

# **IPA MEDIA RELEASE**

Institute of Public Affairs | Australia's leading free market think tank

Thursday, 14<sup>th</sup> February 2013

## **DREYFUS MUST ABANDON THE ANTI-DISCRIMINATION DRAFT BILL**

“Newly appointed Commonwealth Attorney-General Mark Dreyfus should abandon his predecessor’s attempts to consolidate federal anti-discrimination law, and repeal s 18C of the *Racial Discrimination Act 1975*,” said Simon Breheny, Director, Legal Rights Project at free market think tank the Institute of Public Affairs.

“The exposure draft *Human Rights and Anti-Discrimination Bill 2012* is a fundamentally flawed proposal. It is a massive threat to freedom of speech, it reverses the burden of proof and it would encourage frivolous litigation. The consolidation project has been exposed as a failed idea,” said Mr Breheny.

“Today I have written to the new Attorney-General, asking him if he agrees that the draft Bill is beyond saving and should be abandoned,” said Mr Breheny.

“The government recently conceded that it is inappropriate that the draft Bill would make offensive and insulting conduct a basis for legal disputes. This reveals a gaping inconsistency in the government’s defence of other areas of the law that use the same language,” said Mr Breheny.

“I have asked for Mr Dreyfus to clarify whether he agrees that the words ‘offend’ and ‘insult’ should be removed from the definition of discrimination under the draft Bill and, if so, would he also agree that these words should be removed from other areas of the law?” said Mr Breheny.

“Section 18C of the *Racial Discrimination Act 1975* makes offensive and insulting conduct unlawful in the same way that the draft Bill would make this kind of conduct unlawful. No area of the law should restrict free speech in the way that s 18C has been shown to,” said Mr Breheny.

The Coalition has committed to opposing the draft Bill outright and has also committed to repealing s 18C if elected to government later this year. S 18C was the law used against Andrew Bolt.

“Liberal democracy can only function when all laws that restrict freedom of speech are repealed. Mr Dreyfus should affirm a commitment to freedom of speech in Australia by abandoning the draft Bill and repealing s 18C.”

**My letter to Attorney-General Mark Dreyfus is attached to this media release.**

**For media and comment: Simon Breheny, Director, Legal Rights Project, 0400 967 382**

**Director**  
Simon Breheny

**Advisory Council**  
Professor James Allan  
Bryan Pape  
Stuart Wood S.C.  
Geoff Hone  
Julie Novak

14 February 2012

The Hon Mark Dreyfus MP  
Attorney General  
Parliament House  
Canberra ACT 2600

Dear Mr Dreyfus

**Seeking your response on recent threats to freedom of speech**

Congratulations on your appointment as Attorney-General.

I am sure you that you are currently busy settling into your new role. The chief law officer of the Commonwealth of Australia has a range of responsibilities that you will no doubt be familiarising yourself with. The coming months will also be incredibly busy as you prepare for an election on September 14 2013.

I'm sure you will be trying to forge a new path following a predecessor in Nicola Roxon who had a very ambitious and controversial agenda.

The last item on that agenda was the consolidation of Commonwealth anti-discrimination laws. The consolidation project has resulted in the exposure draft *Human Rights and Anti-Discrimination Bill 2012*, which is currently before the Senate Legal and Constitutional Affairs Legislation Committee.

One of the first decisions you will need to make is what to do with the draft Bill.

The Institute of Public Affairs was the first to recognise the draft Bill for what it is – a major threat to freedom of speech and fundamental legal rights in Australia. For three weeks, the IPA was the only one talking about the very real threat the draft Bill posed to the health of Australian democracy.

Following our lead, the draft Bill has received criticism from a wide range of sources, from ABC chairman Jim Spigelman to some of Australia's largest media organisations.

Earlier this year, president of the Australian Human Rights Commission Gillian Triggs publicly acknowledged that the draft Bill might go too far. Specifically, Triggs said that the words "offend" and "insult" would need to be removed from the definition of discrimination under clause 19 of the draft Bill.

Two days before Nicola Roxon resigned as Attorney-General she also admitted that the draft Bill might go too far. In a remarkable back down, she said that it was inappropriate to make it unlawful to offend and insult another person. In an attempt to rectify these issues, she directed her department to draft some options for amendment to the Bill. The resultant options paper has now been tabled with the committee considering the draft Bill.

... / 2

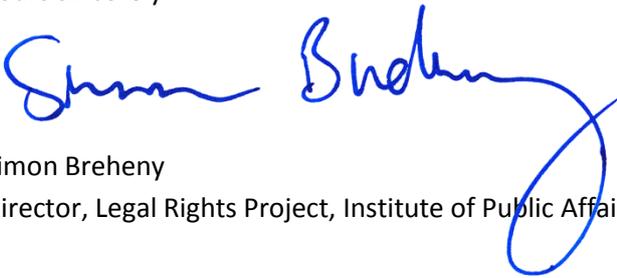
Following these developments in the debate over the draft Bill, I am interested in your urgent response to the following issues raised:

1. Do you agree with your predecessor that it is inappropriate to include the words “offend” and “insult” in the draft Bill?
2. If the words “offend” and “insult” are an inappropriate inclusion in the context of the definition of discrimination under the draft Bill, should these words also be removed from provisions which make such conduct unlawful in existing law? Specifically, should s 18C of the *Racial Discrimination Act 1975* (or clause 51 under the draft Bill) be repealed so as to reflect consistency in the law?

Of course, there are many other problems with the draft Bill, including the reversal of the burden of proof, a costs structure that risks encouraging frivolous litigation and the subjective test for discriminatory conduct. I am therefore also interested in hearing whether you have come to the view, as I have, that the draft Bill is beyond saving and should be abandoned due to fundamental problems with the consolidation project.

I look forward to your prompt response on these matters.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Simon Breheny', with a large, stylized flourish extending from the end of the signature.

Simon Breheny  
Director, Legal Rights Project, Institute of Public Affairs