To Whom It May Concern:

Submission to Senate Enquiry*
Human Rights and Anti-Discrimination Bill 2012

I am writing to express my concern about the *Human Rights and Anti-Discrimination Bill 2012.* I am of the opinion that this legislation is dangerously flawed on the following points:

1) The removal of the right to legal representation
2) The removal of the onus of proof
3) Freedom of conscience in the practice in the matter of faith and belief

By far the greatest flaw is the removal of the onus of proof. In cases of 'offence' material evidence as currently understood in law would not necessarily be required, as the chief evidence is on how the complainant feels. Of course, in our society we recognize the importance of balance between free speech and hate speech, particularly where the element of incitement is involved. I believe this well covered by existing legislation.

One might add, that with such a far reaching premise, is possible that the subjectivity of the perceived offence could be readily used as a malicious tool by government agencies to target particular individuals or groups, on almost arbitrary criteria.

There is no international requirement for a law requiring protection form being offended. However, Australia has international obligations to protect free speech. This legislation would breach that commitment. Indeed, it seems a cruel irony that human rights are proposed to be protected by curtailing others, undermining the principles upon which the Australian justice operates. I understand that the reversal of onus of proof already works in a common sense way with respect to discrimination in a common sense fashion under the *Workplace Relations Act (1996)*, whereby a respondent can be required to explain the reason for apparently racist behaviour as part of an unfair dismissal case, for instance.

To follow from the above example, I am of the view that many of the changes being made are unnecessary and are adequately addressed in at least a broad sense by existing anti-discrimination legislation. Certainly, some of this is a work in progress, and some further refinement may be required, particularly in the areas of age discrimination and carer status in work places. I would foresee that such refinements could readily be made without recourse to the proposed legislation.

I would also comment that if the government is concerned about addressing racism or other discriminatory behaviours in our society, it would be better to invest in individuals taking responsibility for their racism (or other behaviours) more than 'wielding a big stick' as a punitive approach. As I have already mentioned there is range of legislation designed to deal with discriminatory behaviour when and where necessary.

A further problem with this legislation is that it may be seen to apparently contradict the principle of parliamentary privilege fundamental to our democratic system. Public statements made in parliament in past couple of months by both the Honourable Prime Minister and the Honourable Leader of the Opposition to each other could be seen as blatantly offensive, and thus potentially subject to the force of the law…except for parliamentary privilege. If such privilege was continued as an exemption to the act, then it would effectively serve to alienate the population from its political leadership, weakening the foundations of our governmental system.

In addition to the above example, it is quite possible that cases could be undertaken under the legislation that are not in the spirit of the legislation. Thus the legislation may well end up being used in ways that are not intended. For instance, cases where satirical pieces of work (e.g. literature or theatrical performances) have been considered as being racist by complainants, where the intent of the authors had been to highlight the negative aspects of racism by way of satirical humour.

I would also add in the light of above statements that very careful consideration needs to be given to the "protected attributes" listed in section 17, with particular concern about "religion" being a protected attribute. It is been pointed out that this could effectively form the basis of a blasphemy law, which, as I understand it, is completely outside the framework of separation of church and state, as well as free speech issues already alluded to.

A further indicator of the flawed nature of this legislation is the widespread concern being expressed in relation to this legislation by the concern, and in some cases, outright condemnation by knowledgeable persons across much of the political spectrum, as well as civil libertarians. This also includes highly experienced jurists such as former NSW Chief Justice Jim Spigelman, who enunciated his concerns in a Human Rights Day Oration speech.

*I would request that you do not publish my name on the internet, as per point 4 on "How to make a submission to a Senate or Joint Committee inquiry", otherwise I am not requesting special confidentiality *per se*. I make this submission as a private Australian Citizen, and not on behalf of any organization.