

The new Human Rights and Anti-Discrimination Bill 2012 is offensive for several reasons:

The new Bill undermines free speech, freedom of religion, freedom of association and natural justice.
It should be rejected, or amended:

- to remove from clause 19 the words, 'conduct that offends, insults or intimidates' and the words 'religion' and 'political opinion' from the list of protected attributes in clause 17;
- to delete clause 124 which reverses the onus of proof;
- to allow respondents the right to legal representation if they wish;
- to allow religious freedom to religious bodies in all circumstances.

The Human Rights and Anti-Discrimination Bill 2012 would

- greatly increase the number of attributes (eg gender identity) on which discrimination is forbidden;
- make it illegal to offend someone at work on the basis of their religious belief or political opinion;
- reverse the onus of proof;
- deny non-disabled respondents the right to have a legal adviser at conciliation conferences;
- make it illegal for church-based aged care homes to discriminate on sexual orientation or gender identity grounds.

Comment

It is impossible to outlaw offence. The ability to be offended is part of our freedom of speech. The preservation of our right to freedom of speech necessitates the freedom to be offended and the freedom to forgive.

As soon as human rights become 'identified' as opposed to being 'assumed' it creates a lawyers' cash cow.

The reversal of 'innocent until proven guilty' is an amputation of our human rights.

The more we go down this road, the more laws we will need.

The proposed Bill of Rights is a direct attack on church based charities who want to exercise their Christian conscience for the common good.

The new proposed legislation will further erode our natural rights and freedoms.

The best summary of key issues comes from James Spigelman, Chairman of the ABC and former Chief Justice of the Supreme Court of NSW.

As he has explained:

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.

He concludes with these words: "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.

Please reject or amend the proposed Human Rights and Anti-Discrimination Bill 2012 and remove the unworkable and offensive clauses.