SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

My concern is that the proposed reforms in the "exposure draft" of the new federal Human Rights and Anti-Discrimination Bill 2012, if implemented will seriously undermine freedom of speech in Australia. The proposed definition of discrimination under the proposed bill is defined as, "conduct that offends, insults or intimidates". This opens up a huge area, and is a very low threshold to constitute "unlawful conduct" that can be grounds for complaint and legal action. The proposed definition of discrimination as "conduct that offends, insults, or intimidates" should be removed as it seriously undermines freedom of speech. Presently, the right to freedom of speech is guaranteed by the International Covenant on Civil and Political Rights (the ICCPR) and Australian law. Australia's international treaty obligations do not therefore require Australia to protect persons from being offended. Our international treaty obligations do however require Australia to protect freedom of speech. The law of defamation and the laws prohibiting incitement to violence presently govern the limits of free speech, giving opportunity for people to be responsible for their own actions. I therefore urge the Senate and Legal Constitutional Affairs Committee to reject or amend the proposed reforms contained in the "exposure draft".

Secondly, clause 124 which reverses the onus of proof, should also be deleted. This is a reversal and complete undermining of a fundamental principle of our legal system, derived from 800 years of common law, by which an accused is innocent until proved guilty. In my opinion the present law has served Australia well and the onus of proof should remain on the party making the complaint, to prove that the conduct amounts to "unlawful discrimination".

The new "protected attributes" introduced in 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. If introduced these reforms instead of dissolving discrimination, will actually bring a greater division. The currently protected attributes of disability, age race and sex do not raise such issues, so I respectfully suggest they are retained as they are.

In conclusion, I observe that should the proposed bill, be accepted without amendments, it would expand the prohibition of discrimination into the social life of citizens. Clubs and member based associations such as sporting activities would be restricted to the exceptions proposed in Section 35 and 36. This would most certainly undermine the right to freedom of association that we Australians have long enjoyed and which is guaranteed by the ICCPR. I urge those who are on this Senate Committee to carefully consider the long ranging consequences that would result from making the drastic changes proposed.

Cheryl Harrold