

**Combined Pensioners
& Superannuants Association**

OF NEW SOUTH WALES INC



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

April 2013

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Combined Pensioners & Superannuants Association of NSW Inc (CPSA)

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CPSA is a non-profit, non-party-political membership association founded in 1931 which serves pensioners of all ages, superannuants and low-income retirees. CPSA has 130 branches and affiliated organisations with a combined membership of over 29,000 people living throughout NSW. CPSA's aim is to improve the standard of living and well-being of its members and constituents. CPSA depends for the majority of its funding for core activities as a peak body on a \$440,000 grant from the NSW Government and a \$68,000 grant from the Australian Government. CPSA engages in systemic advocacy on behalf of its constituency and also auspices four services which receive Government funding: the Health Promotion Service for Older People, the Older Persons Tenants' Service, the Park and Village Service and a Community Visitors Scheme. CPSA acknowledges the potential for conflict of interest arising for CPSA and the NSW and Australian Governments as a result of this funding arrangement. CPSA is committed to managing any conflict of interest issues in an ethical manner.

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CPSA welcomes the opportunity to comment on the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* (the Bill). CPSA's comments will be confined to sex discrimination in aged care.

CPSA supports the Australian Government's policy to end discrimination against people on the basis of sexual orientation, gender identity, and intersex status when accessing aged care services, including removing religious exemptions that currently apply to discriminate against these groups. However, CPSA is disappointed that the Australian Government's policy has not been included in this Bill.

Religious aged care providers received over \$2.7 billion in Commonwealth funding in 2012/13. They provide a public service using public money. It is, therefore, indefensible to retain an exemption that allows these bodies to discriminate on the basis of sexuality or gender in the provision of a public service - aged care.

Religious aged care operators are the largest providers of community aged care packages, providing 36% of all community aged care places. Religious aged care operators are the second largest provider of residential care places, comprising 27.2% of the market. There is therefore a strong likelihood of older people having no choice but to access care from a religious aged care provider. This is combined with the high occupancy rates across the country, which average above 90% (in residential aged care). Community aged care packages are in short supply and do not meet demand, leaving prospective community aged care recipients with no alternative but to accept a package from a religious aged care provider if that is all that is available.

CPSA welcomes commitments by some religious aged care providers (Uniting Care, for example) to not support religious exemptions in anti-discrimination laws. However, a range of other high profile operators, such as Hammondcare and Anglicare have stated that they believe the religious exemptions should remain. At the same time, these religious bodies claim to not discriminate against aged care recipients on the basis of sexuality or gender, calling into question their opposition to removing religious exemptions.¹

Older people should have a legal right of appeal if they feel that they have been discriminated against on the basis of sexuality or gender when accessing or receiving aged care.

CPSA contends that just as Commonwealth-funded aged care providers should not have a right to discriminate against older people on the basis of sex or gender, employees and volunteers in aged care should also be protected under anti-discrimination laws.

¹ Brian Grieg, 22 January 2013, 'Exemptions for religious groups keep fears alive' *Sydney Morning Herald* <http://www.smh.com.au/opinion/exemptions-for-religious-groups-keep-fears-alive-20130121-2d2f8.html>

The Australian Government has launched the *National Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Ageing and Aged Care Strategy* to “better support” the needs of LGBTI older people in aged care. This strategy is welcome and is a step forward in fighting discrimination in aged care.

However, this strategy obviously sits uneasily with the exemption from anti-discrimination laws for religious aged care providers, not only in terms of care recipients but also employees and volunteers. For example, the strategy calls for aged care providers to “develop policies and organisational processes to address discrimination and prejudice; and to promote inclusion of LGBTI people, carers and staff within a best practice framework and among other residents/clients.”² At the same time, the aged care provider has a right to not accept LGBTI care recipients and/or exclude LGBTI care workers, nurses and volunteers from being involved with the organisation.

Aged care involves working closely with older people on a daily basis. It stands to reason that in an environment where certain groups of people may be excluded, inclusion cannot truly be fostered. In this light, the LGBTI strategy is merely paying lip service to supporting LGBTI people in aged care so long as religious aged care providers can discriminate against them.

Recommendation:

1. The Sex Discrimination Amendment include the removal of religious exemptions from anti-discrimination law that permits discrimination against people on the basis of sexuality, gender and intersex status.
2. That the removal of religious exemptions also apply to employees and volunteers in aged care.

² Department of Health & Ageing (2012) ‘National Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Ageing and Aged Care Strategy’ accessed 26/04/2013, available at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-lgbti-national-aged-care-strategy-html>