The Australian Family Association

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HUMAN RIGHTS AND ANTI-DISCRIMINATION BILL 2012

Submission

1. Introduction

Following the successful implementation of Human Rights Acts in the ACT (2004) and Victoria (2006), the Rudd government announced, on 10.12.08, a National Consultation on Human Rights. Chaired by Fr Frank Brennan SJ, members of the Consultation Committee traversed the nation, holding meetings in important population centres , in an attempt to ascertain the views of the people.

Groups and individuals were encouraged to present, to the Committee, submissions which formed the basis of a Report. This was presented to then Attorney-General, Robert MacLelland, on 30.9.09, and, together with the earlier Report of the Consultative Committee on the WA Draft Human Rights Bill, unsurprisingly, contained recommendations that the federal government proceed with a Human Rights Act (HRA) for Australia.

2. Progress towards HRA

In any event, a Bill for HRA was not presented to the Parliament prior to 2010, when a general election saw the Gillard government assume office. Since then, Attorney-General Roxon has taken the view that the four Anti-Discrimination Acts (ADA,2004; DDA,1992; RDA,1975; SDA,1984) need to be combined, together with the Australian Human Rights Commission Act(AHRCA), 1986.

By embroiling the AHRCA in proceedings, the question which immediately arises is: does the proposed legislation represent a Human Rights Act by stealth? For, it is certainly possible at some later date to present, by default, the combined legislation, unencumbered by the anti-discrimination component, as a Human Rights Act.

3. Discrimination

While it is reasonable to be sympathetic towards people, or groups, who are unjustly discriminated against on the grounds of race, colour, ethnicity, religion, age, sex, etc, not all discrimination is necessarily invalid. People who have broken the law can have their freedom suspended, those under age 18 are prevented from purchasing alcohol legally, bonds of kinship may preclude people from marrying, and so on. There is obviously no unjust discrimination in these cases.

What has been apparent, however, in recent times, in the area of discrimination and its concomitant Human Rights, is that greater recognition has been accorded small, but strident, groups of social and judicial activists to whom governments pander under the mistaken belief that their rights are being infringed; and that thereby they are being discriminated against.

In seeking to select certain groups on which to confer special 'rights' because of perceived discrimination, governments run the risk of infringing the rights of other groups and discriminating against those who may have prior rights.

This process may be described as **reverse-discrimination.**

4. Examples of Reverse-Discrimination

Example1

The Abortion Reform Act was passed in Victoria in 2008. One of its infamous provisions was that doctors or hospitals having conscientious objections to abortion, and declining to perform them, were forced to

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refer women seeking abortions to practitioners or hospitals which did undertake them; or face penalties if they did not. It did not matter that the doctor or institution might harbour a conscientious objection to making such referrals; the full force of the law was invoked for non-compliance. The overriding consideration appeared to be that refusing to co-operate in meeting a woman's request for an abortion was blatant discrimination.

This aspect of the legislation assumes ominous significance when it is realised that freedom of conscience is enshrined in the Universal Declaration of Human Rights (UDHR), (Article 18), whereas a 'right' to abortion is not.

Example 2

Despite the fact that only a minority of countries in the world - and States in the USA - allow Same-Sex Marriage (SSM); and, notwithstanding significant defeats in the Australian Parliament within the last two years, its proponents continue to claim that the only reason SSM has not succeeded in this country is because of discrimination against homosexuals. Can this argument be sustained?

Marriage is not simply about the love of two people. It concerns children and families, and the perpetuation of the Australian population, its culture and its ethos. Since the proportion of homosexuals in the western world (including Australia), is extremely small (about 1.5%), the proportion who want SSM (4 % of homosexuals) small as well, and their relationships, by definition, sterile, there are very good reasons for excluding homosexual relationships from the framework of marriage.

Under the UDHR, marriage of a man and a woman and their family, including children, are protected in Article 16. On the other hand, SSM is not considered a human right because it is quite obvious that homosexuals are not unfairly discriminated against when denied marriage.

What both these examples show is that in promoting so-called 'rights' using a fallacious concept of 'discrimination', the rights of those who are compelled to accept behaviours which they find morally or ethically repugnant are being transgressed, leading to **reverse discrimination.**

5. Application of the Bill

Along with categories in which discrimination is still sometimes found: age, sex, race, etc, protected status is to be conferred, by this Bill, on new groups perceived as subjects of discrimination. Among these will be two new categories: ' gender identity' and 'sexual orientation'. Needless to say these are code for the GLBIT lobby which will, under the provisions of this Bill, impose its homosexual agenda on the rest of society.

In which areas of society might this **reverse discrimination** be found?

