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To whom it may concern,

**RE: Human Rights and Anti-Discrimination Bill 2012**

The Australian Psychological Society (APS) welcomes the opportunity to make a submission into the Senate Inquiry into the Human Rights and Anti-Discrimination 2012 Bill.

The APS is the premier professional association for psychologists in Australia, representing more than 20,000 members. Psychology is a discipline that systematically addresses the many facets of human experience and functioning at individual, family and societal levels. Psychology covers many highly specialised areas, but all psychologists share foundational training in human development and the constructs of healthy functioning.

Psychologists regard people as intrinsically valuable and respect their rights, including the right to autonomy and justice. Psychologists engage in conduct which promotes equity and the protection of people's human rights, legal rights, and moral rights (APS, 2007). The APS specifically has raised concerns and contributed to debates around human rights, including the rights of clients receiving psychological services, and of marginalised groups in society (such as Aboriginal and Torres Strait Islander people, asylum seekers and refugees and LGBTI individuals and groups), and has highlighted the established links between human rights, material circumstances and psychological health (<http://www.psychology.org.au/community/public-interest/human-rights/>).

We understand the purpose of the Human Rights and Anti-Discrimination 2012 Bill is to consolidate the existing Commonwealth anti-discrimination legislation - the Age Discrimination Act 2004, the Disability Discrimination Act 1992, the Racial Discrimination Act 1975, the Sex Discrimination Act 1984 and the Australian Human Rights Commission Act 1986 - into a single Act.

It is beyond the scope of the APS to address the legislation in detail and we are not in a position to comment on the specific legal context of the bill. Our response draws on the evidence from the psychological literature on the links between human rights and mental health and community wellbeing.

## **Human rights, discrimination and mental health and wellbeing**

Human rights promote health, safety and wellbeing because they protect people's vital needs and fundamental interests. This is expressed in the Universal Declaration of Human Rights, which states that "everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing and medical care" (Universal Declaration of Human Rights, Article 25).

Discrimination has detrimental impacts on the psychological health and wellbeing of individuals, with far-reaching health, social and economic consequences for communities. Individuals who have experienced discrimination are more likely to suffer poor physical and psychological health.

While our response to this inquiry focuses primarily on the impact of discrimination and the current proposed Bill on migrant, refugee and asylum seekers, Aboriginal and Torres Strait Islander peoples and the LGBTI community, we are aware many groups are at risk of experiencing discrimination and human rights violations including single parent families, people who are unemployed or underemployed, people with disabilities, including mental health issues, women, victims of family violence and those caring for a family member.

In particular there is compelling evidence of a link between ethnic and race-based discrimination and poor mental health and wellbeing (Paradies, 2006). Evidence suggests that many Australian migrants and refugees experience discrimination and intolerance (Fozdar & Torezani, 2008). In particular the failure to protect the human rights of those seeking asylum in Australia (through indefinite, mandatory detention, some of which is provided offshore) has been closely related to the violation of the right to health especially mental health as evidenced by the unacceptably high rates of self harm, suicidality, depressive and anxiety disorders including PTSD. The perception of discrimination in the community by refugees also significantly affects wellbeing as well as integration into Australian society (Davidson et al, 2008).

Additionally, racism as a form of discrimination against Aboriginal and Torres Strait Islander peoples is pervasive. Discrimination is a key barrier to the progress of Australian Aboriginal and Torres Strait Islander peoples towards improved futures. Racism has a destructive impact on Aboriginal and Torres Strait Islander people's education, health and wellbeing, considerably beyond its immediate impact. Racism works strongly against all agendas which aim to close the gaps in health and other outcomes between Aboriginal and Torres Strait Islander peoples and other Australians.

Discrimination against Lesbian Gay Bisexual Transgender and Intersex (LGBTI) people is also widespread and includes stereotyping, ostracizing, harassment and violence (Rosenstreich, 2011). Disparities in health between LGBTI people and the assumed-to-be-heterosexual and non-trans general population have often been understood as a product of both societal and interpersonal anti-

LGBTI prejudice in health care settings and from health care professionals (Clarke et al, 2010). Researchers have also consistently shown that gay men and lesbians exposed to the stigma against homosexuality have a higher risk of experiencing distress and adverse psychological outcomes (Peplau & Fingerhut, 2007). Young people in particular are vulnerable to discrimination. A comprehensive Australian research project, *Writing Themselves In* (Hillier et al., 2010), found that young people suffer high levels of verbal and physical homophobic abuse in the community, particularly at school, and that there are strong links between homophobic abuse and feeling unsafe, excessive drug use, self harm and suicide attempts.

Violations of human rights cause serious harm to individuals but also more generally undermine the community's expectations that they can count on having their own human rights respected. When gross human rights violations are being enacted and run unchecked, this can lead to learned helplessness in society at large. It can also engender a pervasive sense of fear and insecurity which should not exist in an open democratic society.

