



Submission to the
**Senate Legal and Constitutional Affairs
Committee**
in response to the
**Exposure Draft of Human Rights and
Anti-Discrimination Bill 2012**

By the Australian Association of Social Workers
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Introduction

The Australian Association of Social Workers (AASW) welcomes the Attorney-General Nicola Roxon's plan to consolidate national anti-discrimination laws in the *Human Rights and Anti-Discrimination Act 2012*.

The AASW believes that unfavourable treatment on the basis of race, gender, sexual orientation or disability is unacceptable and we support steps to strengthen protections against discrimination. The Federal Government's decision to replace Australia's five anti-discrimination Acts with a single Act will address all forms of discrimination on the same basis.

The AASW is deeply concerned that the proposed legislative changes do not adequately address the exemptions that currently apply to religious organisations delivering community services. While the proposed change to the legislation to prohibit discrimination in Commonwealth funded aged care is a great step forward, it is insufficient. Religious organisations receiving government funding for the delivery of community services should not be exempt from anti-discrimination law in the employment of personnel at any level of these services.

The AASW recognises and respects the Right to religious freedom. However, we do not support any exemptions from anti-discrimination for religious organisations receiving funding to provide services to the general community. Community services must be required to comply with anti-discrimination legislation, in all aspects of employment and service delivery, and to be held accountable for the harm that discrimination causes.

Social Work in Australia

The AASW is the only national organisation for social workers in Australia, with over 6,800 members. Social Workers acknowledge the Aboriginal and Torres Strait Islander peoples, the First Australians, whose lands, winds and waters we all now share, and pay respect to their unique values, and their continuing and enduring cultures which deepen and enrich the life of our nation and communities. The AASW Code of Ethics establishes that social workers strive to challenge and change potential oppressive, disempowering or culturally inappropriate courses of action (AASW Code of Ethics 4.2.2d pg. 19). The AASW welcomed the reinstatement of the Racial Discrimination Act in the Northern Territory, but acknowledges that the majority of those Centrelink recipients who are currently having their income managed in the Northern Territory are Indigenous. Thus we would support review of such Commonwealth Government policies when the *Human Rights and Anti-Discrimination Act 2012* is enacted.

The AASW Code of Ethics underpins the AASW supporting the elimination of the policies of mandatory detention, and other forms of harsh, punitive or discriminatory treatment of asylum seekers and refugees. There is a need for Australian Immigration laws and policies regarding Asylum Seekers to be consistent with the *Human Rights and Anti-Discrimination Act 2012*. The social work profession is committed to maximising the well being of individuals and society. It considers that individual and societal wellbeing is underpinned by socially inclusive communities which emphasise principles of social justice and respect for human dignity and human rights,

including the right to freedom from intimidation, discrimination and terror in society. Minimum standards of human rights include also the right to adequate housing, income, employment, education and health care. Working from a strengths based approach with an underlining participatory framework, the AASW and, by extension, AASW members recognise individuals' rights to self-determination, autonomy and freedom from discrimination, supporting the enablement of individuals to become *rights holders*.

Significant numbers of AASW members work within the fields of children and family support, health and mental health, income support, refugee and immigrant services, and community development in a range of roles including case work, management, policy, early intervention and prevention and project management roles. Social workers are recognised on a local, national and international scale as key stakeholders in the effective provision of human, social and community-based services.

The AASW is a member of the International Federation of Social Workers and International Association of Schools of Social Work. The social work profession in Australia adheres to these bodies' definition of social work from 2001:

- *The social work profession promotes social change, problem solving in human relationships and the empowerment and liberation of people to enhance wellbeing.*
- *Utilising theories of human behaviour and social systems, social work intervenes at the points where people interact with their environments.*
- *Principles of human rights and social justice are fundamental to social work.*¹

Social Workers and Human Rights

In accordance with its constitution, the AASW operates on well established principles, including the promotion of human rights. In carrying out their professional tasks and duties, social workers strive to act in ways that give equal priority to respect for human dignity and worth and the pursuit of social justice. This commitment is demonstrated through service to humanity, integrity and competence, which characterise professional social work practice. In June 2009 the Australian Government inquired into the possibility of developing a National Charter of Human Rights and later deciding not to proceed with proposed legislation. The AASW supported the introduction of National Human Rights legislation as it believed in recent years the adequacy of human rights protections in Australia has been eroded.

The AASW, in its submission to the national Human Rights Consultation, supported **the following principles** as they applied to any future legislative review of human rights and anti discrimination laws:

1. Articulation and enforcement of obligations on public authorities to comply with rights.
2. Inclusion of human rights compatibility statements.

¹ IFSW <http://www.ifsw.org/f38000138.html>

3. Development and implementation of measures aimed at promoting and educating Australians about their rights.
4. Appointment of an independent monitor, to provide advice to Government and monitor the operation.
5. Adoption of key rights articulated within *the United Nations Declaration on the Rights of Indigenous Peoples*, *the Convention on the Rights of Persons with Disabilities*; *the United Nations Convention on the Rights of the Child*; *the International Covenant on Civil and Political Rights*; *the International Covenant on Economic, Social and Cultural Rights*.

