Submission No 183

INQUIRY INTO ANTI-DISCRIMINATION AMENDMENT (COMPLAINT HANDLING) BILL 2020

Name: Ms G Mortiss

Date Received: 26 April 2020

Dear Sir/Madam,

I am writing to express my support for the Anti-Discrimination Amendment (Complaint Handling) Bill 2020.

Complaints against persons with cognitive impairment

Firstly, I would commend the amendment which would require that complaints against the conduct of persons with cognitive impairment be rejected by the NSW Anti-Discrimination Board (ADB). For the past half-century or more, in Western societies the model of care for persons with mental illness and intellectual impairment has transitioned from one of care in an institutional setting to one of care in the community.

The rights and wrongs of this change in practice are still a matter of debate. However, society has obviously failed in its duty of care to persons with mental impairment, if it leaves them to live independently within the community, and then lets them fall prey to a legal system which fails to take account of the fact that their behaviour will likely not be in complete accordance with commonly held social norms. The NSW Government must play its role in ensuring that the most vulnerable members of our society are not subject to extended campaigns of “lawfare”. Such an outcome could only be considered as a shameful black mark on the reputation of our state’s legal system.

Complaints against persons who are not NSW residents

It is hard enough for an Australian citizen to keep abreast of all potential breaches of state and federal legislation within one location. It is unreasonable to ask every Australian to keep up with changes in legislation through multiple jurisdictions to avoid the commission of possible interstate “thought crimes”. Why should citizens who are not resident in NSW be held accountable under NSW legislation limiting freedom of expression for conduct not occurring within the state, particularly if they have limited power to influence or amend that legislation through the state’s electoral processes?

Vexatious and frivolous complaints

As I write this submission on Anzac Day 2020, I am reminded of the major sacrifices made by Australia’s armed services over the course of our nation’s history in order to secure our freedoms and way of life. However despite these sacrifices, I now find myself feeling it necessary to spend the national holiday contributing to the defence of the right to free speech within the state of NSW.

Allowing and supporting extended campaigns of costly legal proceedings against individuals with unpopular or controversial opinions is a form of soft tyranny. Under the NSW Anti-Discrimination Act in its current form, this tyranny can be exercised on an ongoing basis by any member of a range of designated victim groups. Legal systems which support vexatious and frivolous complaints against individuals particularly for matters relating to freedom of thought and opinion should have no place in a supposedly liberal democracy.

Ultimately, individuals or groups engaging in state facilitated anti-discrimination claims for monetary gain or to silence opponents in political or social matters through costly and protracted legal proceedings are likely doing themselves more harm than good. Such behaviour does not engender community support for groups who might have in the past found themselves subject to unjust discrimination. Many lawyers may perhaps regard the legal proceedings of anti-discrimination matters as a source of professional and indeed even personal enjoyment. The respondents in such matters would no doubt have different feelings regarding their own experiences.

Many Australians will no doubt recall the federal anti-discrimination case involving the AHRC beginning in 2013 in which four QUT students found themselves in a four-year legal battle over a social media discussion about access to an Indigenous only computer lab. This case, which had its origins in a very minor incident, was ultimately dismissed but not before it resulted in what many in the community saw as an egregious waste of valuable court time and untold stress upon the students involved and their families. Moreover, as the case gained international attention the AHRC became a laughing stock and the nation's legal system was brought into disrepute. The NSW Parliament obviously has no power to amend the federal legislation under which the QUT action was brought, however it can play a role in placing reasonable limits on the relevant NSW legislation to prevent similar outcomes within its own jurisdiction in future.

Allowing anti-discrimination complainants to punish their ideological opponents over trivial matters by dragging them through the courts and other state funded agencies is damaging to the reputation of Australia as a supporter of personal freedoms. Enabling such behaviour only further fosters a culture of grievance and resentment within our communities which is damaging to social harmony and does nothing to promote the economic, physical and psychological wellbeing of Australian citizens. I call upon the NSW Parliament to rectify some of the more obvious shortcomings of NSW ADB processes and support the passage of the Bill.

Yours faithfully,

Genevieve Mortiss

25 April 2020