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16 December 2012

Committee Secretary, Senate Legal and Constitutional Affairs Committee  
PO Box 6100, Parliament House, Canberra ACT 2600  
fax 6277 5794 Total pages = 5, this letter has 3 pages, and an attachment of two pages.

Dear Sir

I write to offer comments on the Human Rights and Anti-Discrimination Bill 2012.

In summary, I think that it is flawed and unnecessary, and it should be totally rejected. This Bill is an attack on free speech, and I condemn it.

1) Firstly, I am concerned about the too short time allowed for public comments.

On 21 November 2012 the Senate referred the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 for inquiry and report by 18 February 2013, with comments being received up until 21 December 2012.

**Why the rush?** Only ONE MONTH!! One must be suspicious when a comment process on a Bill with potentially far-reaching implications is rushed through before Christmas.

This Government has not adequately informed us members of the public to enable us to study the implications of, and to prepare thoughtful comments on, this far-reaching legislation. While the Government might claim that the issuing of a Discussion Paper, dated September 2011, was intended to give adequate public participation, in practicality it has not done so, because here am I on 15 December becoming aware for the first time of this issue. I have many politically-aware friends and none were aware of it. I now have only a few days till the deadline at a time when my attentions are elsewhere, limiting my time for research etc.

I have read through the Discussion Paper of Sept 2011 and am alarmed at its bias. During my 30 years in the Public Service and work for 6 MPs from 4 Parties (including a Minister and a Senator) I have written and/or participated in many Discussion Papers, I am appalled – this is not a Discussion Paper; it is an aggressive Position Paper, pushing one particular line.

2) As one who worked 30 years in the public service (& 15 years in the private sector), I ask the fundamental question, “*Why bother? What is the need to do anything at all?*”.

Who among the voter constituency (except some fringe minority elements, less than 1% of the population) are arguing in the public arena for the need for change?

The answer is that this change is NOT being sought by the vast majority of people.

I note that the Discussion Paper states:

“The Government has decided, as part of Australia’s Human Rights Framework and as a Better Regulation Ministerial Partnership between the Attorney-General and the Minister for Finance and Deregulation, to consolidate existing Commonwealth anti-discrimination legislation into a single, comprehensive law.”

In other words, the Government has decided to do it, without thinking of the justification whether it is needed or not, and regardless of whether the Australian public is calling for it.

3) I argue strongly against consolidation of existing legislation.

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For example I was a senior Manager in 1977-89 in what is now called the Environment Protection Authority. Just before I left to work in the Commonwealth Public Service (2 yrs) then in the NSW Roads and Traffic Authority (10 yrs), it was proposed in 1989 to consolidate the legislation that I and others had been administering (Clean Air Act, 1961, Clean Waters Act 1970, Noise Control Act 1975 etc) into one unified, consolidated Act, which ended up as the NSW Protection of the Environment Operations Act, 1997. Recently (during most of year 2009) I was brought out of semi-retirement to work on a special project in what is now called the Environment Protection Authority.

I reached the conclusion that the consolidated Act has been a disaster – costs and administrative complexities have gone up, productivity and morale have gone down, and less has been achieved in sensible environmental controls than I think should have been achieved.

Therefore, I would urge that the existing legislation (the *Age Discrimination Act 2004*, the *Disability Discrimination Act 1992*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Australian Human Rights Commission Act 1986*) be kept separate.

4) I am against the principle of merging new things with consolidation of existing things. The Discussion Paper of Sept 2011 states, "As part of this project, the Government is also delivering on its commitment to introduce new prohibitions on discrimination on the basis of sexual orientation and gender identity."

If new things are to be introduced then they should be in separate, stand-alone legislation where the new things can be debated and considered on their merits, or lack of them, rather than being merged in among a whole lot of other things like consolidation.

5) I was in the bureaucracy long enough (30 years) to know that words like "streamline" and "rationalise" are euphemisms for extension of powers and increases of costs. From my quick study of the Bill and of the comments of reliable commentators, I simply do not accept or believe that

- a streamlined approach to exceptions;

will in fact streamline anything, but in reality it will lead to huge increases in complexities and costs, both in litigation and in the bureaucracy. Similarly I do not believe that

- rationalisation of some functions of the Australian Human Rights Commission.

will actually rationalise, i.e. be rational, nor will it reduce functions or costs to taxpayers – I forecast a large increase in the powers of, staff of, and costs of the AHRC to enforce this new Bill if it does become an Act, and this will be a waste of taxpayers' moneys when economic stringency is needed in order to achieve a much-needed surplus in the Federal Gov't Budget.

6) I am concerned that the Federal Government has not learned from the extremely poor performance of similar Victorian State legislation, which has been a disaster (to all except the lawyers who enjoyed the fees from spurious litigations)

The new offence of "offending" others at work on the basis of religious belief is a big worry. A similar law in Victoria (the Racial and Religious Tolerance Act, 2001) caused great stress and expense for two Christian pastors (Danny Nalliah and Danny Scot) before they were vindicated by the Victorian Supreme Court of Appeal five years later. Other states then decided not to proceed with such harmful and counter-productive laws. For example, the NSW Premier, Bob Carr, rejected calls to introduce a law like the Victorian one, and after his retirement wrote an excellent newspaper article (see copy attached) criticising this sort of

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approach - but now the federal Attorney-General misguidedly wants to proceed with exactly this type of legislation that was so discredited in Victoria

A recent financial newsletter (<http://www.dailyreckoning.com.au/why-free-speech-is-the-most-important-of-all-the-civil-liberties/2012/12/11/>) wrote something that I agree with:-

"By suppressing speech, you suppress thought, too. Free speech is the most important of all the civil liberties precisely because it guarantees that uncomfortable, provocative, and unsettling ideas will be spoken out loud and be vigorously contested in an open society. The best disinfectant against hateful speech is sunlight: let the racists, xenophobes, homophobes and crazies open their mouth and prove to the world how ridiculous they are."

I have heard Danny Nalliah speak and I do not agree with him, but I do agree with his right of free speech to say things that prove to most people how ridiculous he is. However the Victorian court case made him a martyr, plus which it did not improve social harmony between Christians and Moslems. Governments should not legislate, but should allow people like Danny Nalliah to 'open their mouth, and prove to the world how ridiculous they are'. Danny attracts only a tiny minority following – of similar size and importance as the small minority who want 'gender identity' and 'sexual orientation' introduced into law.

7) This is more 'nanny state', big government restriction on healthy free speech, and a dangerous step toward more of the flawed concepts of hate speech and hate crimes. Orwell's 'Big Brother' thrived on such things, but no democracy should be thinking about moving in this direction, and Jim Spigelman (with whom I was at University) agrees with me.

8) An important speech was recently delivered by James Spigelman, Chairman of the ABC and former Chief Justice of the Supreme Court of NSW. He also is greatly concerned about this bill, and how freedoms will be much reduced by it. He said:-

"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 any other liberal democracy, that extends to conduct which is merely offensive. ... 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..."

"The new Bill proposes a significant redrawing of the line between permissible and unlawful speech. This is so, notwithstanding the ability to establish that relevant conduct falls within a statutory exception. A freedom that is contingent on proving, after the event, that it was exercised reasonably or on some other exculpatory basis, is a much-reduced freedom. Further, as is well known, the chilling effect of the mere possibility of legal processes will prevent speech that could have satisfied an exception.

"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."

Yours sincerely

16 Dec 2012

Mr Alexander Cornell Stewart

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