

# CHAPTER 1

## INTRODUCTION AND BACKGROUND

1.1 On 21 March 2013, the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 (Bill) was introduced into the House of Representatives by the Attorney-General, the Hon Mark Dreyfus QC MP (Attorney-General).<sup>1</sup> On the same day, the Senate referred the provisions of the Bill to the Senate Legal and Constitutional Affairs Legislation Committee (committee), for inquiry and report by 17 June 2013.<sup>2</sup> To assist the parliament's timely consideration of the Bill, the committee decided to present its report on 14 June 2013.

### Purpose of the Bill

1.2 The Bill seeks to amend the *Sex Discrimination Act 1984* (Cth) (SDA) in order to:

- extend protection from discrimination to the new grounds of sexual orientation, gender identity and intersex status; and
- extend the existing ground of 'marital status' to 'marital or relationship status' to provide discrimination protection for same-sex de facto couples.<sup>3</sup>

1.3 The Explanatory Memorandum to the Bill (EM) states:

There is substantial evidence demonstrating that discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people occurs in the community. This discrimination occurs in a range of areas of public life, including work, accommodation and the provision of goods and services. This range of conduct is highly detrimental to LGBTI people, manifesting in barriers to how they carry out their day-to-day lives.

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.<sup>4</sup>

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1 *House of Representatives Votes and Proceedings*, No. 160—21 March 2013, p. 2198.

2 *Journals of the Senate*, No. 143—21 March 2013, p. 3866.

3 Explanatory Memorandum (EM), p. 2.

4 EM, p. 4.

## Background

1.4 The Bill would add to the number of grounds already protected under the SDA, which currently provides protection for individuals against discrimination on the basis of: sex; marital status; pregnancy or potential pregnancy; breastfeeding; and family responsibilities.<sup>5</sup>

1.5 The introduction of the Bill comes in the context of a broader proposed reform project relating to Commonwealth anti-discrimination law and previous committee inquiries into anti-discrimination law, including the SDA.

### *Commitment to extend discrimination protection*

1.6 Introducing protection against discrimination on the grounds of sexual orientation and gender identity implements a 2010 election commitment by the government.<sup>6</sup> In bringing the Bill before the parliament, the Attorney-General stated:

Members of Australia's lesbian, gay, bisexual, transgender and intersex communities continue to experience high levels of discrimination. However, there is currently little protection in federal law from discrimination on the basis of sexual orientation and gender identity.

That is why this government [has] committed to introduce sexual orientation and gender identity as protected grounds of discrimination at the federal level. This bill honours that long-standing Labor commitment.<sup>7</sup>

### *Proposed consolidation of Commonwealth anti-discrimination laws*

1.7 The government has committed to consolidate the five Commonwealth Acts which deal with anti-discrimination matters<sup>8</sup> into a single Act. The project to consolidate Commonwealth anti-discrimination legislation was announced in 2010 as part of the Australian Government's Human Rights Framework.<sup>9</sup>

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5 *Sex Discrimination Act 1984*, sections 5-7A.

6 See: Attorney-General's Department, *Consolidation of Commonwealth Anti-Discrimination Laws: Discussion Paper*, September 2011, p. 21.

7 The Hon Mark Dreyfus QC MP, *House of Representatives Hansard*, 21 March 2013, p. 2893.

8 The existing Commonwealth Acts are: the *Racial Discrimination Act 1975*; the *Sex Discrimination Act 1984*; the *Disability Discrimination Act 1992*; the *Age Discrimination Act 2004*; and the *Australian Human Rights Commission Act 1986*.

9 Attorney-General's Department, *Australia's Human Rights Framework*, <http://www.ag.gov.au/RightsAndProtections/HumanRights/HumanRightsFramework/Pages/default.aspx> (accessed 26 March 2013).

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*Exposure Draft legislation and recent inquiry by this committee*

1.8 Following a discussion paper and consultation process, the government released a draft consolidation bill on 20 November 2012: the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 (Exposure Draft).<sup>10</sup> One of the proposals contained in the Exposure Draft was the introduction of protection against discrimination on the grounds of sexual orientation and gender identity.

