



CATHOLIC WOMEN'S LEAGUE AUSTRALIA INC.

*Member Organisation of the World Union of Catholic Women's Organisations (WUCWO)
NGO in consultative (Roster) status with the Economic and Social Council of the United Nations*

Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Submission from
Catholic Women's League Australia Inc.
regarding the
Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012.

21 December 2012

1. INTRODUCTION

1.1 Thank you for the opportunity to make a submission on the *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012* (the "draft bill").

Catholic Women's League Australia Inc. (CWLA) is the national peak body representing the League's seven member organisations located throughout Australia. We are a Non-Government Organisation and have consultative (Roster) status with the Economic and Social Council of the United Nations. We are also a member organisation of the World Union of Catholic Women's Organisations.

1.2 As a Christian organisation within a democratic society, we recognise our right and responsibility to express a view on matters of public policy. We understand that when they are appropriately applied, anti-discrimination laws are an important means of protecting a range of human rights; but these must include the fundamental right to manifest one's religion, beliefs and conscientious convictions in the public square.

1.3 Therefore, while CWLA affirms the draft bill's goal of producing a clearer and simpler Commonwealth anti-discrimination law¹, this cannot be at the expense of fundamental freedoms such as freedom of religion and freedom of speech.

¹ Attorney-General's Department. Consolidation of Commonwealth Anti-Discrimination Laws, *Human Rights And Anti-Discrimination Bill 2012 Exposure Draft*, Explanatory Notes, November 2012, p.1.





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2. DEFINITION OF DISCRIMINATION

2.1 Clause 19(2) (b) of the draft bill, defines discrimination by unfavourable treatment to include "conduct that offends, insults or intimidates" another person because of a particular protected attribute. CWLA is concerned that extending this definition to cover conduct that merely "offends" will curtail the legitimate expression of free speech in this Country.

2.2 In the *2012 Human Rights Day Oration*, Justice Spigelman describes free speech as 'perhaps the most fundamental human right underpinning participation in public life'² and argues that the draft bill proposes a significant redrawing of the line between permissible and unlawful speech.

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."

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.³

² Honourable James Spigelman AC QC. Australian Human Rights Commission, *Human Rights Day Oration, 2012*. 'Where do we draw the line between hate speech and free speech?'

³ In coming to this view, Justice Speigelman acknowledges the influence of Jeremy Waldron, who establishes the proposition that protection of dignity does NOT require protection from being offended.

Laws restricting hate speech should aim to protect people's dignity against assault. I am referring to their status as anyone's equal in the community they inhabit, to their entitlement to basic justice, and to the fundamentals of their reputation. Dignity in that sense may need protection against attack, particularly against group- directed attacks ... It understands dignity as a status sustained by law in society in the form of a public good.

However, I do not believe that it should be the aim of these laws to prevent people from being offended. Protecting people's feelings against offence is not an appropriate objective for the law. ...[T]o protect people from offence or from being offended is to protect them from a certain sort of effect on their feelings. And that is different from protecting their dignity and the assurance of their decent treatment in society. (Jeremy Waldron *The Harm in Hate Speech* Harvard University Press, Cambridge, Massachusetts, 2012, pp 105-107.)



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2.3 CWLA finds arguments against the inclusion of "offense" in the definition of discrimination to be compelling and recommends that this definition is not adopted in any bill that is to go before the parliament.

3. REVERSAL OF ONUS OF PROOF

CWLA is concerned that moving the onus of proof that there was no unlawful discrimination to the respondent (Clause 124), could lead to a significant increase in nuisance claims. We particularly note that many existing religious organisations that make a substantial contribution to public life would be poorly equipped to deal with an increase of complaints, especially where such complaints are of a vexatious nature.

4. RELIGIOUS EXEMPTIONS

4.1 CWLA endorses Clause 33 of the draft bill which continues to provide religious bodies and educational institutions with exemptions for discriminatory conduct in matters fundamental to the practice of their religion. As a signatory to international covenants⁴ which acknowledge that freedom of religion is a fundamental human right, the government is obliged to ensure that freedom of religion and the freedom to manifest religious beliefs in public is recognised and protected in law. This applies equally to participation in religious observance and to the delivery of services by religious people and agencies.