### **APS Response to the Human Rights and Anti-Discrimination Bill 2012**

The APS supports the intent of the proposed Human Rights and Anti-Discrimination Bill 2012 to consolidate and strengthen Commonwealth anti-discrimination law to 'strengthen human rights and advance equality for all'.

We concur with the Australian Human Rights Commission in supporting the process of referral of this draft legislation to the Senate Committee for review and public consultation and believe that this process should be used for significant pieces of legislation on a more regular basis to ensure community participation and accountability.

Australia is committed to promoting human rights as a signatory to many international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the 1951 Convention Relating to the Status of Refugees, the Convention on the Rights of the Child and the UN Declaration of the Rights of Indigenous Peoples.

The APS welcomes the draft Bill as a mechanism for realising this commitment to human rights, and improving our human rights response across the board; we offer particular comment as follows.

### **Enhanced protections (protected attributes)**

The APS welcomes the coverage of additional protections (protected attributes) as a way of protecting the most vulnerable and disadvantaged in our society. In particular, we support applying the highest current standard across all forms of discrimination and across all States and Territories.

We welcome the expansion of protections under the Sex Discrimination Act regarding family responsibilities. While the Bill provides implicit coverage of carer responsibilities, as the AHRC notes in their submission to this inquiry, 'express coverage of carers who are not immediate family members could assist in dealing with situations, including in Indigenous communities, where children are cared for by extended family members, which would not appear to be covered by the definition of family responsibilities in the Bill'. The APS therefore recommends that the Bill be further strengthened to explicitly cover discrimination on the basis of carer responsibilities.

The APS supports the further protection against sexual orientation and gender identity discrimination, and extension of protections against relationship discrimination to same-sex couples in any area of public life (clause 17). To ensure the intent of these measures are fully realised however, the APS recommends that the Bill provide protection on the basis of a person's sex characteristics or intersex status (independent of gender identity) to ensure express coverage against discrimination based on intersex status. Broad inclusive language/coverage to cover variations in sex characteristics, and people who are neither wholly male or female, should be used so that intersex and gender-nonconforming people are also protected.

We note that there is no definition of 'social origin', and share the concerns expressed by the Anti-Discrimination Board of New South Wales, that this term could be misleading. The APS recommends that 'social status' may be more appropriate than social origin and could include persons who are homeless, those who are at risk of or recovering from a period of homelessness, and those who are or have been unemployed or a recipient of social security payments.

We are particularly concerned that family violence is not fully covered in this draft Bill, given the detrimental impacts on health and wellbeing, and potential for discrimination in all areas of public life. The APS recommends including domestic violence as a protected attribute in section 17.

## **Ensuring protection for Indigenous peoples**

The inequality experienced by many Aboriginal and Torres Strait Islander people and communities is one of the most pressing human rights issues facing Australia today. The human rights of Aboriginal and Torres Strait Islander peoples are not sufficiently protected or promoted. The widely documented poor outcomes in relation to health, education, incarceration, child protection, morbidity and mortality, and the average life expectancy gap between Indigenous and non-Indigenous Australians (around 11 years, ABS, 2009), constitute a stark demonstration of the failure to protect the most fundamental human rights.

The continuing inadequate circumstances of many Indigenous communities clearly point to a need for stronger human rights and discrimination protections in Australia. Of particular concern to the APS was the suspension in 2007 of the

Racial Discrimination Act (RDA) (1975) with little or no consultation with the affected communities.

It is imperative that the Principles of the Declaration on the Rights of Indigenous Peoples, in particular the right to free, prior and informed consent are realised.

As fundamental guiding principles, we specifically recommend that:

- Any description of discrimination ensures that indirect/ structural/ systemic discrimination is recognised as a serious form of discrimination in relation to Aboriginal and Torres Strait Islander peoples,
- Any changes in law or policy must be consistent with international conventions and, consistent with the right to self-determination, ensure that the affected groups have been consulted and have given informed consent, and
- Consultation and engagement with Aboriginal and Torres Strait Islander peoples should be consistent with international human rights standards and thus, reflect Aboriginal and Torres Strait Islander models of decision-making.

In relation to the consolidation of the RDA with 4 other anti-discrimination Acts, we are concerned that the provisions in the RDA that protect or advance the rights of Aboriginal and Torres Strait Islander Australians are maintained and strengthened. In particular, it is important to retain reference to:

- Special measures provisions (e.g., special measures to ensure minority racial groups that have been disadvantaged are able to realise their rights and freedoms),
- Direct discrimination and indirect discrimination,
- Equality before the law, and
- Racial vilification.

