

I am writing to express my concern regarding the Government's Human Rights and Anti-Discrimination Bill that proposes that discrimination be widened to include offence, meaning a person would be breaking the law if they were to merely insult another.

While I think insulting a person because of race, gender, disability, political persuasion or religion is not to be taken lightly, I believe that there is a balance that needs to be found between the various discrimination and freedoms. For example, freedom of speech and freedom of religion may come in opposition with each other in some cases. As former NSW Chief Justice and now chairman of the ABC, James Spigelman, mentioned in his speech against the proposed bill – there is a difference between hate speech and freedom of speech. He also mentioned that ‘the focus of that debate was not on the existence of a racial vilification provision, but on the breadth of the conduct to which section 18 C extends, namely, conduct “reasonably likely ... to offend, insult, humiliate or intimidate another person”.’ Someone may be offended at many things.

Mr Spigelman has warned that should the draft bill be enacted, it would isolate Australians from international norms. I do not want that to happen.

Article 19 of the United Nations Charter of Human Rights declares:

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.

It is important that our laws continue to provide those rights.

Sometimes saying something about something else (such as someone else's religion), may be accurate from the originator's belief, but ‘offend’ the other person. That does not necessarily mean that the originator is wrong. They both have free speech and both have freedom of religion.

I am concerned that the bill:

- Drastically expands the number of attributes that will be protected to include things like gender identity and sexual orientation.
- Defines discrimination to include behaviour that “offends or insults - increasing the likelihood of vexatious claims. This has a high risk of people being accused of things that they did not do, causing careers and reputations to be tarnished and excess use of the courts, as a minimum.
- Fails to outline the importance of balancing the right to non-discrimination with other human rights including religious freedom and freedom of association. This is a delicate balance. Amalgamating multiple bills into one may not necessarily be the best way of making such a balance.
- Moves the onus of proving there was no unlawful discrimination to the respondent if a complainant establishes prima facie a case, leading to concerns of nuisance claims – similar comment to my ‘definition’ comment above; and,
- Requires the protections for religious freedom, known as ‘exceptions’, which apply to religious bodies and educational institutions, to be reviewed every three years. This is a significant ‘exception’.

Thank you for the opportunity to contribute.