Social Work Interventions

Social workers are employed at the interface between the person and their environment, and AASW members provide a range of services including child and family welfare, child protection, disability, rehabilitation, income support, corrections and juvenile justice, housing support and homeless services, aged care, and mental health. These interactions with vulnerable people give social workers a unique perspective on human rights.

Social work interventions are typically multi-level and multi-layered. Interventions may include individual counselling, psycho-education and practical support for family and carers, family therapy involving client and family, and case work with groups of clients or families. Social workers work with families and communities to improve their health and well-being within a human rights framework. Social workers are human rights practitioners.

Dr Tom Calma AO, the former Social Justice Commissioner at the Human Rights and Equal Opportunities Commission, described human rights to be central to social work practice, saying human rights are:

*The bread and butter work of most social workers. It involves putting services in place to meet rights like the right to education, health care, housing, income and so on.*²

The AASW *Code of Ethics*³ positions social work as a profession that is committed to “the pursuit and maintenance of human well-being. Social work aims to maximise the development of human potential and the fulfillment of human needs.” The Code of Ethics also highlights human dignity and the pursuit of social justice as key values guiding the work of the profession. A key objective is the pursuit of social justice in order to promote social inclusion and redress social disadvantage.

² Calma, T. (2008) **The Role of Social Workers as Human Rights Workers with Indigenous People and Communities**. Presentation at the Social Work Orientation Week Seminar. Australian Catholic University. Accessed June 2008. Available online: http://www.hreoc.gov.au/about/media/speeches/social_justice/2008/20080212_socialwork.html

³ AASW Code of Ethics 2010 <http://www.aasw.asn.au/document/item/740>

AASW and Indigenous Communities

The AASW supports the statement by the National Aboriginal and Torres Strait Islander Legal Services⁴ that

“Discrimination harms not only the individual aggrieved, but society as a whole. As such, the responsibility to prevent discrimination and enforce standards should be borne by every member of society rather than just individual complainants.”

The AASW also endorses the comments by The Honourable Catherine Branson QC, President, Australian Human Rights Commission⁵ that

“Resolving the conflict between the right to freedom of religion and belief and other fundamental human rights is challenging... and the conflict that causes the most acute concern is that between freedom of religion and belief and freedom from discrimination.”

Ageing

Many social workers are involved in the delivery of aged care and carer support services in a range of fields of practice including direct service delivery, advocacy, service planning, service management, service development and policy. Other social workers are involved in supporting older people in many other areas of practice associated with the social work profession including health, housing, income support, support to Indigenous Australians, disability, workforce participation and community development. Social workers are therefore uniquely placed to hold both a broad and an in-depth view of the multiple issues facing older Australians within a rights-based context and with a focus on social justice.

Reflecting the United Nations Principles for Older Persons⁶, it is the Association's position that older people have the right to:

- Independence;
- exercise choice and control over their lives and deaths;
- pursue lifestyles of their choice and be free to express diversity with respect to their culture, language and sexuality, amongst other things;
- employment;
- opportunities and support to pursue healthy ageing lifestyle choices;
- participate in all aspects of society and be provided with opportunities to share their knowledge and skills with younger generations;

⁴ NATSILS Submission on the National Human Rights Action Plan Exposure Draft

⁵ Religion in the Public Square Colloquium, Assembly Hall Melbourne July 2010

⁶ UN General Assembly, *Principles for older persons*, annexure to resolution 46/91, United Nations, forty-sixth session, 16 December 1991, viewed 15 September 2012, <<http://www.un.org/Depts/dhl/resguide/r46.htm>>.

- self-fulfilment which involves access to educational, cultural and recreational resources in their communities;
- be treated with dignity and respect;
- be free from discrimination and abuse;
- equitable and readily available access to a competent, comprehensive and affordable health and social support services that meet their individual needs.

Under the proposed *Human Rights and Anti-Discrimination Act 2012*, Commonwealth funded aged care providers will no longer be permitted to discriminate on the grounds of sexual orientation and gender identity. The AASW welcomes the move to consolidate Australia's human rights legislation which will ensure that gay, lesbian, bisexual, transgender and intersex Australians are not discriminated against in aged care.

Conclusion

The AASW reiterates its support for effective consolidation of anti-discrimination legislation and asked the parliament to be aware of the issues raised above in relation to indigenous communities, those people in immigration detention, aging members of our communities and the application of the five principles stated above when finalising the proposed changes.

The AASW believes strongly that there should be no exemption relating to religious institutions delivering community services and that the application of anti-discrimination legislation in this regard in no way imbeds the rights to religious freedom.

Submitted for and on behalf of the Australian Association of Social Workers Ltd

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