

**Presbyterian Church of Australia
Church and Nation Committee**



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

Dear Sir / Madam,

The Committee of the Federal Assembly of the Presbyterian Church of Australia, which I convene, makes this submission concerning the Human Rights and Anti-Discrimination Bill 2012 (Exposure Draft) on behalf of the Presbyterian Church of Australia's Federal Assembly.

The Committee has very serious concerns about the expansion of the reach of the proposed law to include new categories of the protected attributes and its application, both in an unlimited way, to new categories of public life.

As a church we are constantly confronted with and seek to address the results of interpersonal conflict and disagreement in Australian society. In our experience, interpersonal harmony and respect is best encouraged and secured in a community context where resort to legal procedures and formal institutions and agencies of government occurs only in serious cases or as a last resort. We consider that the proposed expansion of the reach of Commonwealth anti-discrimination laws and procedures will on the whole be counterproductive.

At present, Commonwealth laws are limited in their application to persons who hold positions of authority or are in positions of economic power, such as employers, providers of accommodation, goods and services, and administrators of public agencies. However, as currently proposed, the Commonwealth law would extend the application of anti-discrimination rules to the conduct of ordinary individuals in an unlimited range of areas of public life. In other words, the proposed changes would give anti-discrimination laws a 'horizontal' application and thus logically extend to all manner of 'unfavourable treatment' between individuals, such as offensive and insulting conduct.

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Such an unprecedented step would, we consider, encourage individuals to make frivolous, vexatious or malicious complaints against others with whom they have personal differences. Even if such complaints are without substance, there will be every incentive for such individuals to initiate them on account of their 'nuisance' value and as means of causing trouble and grief to the person against whom the complaint is made.

Such a change to the law has the potential to have disastrous consequences for the maintenance of genuine harmony and respect within our local communities. It will tend to make controversial and confrontational, matters which should not be brought to dispute in this way. We do not want to see the creation of a climate of gratuitous litigiousness on the part of complainants issuing frivolous claims which do not pass the first stages of conciliation but nonetheless oblige respondents to take steps to defend such claims at great cost to themselves, in monetary, mental and temporal terms. We have seen the inter-personal cost that such behaviour entails; we do not want to see it encouraged.

As a denomination, we abhor all forms of unjust discrimination. At the very foundation of the Christian Faith is a commitment to the eternal worth and dignity of every individual human being, without discrimination on any ground whatsoever (Ephesians 2:14).

But we do not consider that the heavy hand of the law, whether in the form of compulsory conciliation or court proceedings, is the best way to encourage and secure the kind of mutual love and respect that must be the foundation of a healthy, flourishing community. There is a role for law and government where serious breaches of legal rights occur, but extending the reach of the law too far only has the tendency to exacerbate the problems that it is designed to solve.

We also have to insist that every moral position adopted by an individual or a group involves the making of moral distinctions. Morality, as well as the law, inevitably distinguishes between what is good and what is bad, what is right and what is wrong, what is permitted and what is prohibited. Those who enact anti-discrimination laws need to recognize the proper limits of law, and the need for the law to respect the moral distinctions that all individuals and groups make in one way or another. Christians draw these distinctions, as do persons who

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adhere to other religious and non-religious beliefs. The law needs to respect the freedom of all such people and groups to act on their religious and moral convictions, even where these conflict with the views of the majority within the society.

For these reasons, we make the following specific submissions:

1. There is no warrant for an expansion in the reach of Commonwealth anti-discrimination laws to new protected attributes and new areas of public life.
2. Commonwealth anti-discrimination law should not be extended in its application to volunteers. Volunteerism is an indispensable part of our society's functioning and any disputed issues which arise are best resolved in ways other than through formal anti-discrimination processes.
3. The existing exemptions which enable religious groups to act upon their religious convictions ought to be fully maintained, and they should not be subjected to a continuing process of review unless the entire body of anti-discrimination law is subjected to similar scrutiny. In particular, the exemption in relation to the provision of aged care should not be revoked.
4. There should be no reversal of the onus of proof – this will only tend to encourage frivolous, vexatious and malicious claims which have no substance but are initiated for their 'nuisance' value.

Given the extensive detail contained in the submission of the Freedom 4 Faith coalition – whose proposed amendments of the draft bill this Committee endorses – this submission has focused on only certain matters of particular concern.

The Committee commends the submission by the Freedom 4 Faith coalition to the enquiry.

Yours faithfully,

Rev. Stefan Slucki
Convener