



Australian Sex Party  
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Committee Secretary  
Senate Legal and Constitutional Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
[legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Committee Secretary,

**Re: Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012**

The Australian Sex Party is a registered federal political party. We represent a diverse group of more than 4,000 members, who are united in a belief of free speech and sexual expression. Since the party was formed in 2009 we have campaigned on a range of issues including law reform in the areas of sexual equality, sex work and gender expression.

We thank the Senate Legal and Constitutional Affairs Committee for the opportunity to respond to the exposure draft.

In our submission to the discussion paper we recommended that:

1. Sexual orientation should be defined as sexual attraction, sexual identity, and/or sexual behaviour.
2. Gender identity should be defined as a person's actual or perceived sex, as well as a person's gender-related self-image, gender-related appearance, or gender expression whether or not that gender-related self image, gender-related appearance, or gender expression is different from that traditionally associated with a person's sex at birth.
3. There should not be an exception to the gender identity ground for sporting activities.
4. The Consolidated Act should include profession, trade, occupation or calling as a protected attribute.
5. The Consolidated Act should not include religious exceptions that apply to discrimination on the grounds of sexual orientation or gender identity.

6. If the Act does include religious exceptions, they should apply only to the ordination or appointment of priests, ministers of religion or members of a religious order.
7. Any religious exception should not apply to institutions or organisations that receive public funding.
8. Religious organisations that wish to be exempt from anti-discrimination law should be required to apply to the Australian Human Rights Commission for temporary exemptions.

We welcome the draft legislation and in particular we support the new protections against discrimination on the attributes of sexual orientation and gender identity, which address a gap in federal law. We support the decision to define sexual orientation in a broad and inclusive way, without the use of 'labels'.

However, the draft legislation is a failed opportunity to further strengthen protections against discrimination and to ensure that all persons and organisations in society, including religious organisations, are required to comply fully with the law.

**Consequently, we recommend these changes to the draft legislation:**

### **Gender Identity**

We support the introduction of a gender identity attribute to the draft legislation, however, we are concerned that the chosen definition of gender identity is too narrow.

According to the explanatory notes, "this clause does not require recognition of, or provision of facilities for, people who do not identify as either sex".

There are intersex and gender diverse people in Australia, who are not male or female. We support a definition of gender identity that reflects this diversity. The draft legislation should be amended to recognise that there are more than two forms of gender identity.

Whilst such a notion may appear fanciful to those who do not have to grapple with this sort of discrimination - its inclusion is important to ensure that gender diverse people enjoy the full protection of discrimination law.

We also consider the requirement for the "identification, on a *genuine basis*" unnecessary. This implies that some people's gender expression is false or questionable.. Further, other attributes such as race and religion do not contain a 'genuine basis' requirement.

We recommend that gender identity be defined as a person's actual or perceived sex, as well as a person's gender-related self-image, gender-related appearance, or gender expression whether or not that gender-related self image, gender-

related appearance, or gender expression is different from that traditionally associated with a person's sex at birth.<sup>1</sup>

## **Sport**

The draft legislation includes an exception to the gender identity attribute for competitive sporting activities, where the sporting activity is an activity in which the strength, stamina or physique of competitors is relevant.

It is unclear from the draft legislation and explanatory notes, whether this exception would apply to male-to-female transgender people who wish to compete in women's sport.

We are concerned that this exception could have a negative effect on the lives of gender diverse people. Exceptions discourage gender diverse people from participating in sport and send the message to the sporting community that discrimination against gender diverse people is acceptable. Sport is important to many Australians' health, fitness and social lives. Exclusion from sport could have negative impact on a person's physical and mental health.

Sport is also a means of social inclusion, and we are concerned that the draft legislation will result in the further ostracisation of people who do not conform to rigid gender roles.

We recommend that the draft legislation be amended such that sporting bodies who wish to exclude transgender people from competing should be given the option to apply for a temporary exemption from the attribute.

We also request that the meaning of this exception be clarified.

## **Religious Exceptions**

The draft legislation includes exceptions to the sexual orientation and gender identity attributes for religious bodies.

We welcome the decision not to apply this exception to Commonwealth funded aged-care facilities. This is an important recognition that religious organisations should be subject to the same laws as other organisations in society. We do not support the application of this exception to other Commonwealth funded services. The Australian Government should not allocate funds to organisations that discriminate against people based on sexual orientation and gender identity.

We recommend that all religious exceptions be removed from the draft legislation. We submit that religions should be subject to the same laws as other

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8.<sup>1</sup> As defined in *New York City Administrative Code*, Ch 1 NYC Admin. Code §§ 8-102.23 (2010).

private organisations as religious beliefs do not justify discriminatory acts. Any exception to anti-discrimination law expressly allows for further discrimination to take place and undermines the purpose of the legislation.

Australian Sex Party  
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