

To:
Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Sir

I am a Solicitor of the Supreme Court of NSW and I wish to make a submission that I am opposed to the Draft of Human Rights and Anti-Discrimination Bill 2012 in its present form because:

- The Proposed bill poses threat to freedom of religion and freedom of speech; and
- The Bill proposes that discrimination be widened to include offence or insult.

In support of the submission I refer to the Human Rights Day Oration - delivered by the Honourable James Spigelman AC QC on Monday 10 December 2012. He says, inter alia:

“Professor Waldron’s hate speech book, which is of particular significance for our debate, is the chapter he devotes to establishing the proposition that protection of dignity does NOT require protection from being offended:”

And he quotes from Professor Waldron:

*“I do not believe that it should be the aim of these laws to prevent people from being offended. Protecting people's feelings against offence is not an appropriate objective for the law.
To protect people from offence or from being offended is to protect them from a certain sort of effect on their feelings. And that is different from protecting their dignity and the assurance of their decent treatment in society.”*

He goes on to say:

“I agree with Professor Waldron. His detailed analysis supports the proposition that declaring conduct, relevantly speech, to be unlawful, because it causes offence, goes too far. The freedom to offend is an integral component of freedom of speech. There is no right not to be offended.

I am not aware of any international human rights instrument, or national anti-discrimination statute in another liberal democracy, that extends to conduct which is merely offensive. I have not conducted a detailed review of the international position in this respect. However, so far as I have been able to determine, we would be pretty much on our own in declaring conduct which does no more than offend, to be unlawful. In a context where human rights protection draws on a global jurisprudence, this should give us pause when we re-enact s 18C and before we extend such protection to other contexts.

Section 19(2)(b) of the proposed Human Rights and Anti- Discrimination Bill 2012, introduces “offending” into the definition of discrimination for all purposes, not just for

racial vilification. None of the other pre-existing Commonwealth Acts – covering sex, disability and age discrimination – extends the concept of discrimination to conduct which only offends

At another section he says:

“When rights conflict, drawing the line too far in favour of one, degrades the other right. Words such as “offend” and “insult”, impinge on freedom of speech in a way that words such as “humiliate”, “denigrate,” “intimidate”, “incite hostility” or “hatred” or “contempt”, do not. To go beyond language of the latter character, in my opinion, goes too far.

None of Australia’s international treaty obligations require us to protect any person or group from being offended. We are, however, obliged to protect freedom of speech. We should take care not to put ourselves in a position where others could reasonably assert that we are in breach of our international treaty obligations to protect freedom of speech.”

I agree wholeheartedly with the points made in his speech and ask that the Senate Committee redraft the Bill appropriately.

James Warland

Solicitor