

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

26 April 2013

Dear Committee

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

ACON is a community based organisation that seeks to improve the health and wellbeing of the GLBT community, sex workers, people who use drugs, people with HIV, and to reduce HIV transmission. We do this with an understanding that good health can only be achieved when human rights are realised. Anti-discrimination protection is important as our communities, made up of rights holders, often find their rights not being upheld, and experience high rates of discrimination. The impact of discrimination on our communities is well documented¹. It is for these reasons we strongly welcome the protections contained in the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 (SDA Bill).

ACON supported the Human Rights and Anti-Discrimination Bill 2012 (HRAD) and many of the recommendations contained in the report from the Senate Legal and Constitutional Affairs Committee's inquiry into that bill. We see HRAD as a more thorough measure to address the discrimination experienced by our communities. However, we support these amendments to the SDA as a promising preliminary measure to provide anti-discrimination protection and remedies at the federal level.

In our submission to HRAD we urged the committee to change the definitions of intersex and gender identity. We welcome the improvement of these definitions as contained in the SDA Bill.

As with the HRAD Bill, we are concerned about the provision of wide ranging exemptions for faith based organisations in relation to employment and the delivery of services. We suggest that recommendations 11 and 12 (below) from the HRAD report be incorporated into the amending legislation. These recommendations provided a model, that of the Anti-Discrimination Act 1998 (Tasmania), which could easily be incorporated into this bill.

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Recommendation 11

7.80 The committee recommends that the Draft Bill be amended to remove exceptions allowing religious organisations to discriminate against individuals in the provision of services, where that discrimination would otherwise be unlawful. The committee considers that the Australian Government should develop specific amendments to implement this recommendation, using the approach taken in the Tasmanian Anti-Discrimination Act 1998 as a model.

Recommendation 12

7.81 The committee recommends that clause 33 of the Draft Bill be amended to require that any organisation providing services to the public, and which intends to rely on the exceptions in that clause, must:

- make publicly available a document outlining their intention to utilise the exceptions in clause 33;*
- provide a copy of that document to any prospective employees; and*
- provide access to that document, free of charge, to any other users of their service or member of the public who requests it.*

Failing the incorporation of such recommendations for the SDA Bill, we urge the committee to at the very least include the provisions contained in the original exposure draft HRAD which provides protection and remedies addressing experiences of discrimination for those individuals receiving federally funded aged care. This was stated as being government policy at the announcement of the SDA Amendment.

We strongly support the committee's previous recommendation for the incorporation of broader exemptions into the HRAD Bill 2012, and urge the committee to reiterate this recommendation when that Bill is introduced into parliament.

If the government takes the unfortunate path of sanctioning discrimination through broad exemptions, then ACON urges that measures be put in place to ensure that organisations that utilise these exemptions must make this public when they are utilising the exemptions. This would include statements in job advertisements, throughout enrolment processes, through applications for service as well as on websites and in official publications. This will limit any confusion by members of the public, as is currently the case when applying for jobs or seeking services with faith based organisations, and minimise the likelihood of negative consequences for all those involved.

ACON has in the past called for a specific commissioner with the Australian Human Rights Commission (AHRC) to focus on issues faced by LGBTI Australians. We urge the committee to support these calls and recommend the creation of an LGBTI Rights Commissioner within the AHRC.

We understand that there is cross party support for this legislation and urge quick consideration and passage of the legislation.

Thank you for the opportunity to comment on the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013.

Sincerely,

Nicolas Parkhill

CEO