litigation, to further aid social fragmentation and wasted resources. I totally oppose this bill.

Yours sincerely,

Peter Magee