

December 21st 2012

Committee Secretary
Senate Standing Committees on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir/Madam,

I wish to register my opposition to the Human Rights and Anti-Discrimination Bill 2012. I believe much of the intent of the Bill is at odds with our right to open and frank free speech, and thus the right to openly debate important matters of public interest.

Our democracy depends upon citizens in their private and professional lives being free to discuss subjects that other people may find distasteful, or even offensive. I believe that the Human Rights and Anti-Discrimination Bill 2012, if passed into law, will result in people starting to self-censor their views for fear of another party taking, 'offence', and seeking to use the provisions of the Bill to stop shut down public debate.

I find clause 124-1 particularly odious. On my reading of that clause, it reverses the onus of proof which is a fundamental principle of our democratic and legal system. It will effectively declare the party that is being prosecuted as guilty unless they can prove their own innocence – clearly a travesty and worse, the overturning of a fundamental right of every Australian citizen, no matter their view on any of the, 'protected attributes', under clause 17 of the draft bill.

Clause 133 appears to require a party defending themselves to pay all of their own costs, even if they are found innocent. This will allow mischievous plaintiffs to pursue an individual in the Federal Court, and if the case is found to have no merit, the innocent party will have no redress for the time, inconvenience and financial cost of defending themselves. On any balanced assessment, this is very unfair and another reason this bill should be rejected in its entirety.

Unelected government officials appear to gain a lot of power under this draft bill, which I do not believe is appropriate. Clause 23-3 sets out the grounds for, 'good faith', and whether an aim is a 'legitimate aim'. This appears very rubbery to me and this ambiguity allows non-elected officials the scope to make subjective judgements about when conduct is justifiable. The Parliament that we as citizens elect should be the final arbiter of what particular conduct is justifiable – we then have the opportunity to change the membership of the Parliament but we do not have the same scope to dismiss non-elected government appointed officials that choose to engage in what is effectively judicial activism.

Clause 19-2 is so bad, it cannot be improved other than by its excision from this draft bill, or the bill being rejected in its entirety. If to offend or insult someone, whether deliberately or inadvertently is to be a form of discrimination, then important matters of public interest may never be debated. I have previously worked for two different member advocacy organisations in the agricultural sector (from 1997 to 2004) and been involved in public debates about industry policy in the grains sector.

Many people on both sides of the debate had very strong views and debate could become emotional and heated. I was often in a minority in the wheat industry de-regulation debate, and my opponents

would seek to find ways to shut down what they saw as a minority dissenting viewpoint. Had the provisions of the Human Rights and Anti-Discrimination Bill 2012 been available to my opponents, I could well have found myself in court defending my views under Section 19-2, in that I had offended and insulted a wheat grower or an agri-politician who held a different view to me.

Some wheat growers did indeed find it offensive and insulting that there could be a different viewpoint in what I stress, could be an emotional debate, with defenders of the status quo, often relying on dogma, bluster, evasiveness and arguments that did not follow logical thought processes. Less scrupulous supporters of maintaining the regulated wheat marketing system, could well have abused the provisions of the Human Rights and Anti-Discrimination Bill 2012, and shut down people like myself, and wheat growers who opposed the regulated market.

I do not believe that this scenario is an exaggeration. For many years despite compelling evidence, the majority of politicians believed that a regulated wheat market should be maintained, and it took the very high profile Cole Inquiry into Wheat Marketing, and the revelations about the activities of AWB Ltd in Iraq, to sway political and public opinion.

Supporters of the regulated system had incentives to carry out activities that would preserve their privileged position. Employees of AWB Ltd of course, operated in a cosseted business environment which allowed them to be very well remunerated, whilst being immune from competitive pressures, due to the provisions of the *Wheat Marketing Act 1989*. An agri-political structure, that operated in a symbiotic relationship with AWB Ltd was incentivised to maintain the regulated system. Farmers with the 'right', political views often found themselves rising through the ranks of the now-defunct Grains Council of Australia, and onto the board of various grain industry statutory authorities.

For many of those people, this seductive lifestyle was worth preserving, and I believe some of them would have had little hesitation in either threatening to use, or actively pursuing those that threatened their ability to maintain their positions, using the provisions of the Human Rights and Anti-Discrimination Bill 2012.

Many public servants, agricultural economists and academics had failed to speak out on that matter, due to the prevailing politics of wheat marketing and they did not wish to stick their heads up, and I would have no faith in non-elected government officials deciding my fate, should I have found myself in the scenario I have outlined.

For these reasons, I believe this Bill is fundamentally flawed, and should be rejected by the Senate.

Yours sincerely,

Damian Capp
Perth, Western Australia