

Thank you for the opportunity to provide input for the Senate Inquiry into the Bill.

I oppose the Bill (possibly except insofar as it relates to intersex status), and urge the committee NOT to endorse this Bill.

My submission is made in light of the instructions on the Senate committee website on how to make a submission to a Senate or Joint Committee inquiry, namely that '[a] submission may be as short or as long as you like. It may contain facts, opinions, arguments or recommendations. It may cover all the points in the terms of reference or only some of them, depending on what interests you'.

Terms of reference

I note that the terms of reference for this inquiry are the provisions of the Bill. Rather than set out every provision of the Bill, I will summarise these terms of reference as specified in the 'Overview of the Bill' in the Explanatory Memorandum circulated by the authority of the Attorney-General, the Hon Mark Dreyfus QC MP, namely:

'The Bill will amend the *Sex Discrimination Act 1984* (SDA) to introduce new protections against discrimination on the basis of a person's sexual orientation, gender identity and intersex status, and extend the ground of 'marital status' to 'marital or relationship status' to provide protection from discrimination for same-sex de facto couples.'

I will address the Bill on the basis of this summary.

New proposed categories of discrimination

I oppose the addition of the proposed new categories of potentially unlawful discrimination on the grounds of sexual orientation and gender identity, and the related extension of the ground of 'marital status' to 'marital or relationship status', for the reasons set out below.

Intersex status is a medical condition, and is a completely different dimension to sexual orientation and gender identity. The proposed definition of intersex status (s4(1) of the Bill) reflects this:

intersex status means the status of having physical, hormonal or genetic features that are:

- (a) neither wholly female nor wholly male; or
- (b) a combination of female and male; or
- (c) neither female nor male.

The rare cases of intersex conditions, being medical conditions, need to continue to be addressed at or shortly after birth by the parents or guardians of the child, in consultation with medical practitioners.

Sexual orientation

The Bill proposes the following definition of sexual orientation (s4(1)):

sexual orientation means a person's sexual orientation towards:

- (a) persons of the same sex; or
- (b) persons of a different sex; or
- (c) persons of the same sex and persons of a different sex.

I note that given the broad language, could possibly be interpreted to encompass sexual practices such as incest or paedophilia. This is a significant potential flaw in the Bill, and constitutes in itself a sound reason for rejection of the draft legislation.

However in this part of the submission I will focus on the problems of the Bill associated with homosexuality, as the Bill seems to focus on this. Research shows that homosexuality carries with it an increased risk of disease (for example, the vast majority of HIV/AIDS cases in Australia have occurred between homosexual males – National Centre in HIV Epidemiology and Clinical Research, *2012 Surveillance Report*). As an unhealthy practice, therefore, it should not be encouraged. By bringing it within the category of attributes regarding which discrimination is unlawful, this is exactly what the Bill seeks to do.

The serious health issues surrounding homosexuality should as a matter of course outweigh any claim of discrimination. Indeed the Oxford English Dictionary provides the following as a definition of discrimination:

‘The faculty of discriminating; the power of observing differences accurately, or of making exact distinctions; discernment.’

In other words, discrimination is discernment of what is helpful or unhelpful for society generally and for individuals within society. It may be necessary at times to deter people, especially young people, from engaging in behaviour which is damaging to them, as the evidence demonstrates, such as drinking to excess.

Discrimination is also a proven means by which our society has sought to distinguish between what is healthy and unhealthy. For example, to ensure a disease-free blood supply, and eliminate costly litigation, Australian blood banks need to discriminate by excluding certain groups, including men who have sex with men. This is because research shows that such men are at much higher risk of contracting and passing on sexually transmitted infections, including HIV and syphilis.^[1]

It is sensible that discrimination should be extended against such practices, and not diminished. Accordingly sexual orientation, which has the potential to lead to unhealthy practices, should not be a ‘protected attribute’ under the proposed legislation. I therefore submit that the proposed new category of sexual orientation be rejected.

The Bill also seeks to ‘extend the ground of ‘marital status’ to ‘marital or relationship status’ to provide protection from discrimination for same-sex de facto couples’ (Overview of the Bill). As this is a clear reference to homosexuality, for the medical and health reasons given above, this proposed new category of banned discrimination should also be rejected. As mentioned above, discrimination is simply a way for our society to exercise discernment as to what is healthy and unhealthy.

Gender identity

Proposed s4(1) of the Bill defines gender identity as follows:

gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.

As this new provision appears to be an attempt to confirm some people in their gender confusion, I submit it should be opposed. Psychiatrists believe that gender dysphoria is in itself a form of mental ill health.^[2] In general, psychiatrists do not treat delusional patients by affirming their misconceptions. Hence, if the Commonwealth Government is seeking through these provisions to bring about the normalisation of transgenderism as a valid alternative to biological males and females, it is not helpful. Transgendered people are *not* born that way,^[3] and the greatest need, and most compassionate thing is to provide treatment that will help them live out their biological gender (such as counselling and medication, to alleviate anxiety and depressive symptoms).

The discussion above concerning discrimination as a means of discernment between what is healthy and unhealthy also applies to the proposed new category of gender identity, and as such this category should be rejected.

Conclusion

The Bill is flawed, based on the evidence provided in this submission. Regarding just one of the categories highlighted in the report for proposed protected status, homosexuality is not a human right. It is a HUMAN WRONG. It carries with it a high risk of doing damage to people physically, as demonstrated by the evidence cited in this submission.

Apart from the serious questions about affirming people in an unhealthy practice and orientation, and in gender confusion, it is clear that this legislation has a Big Brother function, of 'educating' (ie indoctrinating) our society. This is clear from the Overview of the Bill, which states that:

'The purpose of the Bill is to foster a more inclusive society by prohibiting unlawful discrimination against LGBTI people and **promoting attitudinal change in Australia.**' (emphasis added)

In doing so, and as an ideological rather than an evidence-based piece of proposed legislation, it flies in the face of the documented evidence shown in this submission. This evidence shows the poor health outcomes demonstrated, for example by homosexual practice, including HIV and syphilis. This is not something which anyone would want to encourage. As an ideological tool it should not be recommended or passed by the Australian Parliament.

In particular, the right to equality, insofar as it exists, is not a right to engage in any practice without discernment. We are equal as people, but not all acts carried out by people have equal outcomes.

Thank you for considering this submission. Again, it is submitted the Bill is objectionable, and (possibly apart from its application to the intersex category) should NOT be endorsed. If it is not possible to excise the intersex category from the Bill as a whole, then the Bill should be rejected in its entirety.

If the Bill is not rejected entirely, I submit that it should be amended to:

- Remove all provisions except those relating to intersex people.
- In particular, remove sexual orientation, gender identity and relationship status as attributes which can attract claims of unlawful discrimination.

[1] See for example, Heffelfinger, J D et al, 'Trends in Primary and Secondary Syphilis Among Men Who Have Sex with Men in the United States', *American Journal of Public Health*. June 2007 June; 97(6): 1076–1083.

[2] Dr McHugh, Paul, 'Surgical Sex', *First Things*, US, Nov 2004.

[3] Dr Whitehead, Neil E, 'Is transsexuality biologically determined?', *Triple Helix*, UK, Autumn 2000, pp 6-8.