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Committee Secretary
Senate Legal and Constitutional Affairs Committee
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All Out is the world's largest movement for LGBT equality. More than 40,000 strong in Australia and with members in every country, AllOut.org is building a world where every person can live openly and love who they choose.

Summary of Recommendations

1. All Out supports the Human Rights and Anti-Discrimination Bill and ask the Committee to recommend it be passed in this parliamentary term
2. All Out supports the definitions of "Sexual Orientation" and "Relationship Status"
3. Use the 2012 Tasmanian definition of "Gender Identity"
4. Include "intersex" as a protected attribute, using the 2012 Tasmanian definition
5. Support the prohibition on discrimination for religious aged care services
6. All government-funded services are restricted from discriminating, including religious organisations
7. Religious organisations, including in aged care, should not be allowed to discriminate against employees
8. Religious organisations wishing to make us of an exception or exemption must publish a statement in position descriptions, on their website and in any brochures about their service
9. The Australian Human Rights Commission appoint a commissioner responsible for Sexual Orientation and Gender Identity discrimination
10. The bill should include a right to equality before the law that applies to all attributes
11. The bill should include a mechanism to enable the commission and non-government organisations to institute representative complaints

All Out would be happy to assist in providing further clarification on any issues raised by this submission or other issues of interest to the committee.

Thank you for your consideration of our submission.

Kind regards,

Hayley Conway

Campaign Manager, Australia

Recommendation 1

All Out supports the Human Rights and Anti-Discrimination Bill and ask the Committee to recommend it be passed in this parliamentary term. Some opponents of the bill are suggesting that it should not be passed. It has been 17 years since the Senate first spoke about including sexual orientation and gender identity protections in federal law. It's important that the bill not be delayed until the after the next election. Numerous inquiries and all major political parties have expressed support for these protections for LGBTI people.

Recommendation 2

All Out supports the definitions of "Sexual Orientation" and "Relationship Status". Lesbian, gay and bisexual people still face discrimination and harassment in crucial areas of public life. It's important to ensure that a national law sets a national standard by including protections on the grounds of sexual orientation and relationship status (formerly marital status). Changing the ground of 'marital status' to 'relationship status' ensures that same-sex and other LGBTI relationships are protected from discrimination. The proposed definition of sexual orientation protects lesbian, gay and bisexual people without using these labels, thus being more inclusive.

Recommendation 3

Use the 2012 Tasmanian definition of "Gender Identity" (which is inclusive of Gender Expression/Presentation). Including gender identity as a protected attribute is very welcome, but the proposed definition could be improved in line with best practice. Any definition protecting transgender people should include gender expression (such as mannerisms, appearance etc). In addition, the requirement transgender people identify on a "genuine basis" is problematic and legally confusing, as the term is not defined and contradicts other aspects of the draft bill. A preferred definition is currently being passed by the Tasmanian Parliament and should be adopted in this bill.

Recommendation 4

Include "intersex" as a protected attribute, using the 2012 Tasmanian definition. Intersex people are partially protected in the draft bill under Part B of Gender Identity. This is not correct. Intersex is not a matter of identity, rather it is a matter of biological fact, where an individual may have hormones, chromosomes or sex organs that are either - not wholly male or female; both male or female or neither. Federal Government policy, such as the National LGBTI Ageing and Aged Care Strategy and other mental health initiatives are inclusive of intersex people. Intersex Australians should be protected from discrimination through a standalone protected attribute, which will make it clearer to understand for business and Australians that intersex people are protected.

Recommendation 5

Support the prohibition on discrimination for religious aged care services. The draft bill proposes to outlaw discrimination against LGBTI people when they are receiving federally funded aged care services. The government has indicated that decision was made to ensure this vulnerable group of people would not be discriminated against in "their home" - and we believe this decision should be upheld.

Recommendation 6

All government-funded services are restricted from discriminating, including religious organisations. The draft bill allows religious organisations to discriminate against LGBTI people (except for aged care providers). These 'permanent exceptions' set religious groups apart from other groups, who need to justify that any differential treatment is fair and reasonable. The parliament should make it clear that taxpayer dollars cannot be used to contribute towards discriminatory practices. All organisations in receipt of government funding should be prevented from discriminating when they deliver services to the community; particularly vulnerable groups such children and those receiving disability, homelessness or mental health services.

Recommendation 7

Religious organisations, including in aged care, should not be allowed to discriminate against employees. Many LGBTI people live with the threat or reality of discrimination in employment. The draft bill allows religious organisations to discriminate against LGBTI job applicants and employees, regardless of whether the person can meet the inherent requirements of the job. The bill already provides sufficient safeguards to allow employers, including religious organisations, to discriminate when it is necessary and reasonable.

Recommendation 8

Religious organisations wishing to make us of an exception or exemption must publish a statement in position descriptions, on their website and in any brochures about their service. If religious organisations are to be granted these 'permanent exceptions' from discrimination laws, members of the community are entitled to be informed of risk of discrimination before they make a decision to purchase goods and services

or apply for a job. The draft bills should include a requirement that religious organisations publish statements on their website, position descriptions for job advertisements and brochures or other promotional material advertising services. The organisations should also be required to register a notice with the Australian Human Rights Commission and a searchable public record should be maintained of these notices. This would not only to forewarn potential victims of discrimination but ensure accountability to the wider community.

Recommendation 9

The Australian Human Rights Commission appoint a commissioner responsible for Sexual Orientation and Gender Identity discrimination. Most of the protected attributes currently fall under one of the existing commissioners at the Australian Human Rights Commission (age, race, sex, disability). However, the draft bill does not propose a Commissioner for LGBTI Australians and the generic role of the Human Rights Commissioner is removed. It is incredibly important that responsibility for sexual orientation and gender identity be legislatively written into the role of a commissioner. The AHRC has a time honoured history of sharing portfolios. We think that it is only fair and appropriate that a LGBTI Commissioner be created. Alternatively, the legislation should clarify that the President of the Commission carries portfolio responsibility for LGBTI issues.

Recommendation 10

The bill should include a right to equality before the law that applies to all attributes.

Recommendation 11

The bill should include a mechanism to enable the commission and non-government organisations to institute representative complaints.