4.2 Unfortunately, the draft bill continues to use the language of 'exceptions' and 'exemptions' when these provisions are actually 'protections' of the right of religious freedom. This point was made by the Australian Catholic Bishops' Conference earlier this year, in their response to the Government's discussion paper on the consolidation of anti-discrimination laws:

⁴ Included here is the *International Covenant on Civil and Political Rights* (ICCPR, Article 2(1); Article 26; Article 18(3)).





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While the rights of everyone must be respected, including the right to be protected from unjust discrimination, this should not be pursued in a way which undermines religious freedom.

The language of exemptions and exceptions is misleading and fails to recognise that religious freedom is not a special permission to discriminate granted by government but a fundamental human right that government is obliged to protect.⁵

4.3 *In view of the fact that they are basic protections for religious freedom, CWLA also opposes the requirement that 'exceptions' for religious bodies and educational institutions be reviewed every three years (Clause 47) and recommends that this provision be omitted from the final bill.*

4.4 Another major concern for CWLA is the introduction of a limitation on these exceptions if the discrimination is connected with the provision of Commonwealth-funded aged care services. (Clause 33(3))

The *Explanatory Notes* indicate that this limitation has been introduced to overcome discrimination currently faced by older same-sex couples in accessing aged care services run by religious organisations, particularly when seeking to be recognised as a couple.⁶

4.5 This approach fails to appreciate, however, that the motive of religious organisations which require residents of aged care centres to adhere to a particular lifestyle is not based on prejudice, but on deeply held religious beliefs and moral practices surrounding sexual relationships.

4.6 Certainly, if Catholic health and aged care organisations are unable to provide services because they are not in keeping with the Church's moral teachings, "those whom we are unable to assist in the way they would wish will, of course, be treated with courtesy, respect and compassion as they seek alternatives."⁷

⁵ Australian Catholic Bishops Conference. *Response to Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper*, February 2012, Submission number 197.

⁶ Draft Bill *Explanatory Notes*, para, 190.

⁷ Catholic Health Care Australia. *Code of Ethical Standards for Catholic Health and Aged Care Services in Australia*. June 2001. Part 1 Section 4, pg.6. <http://www.cha.org.au/code-of-ethical-standards.html>



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4.7 If implemented, this limitation would mean that religious organisations that operate aged care centres would be subject to government interference and direction on how the doctrine, tenets or beliefs of their religion are exercised. If they are denied the right of resident and/or bed (or room) selection, they are further exposed to other religious practices which are presently operating being subject to complaints.

4.8 Clause 33(3) would also deny residents of religious operated aged care centres the freedom to establish a 'home' in an environment which respects their religious sensitivities and lifestyle. This is an important element of the whole-person care that Catholic aged care services seek to provide, as expressed by Catholic Health Care Australia's *Code of Ethical Standards for Catholic Health and Aged Care Services in Australia*.⁸

Catholic health and aged care is not confined to the treatment of disease or bodily ailment, and resists a mechanistic approach to dealing with illness. It, therefore, embraces all dimensions of the human person: physical, psychological, social, emotional and spiritual. (Part I, Section 2)

Every effort should be made to ensure that institutional environments for older persons respect their individuality and are as homelike as possible. In addition to high quality nursing care and social services as required, special provision should be made for the spiritual needs of older persons. (Part II, Section 4.4.)

Accordingly, the Australian Catholic Bishops Conference has previously submitted:

People considering a move into a church aged care facility have an expectation that the particular ethos of that church will be reflected in the operation of the facility. If a resident or staff member is publicly advocating against or working in a way contrary to that ethos, the Church should have the freedom to refuse to accept that person.⁹

4.10 Finally, CWLA is concerned that the removal of this 'exception' could result in further imposition of government direction and regulation in other areas of service delivery such as educational institutions, health services and welfare agencies.

⁸ *Ibid.*

⁹ Australian Catholic Bishops, *op. cit.*, p 4.





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4.11 *CWLA therefore recommends against the introduction of a limitation on exceptions for religious organisations if the discrimination is connected with the provision of Commonwealth-funded aged care services.*

Thank you, again, for the opportunity to make this submission. We wish the Committee well in their deliberations.

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