Education - where the AEU, in 2006, signalled its intention of introducing the teaching of aspects of homosexual behaviour into sex-education classes. (If some states in the USA and Canada are any guide, this indoctrination will commence in primary school). All schools will be compelled to provide Gay-Straight (GS) clubs, supposedly to break down prejudice against students with homosexual tendencies. In addition parents, wishing to remove their children from classes where homosexuality is taught as the equivalent of heterosexual relationships, will run the risk of being charged with hate 'crime'. Religious schools may, be allowed to use 'exception' clauses under the legislation, in order to avoid teaching about homosexual behavior and employing homosexuals as teachers. However, will such a proscription apply to non-teaching staff? In any case, exceptions can be revoked at the stroke of a pen; after a review of the legislation, set to take place after a period of three years. It was interesting to note that in the Inquiry that led to the introduction of this draft Bill, 30 submissions argued strongly that there be no such exceptions.

Churches – many mainstream churches and faiths hold that homosexual relations are sinful; their pastors and priests are bound to teach adherents of the faith accordingly. This will immediately put them on a collision course with the provisions of the Bill. While initially such conflicts may be assuaged by 'exception' clauses, it is obvious that these may be withdrawn at a moment's notice; as in the case of Education (above). There is abundant evidence, around the world to show that where the GLBIT lobby is accorded special rights, **reverse discrimination** is applied to the rights of others in relation to freedom of speech, conscience and religion. The prosecution of a pastor in Norway, and a bishop in Spain are just two examples which come to mind. In Australia, a church was defaced after its pastor posted a notice supportive of traditional marriage on his notice-board.

Business/Employment – the literature is replete with situations in which employers and employees have been charged, prosecuted and fined for daring to take a public stance against homosexual behaviour. In October 2010, a Brethren campsite in Victoria was targeted by a homosexual group who wished to hire it for one of their activities. Upon being refused, they alleged that they had been discriminated against, and

appealed the decision by the Brethren using the State's Charter of Human Rights. The appeal was successful and the proprietors of the campsite fined. Dr David van Gend was asked, in October 2011, to pen an opinion-piece, supportive of traditional marriage, for the Brisbane Courier-Mail newspaper. When the article appeared in print, he was required to defend, at his own significant expense his statement by Queensland's anti-Discrimination Commission. Around the world, proprietors of fast-food chains, B&B owners, marriage celebrants, sports commentators, etc, etc, have all been penalized because they have dared to express their opposition to SSM.

The classic case of **reverse discrimination** must surely be the attempted blocking of the appointment of Mr Tonio Borg, a Maltese national, to the position of European Commissioner for Health and Consumer Protection in the European Parliament. The action was taken by the International Lesbian and Gay Association (ILGA), in concert with two other groups, for reasons unrelated to his competence to perform the duties of the position. That the three groups were unsuccessful is beside the point, what is significant is that they were prepared to use means, which had they been applied to their own organizations, would have brought forth accusations of discrimination. There is similar case in the EU of Rocco Buttiglione

Clearly, in the interests of the freedoms of conscience, speech and religion enshrined in the UDHR, these are situations to be shunned.

6. Burden of Proof

Perhaps the most obnoxious aspect of this Bill is the suspension of the presumption of innocence in charges laid under its provisions. All that will be required for a charge to be laid is for a person who feels offended to make a prima-facie allegation of discrimination. The burden of proof will then rest with the accused, who will have to demonstrate that no discrimination has occurred. Furthermore, if precedents overseas are followed, and there is nothing to suggest that they will not, there is every likelihood that plaintiffs will have their court costs met by the state; without any corresponding funding offered to defendants.

7. Legislative Flaw

In what appears to be an exercise in consolidation: the replacement of five Acts by one, the Bill has nevertheless failed in its objective. It has expanded the number of categories of discrimination from twelve to twenty. As such, it reveals the intention of its framers, whether deliberate or not, to approach the question of discrimination in piecemeal fashion. This is completely unsatisfactory, and has the potential to emulate the Income Tax Act if allowed to run to its logical conclusion. A far better alternative would be for the government to introduce a broadly-based Bill, which attempts to provide guidelines setting out the criteria to be used in assessing whether unfair or unjust discrimination has indeed occurred. Thereafter, the government should abdicate a direct role in any legal proceedings which ensue; leaving such action to those who consider that their particular circumstances constitute a breach of the Act.

8. Conclusion

The convolution of four anti-discrimination Acts with AHRCA suggests, strongly, that the Bill will be the pre-cursor of a Human Rights Act.

Ignoring the fact that some discrimination is warranted, the Bill seeks to provide the government with the power to determine what shall, and shall not, be construed as discrimination. There is potential with this approach for **reverse discrimination** to occur; especially in the newly- defined categories of 'sexual orientation' and 'gender identity'.

Freedom of conscience, religion and speech are all gravely at risk.

The most controversial aspect associated with the Bill is the stripping of the presumption of innocence from the defendant. He or she will be presumed to be guilty as charged; and will be required to convince the arbiter in the dispute of the absence of discrimination; whether that discrimination is justified or not. There is also every possibility, if overseas experience can be taken as a guide, that the plaintiff in proceedings will be assisted with court costs, but not the defendant.

The proposed legislation is flawed for a number of reasons: most importantly because it is too prescriptive; but equally, because the minority federal government does not possess a mandate to introduce controversial legislation.

The Australian Family Association does not support this Bill

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