For example, we note that Reconciliation Australia (RA), an APS partner in the development and delivery of our recently launched Reconciliation Action Plan, in their submission to the Attorney General's Department Consolidation of Commonwealth Anti-Discrimination Laws, recommend that the special measures provision in a consolidated Act clearly state that a State must consult with affected communities before enacting legislation under the special measures provision. RA notes the concerns expressed by the AHRC's submission to this inquiry – that the inclusion of 18C and 18D of the Racial Discrimination Act 1975 in this bill was not subject to consultation in the original Attorney General Department Discussion Paper, and therefore concurs with the AHRC that 'any amendments in this respect which might now be proposed would require separate and subsequent processes for specific consultation and detailed consideration'.

## **General comments**

The APS supports the provision within the Bill that means that no provider of aged care services with Commonwealth funding can discriminate on religious grounds, in service provision or employment. While we understand there needs to be a balance between religious freedom and human rights, we can see no compelling reason for service provision to be refused on religious grounds to any person who is otherwise entitled to those services, or for such discrimination to be justified as a barrier to employment. We therefore urge the Government to extend this provision to all government-funded and provided services (e.g., health, mental health, housing, education).

In relation to 'Reasonable adjustments' (exemptions for justifiable conduct) we recommend that specific definitions are included to ensure discrimination cannot inadvertently occur, and that these exemptions be extended to cover race explicitly.

For discrimination on the basis of a criminal record, we concur with AHRC that protection against discrimination on the basis of a criminal record be considered as part of Australia's obligations under the International Labor Organisation Discrimination (Employment and Occupation) convention (1958).

## **A stronger human rights framework**

While we endorse the Government's commitment to improving human rights through this Bill, and welcome greater scrutiny of legislation for compliance with human rights obligations, the APS believes that a stronger human rights legal framework is required to ensure respect and equality for all people, particularly those who are vulnerable and marginalised.

Successive governments have been able to suspend human rights obligations when the political necessity arises, with several recent examples of rights violations pointing to the inadequacy of existing laws and policies to fully protect the human rights of all Australians, as well as those of non-Australians to whom we have responsibilities under international law, especially the most vulnerable and disadvantaged. These violations not only have a significant impact on the psychological state of individuals and the wellbeing of communities, but reflect poorly on Australia as a fair and just nation.

Australia's policies of immigration detention, temporary protection and suspension of entitlements for those seeking asylum, and the 2007 suspension of the Racial Discrimination Act in the Northern Territory, are two stark examples of where Australia is widely believed to have violated human rights norms under international law.

The APS therefore believes the Australian Government should reconsider introducing a Human Rights Act or Charter, as part of its commitment to strengthening human rights in this country.

## **The law alone is inadequate to ensure human rights protections**

While we supported the strengthening of human rights and anti-discrimination legislation in Australia, the APS acknowledges that laws are only the starting point for the full realisation of protection of human rights.

There is also a need for promotion of and education about rights, as well as strengthening of services which enable the most vulnerable and disadvantaged to access their rights. For example in relation to the Disability Discrimination Act, recent research has found that there has been a lack of knowledge about the Act on the part of educators and related service providers, and so their actions have not promoted or protected the rights of children with a disability.

In particular, given the significance of the RDA to the rights of Aboriginal and Torres Strait Islander peoples, communication regarding the consolidation of the RDA will be vitally important, particularly to address any concerns that the Act is being removed or diminished (RA). There needs to be respectful and effective engagement in all stages of policy and program design, implementation and evaluation.

The APS recommends that the Government work with organisations that have strong connections with the community and are best placed to inform them of these key changes.

We concur with the AHRC that introduction of the Bill into Parliament should be accompanied by a commitment to continuing review of needs and options for measures to eliminate discrimination. This should include strong, clear consequences for lack of compliance with the Act.

Moreover, in terms of reducing discrimination more generally, evidence suggests that negative attitudes can move in a more positive direction with adequate education targeted at a range of levels and campaigns aimed at changing attitudes and promoting accurate and positive stories about stigmatised groups. For example, Pedersen, Walker, Paradies and Guerin (2011) identify the range of components required for an effective prejudice-reduction education program, and there is a need for culturally competent services and training for all government-funded services, government departments, the media and politicians (APS, 2007).

Child-rearing practices and education can have an impact on the beliefs which children develop concerning their own and other cultural groups, and thus are also key to addressing racism and prejudice (APS, 2007).

Targeting public perceptions, including the use of accurate language and promotion of positive stories about stigmatised groups, must be part of the solution to addressing the misunderstandings and resultant social exclusion and poor mental health experienced by groups who are discriminated against. It is essential that government(s) lead this approach, and frame any resulting policy

or research in ways that seek to enhance community perceptions and challenge misunderstandings (APS, 2010).

The APS has no interests or affiliations relating to the subject of the consultation and the representations submitted, other than our concern that the Australian Government be well-informed and effective in its strategies.

We would be happy to provide further comment on this Bill in person should you require it. For further information about our submission please contact me on

Yours sincerely,

Heather Gridley  
Manager, Public Interest  
Australian Psychological Society



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