



AUSTRALIAN CHAMBER OF
COMMERCE AND INDUSTRY

26 April 2013

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
E-mail: legcon.sen@aph.gov.au

Dear Committee Secretary,

**Inquiry into the Sex Discrimination Amendment (Sexual Orientation,
Gender Identity and Intersex Status) Bill 2013**

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations. Our member network has over 350,000 businesses represented through Chambers of Commerce in each State and Territory, and a nationwide network of industry associations.

ACCI welcomes the opportunity to participate in this inquiry which is examining the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013.

Please contact Ms Coreena D'Souza, on _____ or by email
for further information.

Yours sincerely,

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ACCI Response
Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status)
Bill 2013

1. Introduction

The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 (the Bill) was introduced into House of Representatives on 21 March 2013 by the Attorney-General, the Hon. Mark Dreyfus QC MP. The Bill amends the *Sex Discrimination Act 1984* to extend the protection from discrimination to the new grounds of sexual orientation, gender identity and intersex status. The Bill also extends the ground of “marital status” to “marital or relationship status” to provide protection from discrimination for same-sex de facto couples.

The Government has committed to introducing new protections at the federal level to cover sexual orientation and gender identity, which are generally covered under various state/territory laws.

2. Key Issues

ACCI notes that the Bill was introduced following an inquiry into the Draft Human Rights and Anti-Discrimination Bill 2012 which was undertaken by this Committee.

The Exposure Draft Human Rights and Anti-Discrimination Bill 2012 was released by the Government on 20 November 2012. The exposure draft Bill attempted to consolidate the five existing federal anti-discrimination statutes, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, the *Age Discrimination Act 2004* and the *Australian Human Rights Commission Act 1986* into one consolidated statute. The release of the draft legislation followed the Government’s announcement in April 2010 that the five statutes would be consolidated with a view to establishing a single comprehensive piece of legislation.

As part of the consolidation project, ACCI has been involved in various discussions with representatives from the Attorney - General’s Department. In February 2012, ACCI provided a submission to the Attorney-General’s Department Discussion Paper “*Consolidation of Commonwealth Anti-Discrimination Laws*”. In summary, ACCI indicated its support for a single set of anti – discrimination laws which would act to override other laws impacting on employers, such as those contained in the *Fair Work Act 2009*.

The Draft Human Rights and Anti-Discrimination Bill 2012 (179 pages) was accompanied by explanatory materials, including a Regulation Impact Statement. There are a number of significant changes proposed to the existing federal anti-discrimination framework, including: (a) a new test for discrimination; (b) creating new legally protected attributes; (c) changes to the defences available to a respondent; (d) creating a ‘shifting onus of proof’; (d) creating a general presumption that each party bears its own legal costs. Some of the changes deliver upon pre-election Government commitments.

The proposed new legally protected attributes included sexual orientation and gender identity, which are also proposed by this Bill.

On 21 November 2012 the Senate referred the Draft Human Rights and Anti-Discrimination Bill 2012 to this Committee for inquiry and report.

On 21 December 2012, ACCI lodged a written submission to the exposure draft bill and appeared before the Committee in support of its written submissions on 23 January 2013.

Whilst ACCI opposed the creation of some new protected attributes¹ as part of the consolidation project, it did not oppose the introduction of new protections covering sexual orientation and gender identity, which are generally covered under various state/territory laws and the *Fair Work Act 2009*.² However, ACCI indicated the importance of clearly defining new protected attributes in order for duty holder to understand their legal obligations and minimise any unintended consequences.³

On 21 February, this Committee tabled its report into the inquiry and made numerous recommendations to amend the proposed draft legislation.

Whilst the Government is still considering the extensive feedback on the exposure draft Bill, it announced on 20 March 2013 that it would introduce measures as *"reform is long overdue and too important to be delayed any further"*.⁴

ACCI notes that this Bill introduces intersex status as new legally protected attribute which was not proposed in the exposure draft legislation but was recommended by this Committee.

3. Conclusion

ACCI encourages the Human Rights Commission to engage in dialogue with the business community and develop guidelines and information to assist duty holders comply with these new protections. If the measures become law, there should be a sufficient period of time before the proposed measures commence, in order to allow duty holders to be fully informed of these changes.

¹ ACCI Submission in response to the to the discussion paper *"Consolidation of Commonwealth Anti-Discrimination Laws"*, paragraph 43.

² ACCI Submission in response to the Inquiry into the Human Rights and Anti-Discrimination Bill 2012, page 2.

³ ACCI Submission in response to the to the discussion paper *"Consolidation of Commonwealth Anti-Discrimination Laws"*, paragraph 45-51.

⁴ Joint Media Release Attorney-General, Minister for Emergency Management, the Hon Mark Dreyfus QC MP and Minister for Finance and Deregulation, Deputy Leader of the Government in the Senate, Senator the Hon Penny Wong: <http://www.attorneygeneral.gov.au/MediaReleases/Pages/2013/First%20quarter/20March2013-Newantidiscriminationlawstocoversexualorientationgenderidentityandintersexstatus.aspx>