

Dear Senate Legal and Constitutional Affairs Committee,

I am writing to urge you to support the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 – particularly in reference to lesbian, gay, bisexual, transgender and intersex (LGBTI) people.

Despite ratifying numerous international human rights treaties, sexual and gender minorities continue to have limited legal recognition and little access to policy infrastructure to challenge ongoing discrimination. Currently, each Australian state and territory has anti-discrimination laws that to some extent protect sexual and gender minorities. However, these protections remain highly disparate, characterised by inconsistent terminology and wide-ranging exemptions.

The recent United Nations (UN) Universal Periodic Review reiterated the importance for Australia to protect the human rights of its LGBTI citizens. Australia's response to this was mixed. While the Government rejected the recommendation for marriage equality, it endorsed the inclusion of sexual orientation and gender identity as part of the consolidation of anti-discrimination laws and the National Human Rights Action Plan.

The proposed harmonisation process must commit to the international human rights law articulated by the *Yogyakarta Principles*. While these principles provide a useful foundation for addressing human rights in terms of “sexual orientation” and “gender identity”, the current exposure draft must be extended to include intersex people and individuals with diverse gender expressions too (as evident in Tasmania's Anti-Discrimination Amendment Bill 2012).

Current state-based equality legislation remains limited in its insistence about thinking of discrimination in single identities or characteristics. As the *Yogyakarta Principles* allude to, this kind of ‘discrete’ approach tends to obscure the intersections between individual identities. For example, as one participant noted in the Australian Human Rights Commission (AHRC) consultation on sexual orientation and sex and/or gender identity discrimination, how would you respond to someone who says to you, “Why don't you poofers drop dead of AIDS”? Such a vilifying statement not only relates to a particular sexual orientation, but also connects it to an HIV status, which is characterised separately as a disability. The current consolidated legislation is to be commended for acknowledging the indivisible intersections of discrimination.

The exposure draft, however, must address how discretionary exemptions in legislation undermine substantive equality for LGBTI people. For example, in NSW, many religious organisations play a vital role in the provision of public services. However, should a faith based organisation wish to do so, the Act provides an exemption to allow the exclusion of a LGBTI person from providing foster care, or the expulsion of a student at a religious school on the sole basis that their “homosexuality” or “transgender status” was perceived to compromise their religious sensibilities. While freedom of religion must be balanced against other human rights obligations, an important distinction must be drawn between what is an inherently religious function, and what is effectively public administration. In the vein of the UK Human Rights Act, exemptions should not exist where an organisation is in receipt of public funds to provide outsourced government services. The rationale underpinning equal opportunity legislation is to redress a history of social inequity. It

is counterintuitive then to permit permanent and automatic exemptions to discriminate against those it is designed to protect. If they are to be included, then in the interest of transparency, they should be clearly advertised.

A stronger statutory framework alone, however, will not ensure social justice for sex, sexuality and gender diverse people. Policy initiatives must elaborate on legal reform by providing education campaigns to challenge prejudice, adequate funding for a national peak body and Human Rights Commissioner, and clear public accountability for LGBTI rights protection.

We just need to hear the experience of one young person in high school: “Not being able to act on any of your desires, having to actively hide your true self, often having to pretend to hate the very thing you are... all of these things equates to a deep feeling that you don’t deserve to live.” Christopher’s story is a tragic reminder of the corrosive impact homophobia has on mental health and self esteem. Suicide Prevention Australia estimates that LGBTI young people are between 3.5 and 14 times more likely to attempt suicide compared to their heterosexual peers.

Sadly, the kinds of experiences recounted by Christopher are not isolated. Lynne Hillier et al. observes in *Writing Themselves In 3* (2010) that approximately 60 percent of same-sex attracted and genderquestioning young people experience verbal or physical abuse, 80 percent of which occurs in school-based settings. In addition, the report indicates homophobic victimisation has increased over the past decade, signaling the need for comprehensive, LGBTI-specific, diversity education to challenge prejudice in schools.

Correspondingly, the need to “closet” the visibility of one’s sexual or gender identity is not confined to youth. The AHRC heard of a case where: “An older transgender woman with dementia, who had lived most of her life as a woman but had never had sex reassignment surgery, was forced by staff of the religious aged care facility where she was being cared for, to live as a man.” This kind of insensitivity is underscored by a history of invisibility, isolation and ignorance. For gender diverse or transsexual people, these problems are exacerbated by difficulties in changing identity documentation if they are married or if they have not undergone sex affirmation surgery.

Elderly LGBTI couples, moreover, have had to live most, if not all, of their lives with the threat of criminal sanctions, or, at the very least, social stigmas regarding their intimate relationships. Now these couples are coerced into remaining silent over their sexuality. Prejudice, or even simple ignorance by aged care providers, results in the denial of appropriate care because legal and policy reform remains somewhat blind to the vulnerable position of many elderly sexual and gender minorities. It is essential, therefore, that the consolidated anti-discrimination legislation retain its prohibition against any form of aged care discrimination, even if provided by religious organisations.

While the Federal Government has made broad rhetorical claims to secure social justice and fairness, these political gestures are of little significance unless comprehensive, inclusive, and appropriately resourced rights protection is available for all LGBTI people in Australia.

Parliament must act swiftly, before the next election, to pass these long overdue laws.

Kind regards,

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