



Police Federation of Australia

The National Voice of Policing

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
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CANBERRA ACT 2600

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Dear Committee Secretary

PFA SUBMISSION: EXPOSURE DRAFT OF HUMAN RIGHTS AND ANTI-DISCRIMINATION BILL 2012

The Police Federation of Australia (PFA) represents the nation's 56,000 police officers in all States and Territories and the AFP. We understand that the time for submissions on the Exposure Draft of this Bill has passed but we nevertheless present this submission so that the PFA's views are on the record.

Having followed the media coverage and debate about the Draft Bill, the PFA shares the widespread concern about aspects of the Bill relating to:

- discrimination including conduct which offends or insults a person, in that person's judgment
- the extension of areas where discrimination is prohibited to include any area of public life, and
- the shift to a shared burden of proof in discrimination cases.

We will however confine our comments on the Bill to those which are likely to affect policing nationally and within States and Territories. There are five main areas of concern.

1. One of the protected attributes in relation to work is medical history. Therefore it will be unlawful to discriminate in employment based on medical history. Police, along with a number of other professions, are frequently at risk of exposure to blood borne diseases and will rightly be concerned if they are precluded from discriminating against people with such diseases. We would not want to see Police Services precluded from rejecting recruits with such a medical history. In cases where police in the course of their duty are exposed to bodily fluids of

alleged offenders who may have such a blood borne disease, we believe the alleged offender should be required to submit to testing for such disease so that the police officers concerned can determine whether or not they have been exposed to risk.

2. The Bill does not include criminal record as a protected attribute based on which it is unlawful to discriminate. However, a number of submissions to the Committee propose that it should be unlawful to discriminate on the basis of a person's criminal record (e.g. The Law Council of Australia and the ACTU). The PFA would be seriously concerned if criminal record or criminal offence became a protected attribute. There are areas where for the protection of the community, particularly children, it is vital that police and employers discriminate against people with a criminal record. Examples include engagement of sex offenders in employment in a child care centre or a school, recruitment of serious criminals into police forces or fraudsters into banks or other financial institutions.
3. One further matter of concern is where the Bill leaves State and Territory anti-discrimination laws. Clause 14 says the Act is not intended to exclude or limit the operation of prescribed State or Territory law, to the extent that it is capable of operating concurrently with the Commonwealth Act. However, it appears that Commonwealth law can displace State laws, and that new disability standards and compliance codes under the Commonwealth Act may apply and affect the operation of State law. The uncertain overlap of Commonwealth and State laws is going to be extremely confusing.
4. The Bill clearly applies to the services which Federal and State police provide in the community and to the way in which they exercise their duties. In doing so, it is foreseeable that many with whom police engage could claim to be discriminated against for any of the grounds proposed as protected attributes e.g. social origin and medical history, or for unfavorable treatment including conduct that offends or insults (such as placing a person under arrest). It appears that this would leave police in the position of having to demonstrate to the AHRC or a Federal Court, on each occasion, that their exercise of their duties was "justifiable discrimination". This stands a chance of bringing policing to a standstill and/or make policing unworkable as suspects, offenders and prisoners exercise their human rights.
5. As the Victorian Government submission points out, by "expanding the scope of anti-discrimination law to conduct connected with 'any area of public life', the Bill may cover significant public administrative responsibilities of State and territory government for the first time". "Examples include the pursuit, arrest, transport and detention of a suspect by police, transport and accommodation of prisoners and exercise of discretion by prosecutors." Exemptions for a wide variety of such essential functions and conduct are necessary. In addition, it may be wise to reconsider extending the Bill's scope to "any area of public life".

We believe the concerns affecting Federal, State and Territory police officers need detailed consideration before a revamped version of the Draft Bill is prepared.

Yours sincerely

A handwritten signature in black ink that reads "m A Burgess". The signature is written in a cursive, lowercase style.

Mark Burgess
Chief Executive Officer

Cc: The Hon Nicola Roxon, Attorney-General