Dear senate committee.

This letter concerns the Human Rights and
Anti-Discrimination Bill 2012

Many countries around the world have various forms of anti-hatred legislation. It would seem that it is difficult to enforce and distinguish from laws guaranteeing free speech. To embark down this pathway, Australia will attempt to do what other nations have not been able to do. The following article is just one example of the frustrations of others to interpret anti-hate legislation.

From 'More Speech is Better', by David Cole in the New York Review of Books, Oct 16, 2012.
http://www.nybooks.com/blogs/nyrblog/2012/oct/16/more-speech-better/

"Such proposals to regulate hate speech—whether "two-pronged" or not—are flawed, for principled, legal reasons, as well as strategic, political considerations. As a legal matter, any attempt to penalize speech because of its offensive content contravenes the First Amendment's bedrock principle that the government should not be in the business of defining what messages are permissible or impermissible. Arguments for regulating hate speech often take the same form as those made by defenders of laws prohibiting flag burning: if the content of the expression is offensive, and the speech itself is deemed of negligible value, it should be suppressed. But the last thing we need in a democracy is the government—or the majority—defining what is or is not a permissible message.

Second, defining "hate speech" in a way that draws a clear and enforceable line between that which deserves protection and that which can be prohibited is an elusive, and probably impossible, task. Ruthven's proposal distinguishes between criticism and "insult," an approach eerily reminiscent of the one Turkey's Prime Minister Tayyip Erdoğan has adopted in defending the prosecution of journalists for "insulting" Turkey. Waldron's proposal draws similarly vague lines between speech that offends, which he would protect, and speech that denigrates the human dignity of individuals or groups, which he would not. Canada prohibits "any writing, sign or visible representation" that "incites hatred against

any identifiable group." Ireland prohibits "blasphemous" speech that is "grossly abusive or insulting in relation to matters held sacred by any religion."

Such laws empower the government, or a jury, to draw lines between legitimate criticism, satire, and public comment on the one hand, and "insulting," "abusive," or "hateful" speech on the other. Is there any reason to be confident that government officials or juries will do a good job of this? And as long as the lines are so murky, many people will be compelled to steer clear of legitimate expression that some official or jury might, from its own viewpoint, deem over the line after the fact: this would stifle free speech and lead to self-censorship. Ruthven himself seems ambivalent about whether Rushdie's depiction of Mohammed in The Satanic Verses is "insulting," and therefore should be prohibited, or an example of artistic criticism that should be protected.

In theory, these laws are designed to protect minority groups and religions. But in a democracy, enforcement will inevitably be driven by the concerns of the majority, and is almost certain to be targeted at marginal dissidents and outliers. George Washington University law professor Jonathan Turley recently compiled a list of examples of ill-advised enforcement of such laws. Canada penalized a comedian for violating a lesbian couple's human rights during an open-mic comedy routine. The UK arrested a fifteen-year-old girl for burning a Koran. France fined Brigitte Bardot for criticizing Islamic influence on French culture. The Netherlands and Italy have charged cartoonists and comedians with insulting religion.

As a strategic matter, if the concern driving such laws is the protection of minority rights, empowering the government to suppress speech it deems "offensive," "abusive," or "insulting" hardly seems wise. Minority groups have historically won legal rights through the kind of public organizing, advocacy, and expression that the robust protection of free speech guarantees—even when the majority would rather they were silenced. For the civil rights movement, the women's rights movement, and the gay rights movement, the path to equality has been paved by the vigorous use of free speech, not by suppression and censorship of racist, sexist, or homophobic comments.

Finally, if the goal is to promote peaceable coexistence among human beings enjoying equal dignity and respect, isn't allowing everyone his or her say a reflection of that respect? And isn't it possible that by tolerating the intolerant, we teach tolerance in the most dramatic and fundamental way? In the United States, a strong First Amendment tradition means that people are free to, and often do, say plenty of outrageous, stupid, malevolent, and hateful things. Just listen to radio talk shows. But what we don't see in response are riots and violence. The constitutional principle that demands freedom for speech that is offensive may in turn teach and reinforce the tolerance that is at bottom, essential to a functioning diverse society and world.

To be sure, the ease with which vitriol and hatred can be transmitted internationally over the Internet complicates matters. When irresponsible individuals in one part of the world engage in speech that is intended and likely to provoke violent unrest in other parts of the world, innocent people in other countries may pay for our free speech. But if we were to start prohibiting speech on the ground that some listeners, somewhere in the world, might be offended and react violently to it, we would be enforcing the worst kind of international "heckler's veto," and sanctioning the violence, which is surely more reprehensible than the speech itself.

We should do a careful review of this legislation before it is rushed through parliament over the Christmas season. Our freedom of speech is likely to shrink under this type of legislation.
Please consider its implications carefully.

Yours truly,

Steve Lick