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Senate Legal and Constitutional Affairs Cttee,
PO Box 6100,
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SUBMISSION ON: HUMAN RIGHTS AND ANTI-DISCRIMINATION BILL

By KJ Francis

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1. Introduction

The proposed Human Rights and Anti-Discrimination Bill currently under consideration by the Parliament is faulty in a number of important aspects and will impede rather than assist in the conduct of genuine political discourse in Australia. Objections to the Bill are discussed in turn in the following sections.

The Bill should be rejected because it:

- Curtails freedom of speech
- Reverses the onus of proof
- Curtails the right to express different opinions
- Restricts freedom of association for like-minded citizens

2. Freedom of Speech curtailed.

The Bill proposes that discrimination will include: "conduct that offends, insults or intimidates." This definition of unlawful discrimination is inappropriate in a robust democracy such as Australia.

Political and social discussion on important issues will often (always) result in a feeling of being offended on the part of participants or observers of a debate, particularly when issues of strongly-held belief are under discussion. In fact it is hard to envisage any debate that won't cause "offence" to somebody.

The inclusion of "offends" in the Bill will effectively curtail freedom of speech in this country.

Review of overseas legislation reveals no examples of a "right not to be offended." Thus why should such a right be created under this Bill?
This being said, there are numerous acceptable laws prohibiting incitement to violence or otherwise threatening others.

In summary, the obligation to protect free speech is far more important than attempting to create a right not to be offended.

3. Onus of Proof is reversed

It appears that under the Bill, a person accused of discrimination will be required to demonstrate to the court that discrimination "did not occur". Thus the long-established principle of presumption of innocence is to be set aside.
Thus a person accused of causing "offence" would be hard-pressed to prove that a complainant was not "offended" if the complainant maintained that he/she was "offended".

4. Right to express different opinions

Under the Bill, certain views of life and society are to be given preferred status ("protected attributes"). Thus "gender identity" and "sexual orientation" would be no longer subject of debate – the expression of opinion on these topics would be restricted under the Bill, and no longer the subject of free discussion without the possibility of court action.

It should be remembered that opinions about sexual identity and expression quite legitimately differ. A healthy society should permit robust discussion on these issues.

5. **Freedom of Association**

It would appear that under the Bill, citizens associating say as a religious grouping would find themselves less able to employ persons who were sympathetic to their religious and/or cultural beliefs and attitudes.

Even though there may be short-term exemptions offered, the determination and duration of any exemptions would be such that the basic freedom of association is impeded.

SUBMISSION ENDS