



# AUSTRALIAN COALITION FOR EQUALITY

Equality For Australia's Lesbian, Gay, Bisexual, Transgender & Intersex People

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Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Via email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Re: **Inquiry into the effectiveness of the *Commonwealth Sex Discrimination Act 1984* in eliminating discrimination and promoting gender equality**

Dear Mr Hallahan

Please accept the following submission to the above inquiry. We apologise that it has been submitted passed the deadline and hope that it may still be considered.

Kind regards

Corey Irlam

## **1. The Australian Coalition for Equality**

The Australian Coalition for Equality (ACE) is dedicated to achieving equality for lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Australian national law and policy. ACE is an LGBTI advocacy and lobbying network with a focus on outcomes. Its mandate is drawn from international human rights law and it is made up of LGBTI advocates with a proven track record in achieving equality in their respective fields.

Currently ACE is the only LGBTI human rights organisation dedicated to a wide range of national issues - including equality for same-sex couples in areas like superannuation, workplace benefits and marriage, national sexuality and gender identity anti-discrimination laws and equality for families headed by same-sex couples.

## **2. This submission**

This submission addresses the following terms of reference,

- The scope of the Act, and the manner in which key terms and concepts are defined
- Addressing discrimination on the ground of family responsibilities
- Effectiveness in addressing intersecting forms of discrimination
- Other matters relating and incidental to the Act.

Our concerns relate to the following two issues,

- a) Discrimination on the grounds of marital status, and
- b) Discrimination on the grounds of sexual orientation and gender identity.

### **3. Discrimination on the grounds of marital status and family responsibilities**

The Sex Discrimination Act (SDA) prohibits discrimination on the grounds of marital status. Currently marital status is defined in the Act as the condition of being single, married, married but not cohabiting, divorced, widowed or a de facto spouse.

The definition of de facto spouse within the Act is limited to unmarried, cohabiting, opposite-sex partners, although we note that the Federal Government's Same-Sex Entitlements (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008 attempts to rectify this discrimination.

Further, "marital status" does not include state and territory-registered relationships.

We recommend

- a) replacing the existing definition of "marital status" with a new term "relationship status" defined as the condition of being single, married, married but not cohabiting, divorced, widowed or a de facto partner, or a registered partner
- b) replacing the existing definition of de facto spouse with a new definition of de facto partner which is gender neutral, and
- c) adding a definition of registered partner.

## **2. Discrimination on the grounds of sexual orientation and gender identity**

There are currently no federal laws which provide comprehensive protection from discrimination on the grounds of sexual orientation and gender identity (SOGI).

There are provisions which provide some relief from discrimination on the grounds of SOGI in relation to employment, including powers available to the Human Rights and Equal Opportunity Commission to investigate and report on such discrimination. But the scope and enforceability of these provisions are limited.

At the same time state and territory laws in relation to SOGI discrimination may be as old as 30 years, and many use definitions and include exemptions which are no longer acceptable.

It is vital that the Commonwealth provide comprehensive SOGI anti-discrimination protection for all Australians.

This can be done by amendment to the SDA, or by the enactment of a new SOGI-specific anti-discrimination instrument.

a) Amendment of the SDA

In the case of *Toonen v Australia* the Human Rights Committee found that the definition of sex in the anti-discrimination provision of the International Covenant on Civil and Political Rights can be defined to include sexual orientation.

This finding provides the Commonwealth with the power to amend the definition of "sex" within the SDA to include sexual orientation.

The drawback to this approach is that provisions of the SDA are dated and not designed to handle SOGI discrimination.

Further, an amendment to SDA fails to send out a clear message to the Australian people that SOGI discrimination is in-and-of itself unacceptable behaviour.

b) A new SOGI-specific instrument

The above-cited HRC finding, plus other international jurisprudence, provides the Commonwealth with the power to enact a stand-alone Sexual Orientation and Gender Identity Discrimination Act.

This would have the advantage of being up-to-date and tailored legislation that specifically addresses gaps in state and territory law.

It would also send out a clear message about the equal importance of tackling SOGI discrimination.

We endorse option b.

c) A new omnibus human rights instrument

We note that in its submission to this inquiry, the Human Rights and Equal Opportunity Commission recommends a national Equality Act which would prohibit discrimination on a range of grounds including sexual orientation and gender identity.

We support this in principle. However, we expect the consultation and drafting required for such a statute to take some time. We can see no reason to delay the enactment of SOGI discrimination protections for this length of time when they are urgently needed now.