

21 December 2012

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
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Parliament House  
CANBERRA ACT 2600

### **Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012**

I am writing to **oppose the proposed changes** outlined in the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012.

The proposed changes broaden the definition of discrimination to include 'causing offence'. Such terms, in the context of legislation, are troublingly vague as they can be only subjective in their application. Is it even *possible* to prove beyond reasonable doubt that a person has *genuinely* been 'offended'?

Section 124 of the proposed legislation reverses the 'onus of proof' from the complainant to the respondent, ignoring basic legal rights currently enjoyed under existing Australian law: ie. a person is "innocent until proven guilty". If it is doubtful whether it can be proven beyond reasonable doubt that a person is *genuinely* offended, surely it is even more absurd to suggest that it could be proven beyond reasonable doubt that another person has not genuinely been offended! Even in the scientific realm, it is impossible to produce evidence of a thing that does not exist, or to prove that it doesn't exist.

The proposed legislation defines discrimination under an expanded set of criteria adding "gender identity and sexual orientation" and strangely "political opinion". Surely even the Gillard Government exercises discrimination against potential candidates and employees on the basis of whether their political opinion is consistent with that of the political party. Every day that our Parliament sits, the Members of the Gillard Government express their political opinions, which could often be considered "offensive" to the Members on the other side of the House. Will the Gillard Government lead by example in with respect to such "discrimination" in these areas, or will these continue under an 'exception' which avails our 'ruling elite' of freedoms not enjoyed by the common citizens, voters and taxpayers?

When the proposed subjective terms such as 'causing offence' are considered together with the proposed expanded range of criteria including "gender identity and sexual orientation" and "political opinion", the result is not only vague and subjective, but ultimately unworkable. Anyone expressing any view on any of these topics will be at risk of being found guilty of discrimination unless they first know the views of each and every listener in each of these areas so intimately that they can be sure of what can be said without cause and 'offence' to any listener. How could this possibly be known unless each of the listeners first stated *their* opinions, putting themselves at risk of being found guilty of discrimination against *their* listeners? The only 'safe' option would be to refrain from expressing any view in any of these areas – ie. silence. Thus, the proposed legislation introduces an imbalance between the 'right to not be offended' and the 'right to hold/express particular views' and goes contrary to the United Nations Charter of Human Rights which declares that "*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.*"

More specifically, each of Australia's most common religions (including atheism) define particular views on "gender identity and sexual orientation" which are different to the views held by others in our community and offensive to them. Thus, to prohibit the expression of offensive views is a severe restriction on the practice of the most common religions practised in Australia – this is a greater discrimination than the simple expression of the views themselves. Consider the irony of the Gillard Government proposing such legislation – would the Gillard Government be able to prove beyond reasonable doubt that it did not cause

offence when their leader expressed her opinion relating to the gender identity of a co-worker in her infamous “misogyny speech” expressed in her workplace on 9 October 2012?

Similarly, political opinions are by nature polarising and almost invariably offensive to those who don't hold the same views – the Opposition is called that because they “oppose” the Government, even sitting on the other side of the House to reflect the reality that their political opinions are on the other side of the political spectrum. Australians currently enjoy a democracy where people are free to decide their own political opinion, even if it is offensive to those with ‘opposing’ political opinions. It is crucial that each of these opinions can be discussed openly in order to keep our Government accountable to the people it is elected to govern (regardless of which political party may be in Government at the time). It is fundamental to a democracy that each citizen has right to choose which political party to support (even if those supporting the other/opposing parties will find this offensive), and not to be coerced by another ‘offended’ party into changing their opinion. Thus, to prohibit the expression of offensive views is an attack on democracy itself, and is a greater discrimination than the simple expression of the views themselves. The proposal by the Gillard Government to prohibit the expression of ‘offensive political opinions’ is in effect a proposal to prohibit the expression of *opposing* political opinions – a ‘feature’ of the German Government during the mid to late 1930s, and in the Government of present-day North Korea – is this what we want for Australia?

Historically, Ms Nicola Roxon's actions and subsequent refusal to enter into any correspondence in the matter do little to allay concerns. For example, the dismissal of Health Ambassador Mr Warwick Marsh in November 2008 demonstrated that Ms Roxon is concerned only whether certain views may be considered to be “extremely offensive” – whether the expressed views are supportable or verifiable does not even rate a mention. Similarly: under her proposed legislation, it appears not to matter whether a person is expressing a verifiable or supportable view or even endorsing changes that would be beneficial for the community at large – all that matters is that someone may be offended, perhaps even by their conscience having been ‘pricked’. It would be prudent to consider whether past ills such as the trading of slaves could ever have been outlawed without people being able to express opinions that, at the time, would most certainly have been found by some to be “extremely offensive” – even the view that the earth is not flat was “extremely offensive” when initially expressed! Under the proposed legislation, such views would be considered “discriminatory” and public discussion of them would not be tolerated – it is difficult to understand how the community is to benefit from such legislation.

Finally, the proposed legislation lacks any discouragement against frivolous or vexatious claims, but instead encourages such claims by effecting a “no cost to the complainant” situation even if they lose the case. While justice should be readily available for those with a genuine claim even if they cannot afford the expense of expert legal advice and representation, there must be some disincentive against potential complainants from further burdening our already troubled courts – when there is no risk on the part of the complainant, why not “give it a go” just in case? It is naïve to think of companies, no matter how large, as bottomless money-pits that can simply absorb the costs of such claims against them – the costs invariably are passed back to the community.

In summary, it is a very immature person indeed who cannot accept that others may have views that differ from their own. Further, it is a most intolerant person who seeks to prevent other people from expressing such views.

Regards,