1.9 This committee conducted an inquiry into the Exposure Draft, and tabled its report in February 2013.<sup>11</sup> The report included 12 targeted recommendations regarding various aspects of the Bill, and also directed the Attorney-General's Department (Department) to consider additional issues raised by submitters during the formulation of the final legislation before its introduction into the parliament.<sup>12</sup>

1.10 Two of the committee's recommendations related to the proposed introduction of anti-discrimination protection on the basis of gender identity. The committee recommended, first, that the definition of 'gender identity' in the Exposure Draft be amended to read:

*gender identity* means the gender-related identity, appearance or mannerisms or other gender-related characteristics of an individual (whether by way of medical intervention or not), with or without regard to the individual's designated sex at birth, and includes transsexualism and transgenderism.<sup>13</sup>

1.11 The committee also recommended that 'intersex status' be included as a stand-alone protected attribute (rather than being encompassed within the concept of 'gender identity'), with the term 'intersex' being defined as follows:

*intersex* 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

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10 The Hon Nicola Roxon MP, Attorney-General, and Senator the Hon Penny Wong, Minister for Finance and Deregulation, 'Clearer, simpler, stronger anti-discrimination laws', Joint Media Release, 20 November 2012, <http://pandora.nla.gov.au/pan/132822/20130204-0704/www.attorneygeneral.gov.au/Media-releases/Pages/2012/Fourth%20Quarter/20November2012-Clearersimplerstrongerantidiscriminationlaws.html> (accessed 25 March 2013).

11 Senate Legal and Constitutional Affairs Legislation Committee, *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012*, 21 February 2013.

12 Senate Legal and Constitutional Affairs Legislation Committee, *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012*, 21 February 2013, pp ix-x and 99.

13 Senate Legal and Constitutional Affairs Legislation Committee, *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012*, 21 February 2013, p. 85.

(c) neither female nor male.<sup>14</sup>

*Announcement to delay the consolidation project and introduce the Bill*

1.12 On 20 March 2013, the Attorney-General announced that the introduction of the final version of the consolidation bill had been delayed to allow for further consideration to be given to the final drafting of the legislation.<sup>15</sup> The Attorney-General subsequently stated:

[The consolidation] is a worthy but complex project, and it is important that we get it right. That means taking the time to carefully consider the many recommendations put forward by the committee and submitters to the inquiry, developing a comprehensive government response, drafting a final bill and fully debating it in this place.<sup>16</sup>

1.13 The Attorney-General explained further that, while the broader consolidation project was being put on hold, the government had decided to proceed in initiating protection against discrimination on the basis of sexual orientation and gender identity, through the introduction of separate and specific legislation:

[Such a] reform is long overdue and too important to be delayed any further. The Government will proceed immediately with the new protection while detailed work continues on consolidating Australia's anti-discrimination laws.<sup>17</sup>

***2008 committee inquiry into the Sex Discrimination Act 1984***

1.14 In 2008, the Senate Standing Committee on Legal and Constitutional Affairs conducted an inquiry into the effectiveness of the SDA in eliminating discrimination and promoting gender equality. The committee's final report, released in December 2008, made 43 recommendations, including over 25 recommendations advocating amendments to the SDA.<sup>18</sup>

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14 Senate Legal and Constitutional Affairs Legislation Committee, *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012*, 21 February 2013, p. 86.

15 The Hon Mark Dreyfus QC MP, Attorney-General, and Senator the Hon Penny Wong, Minister for Finance and Deregulation, 'New anti-discrimination laws to cover sexual orientation, gender identity and intersex status', Media Release, 20 March 2013, <http://www.attorneygeneral.gov.au/Mediareleases/Pages/2013/First%20quarter/20March2013-Newantidiscriminationlawstocoversexualorientationgenderidentityandintersexstatus.aspx> (accessed 26 March 2013).

16 The Hon Mark Dreyfus QC MP, *House of Representatives Hansard*, 21 March 2013, p. 2893.

17 The Hon Mark Dreyfus QC MP, Attorney-General, and Senator the Hon Penny Wong, Minister for Finance and Deregulation, 'New anti-discrimination laws to cover sexual orientation, gender identity and intersex status', Media Release, 20 March 2013.

18 Senate Standing Committee on Legal and Constitutional Affairs, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality*, December 2008, pp xiii-xviii.

1.15 The government subsequently introduced legislation to implement eight recommendations concerned directly with sex discrimination.<sup>19</sup> The remaining recommendations were noted by the government, with the government response stating that '[t]hose recommendations with wider implications for federal anti-discrimination laws will be considered by the Government in light of its broader commitment to streamline and harmonise Commonwealth anti-discrimination legislation'.<sup>20</sup>

### **Conduct of the inquiry**

1.16 The committee advertised its inquiry in *The Australian* on 27 March 2013. Details of the inquiry, including links to the Bill and associated documents, were placed on the committee's website at [www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon). The committee also wrote to 83 organisations and individuals, inviting submissions by 26 April 2013. Submissions continued to be accepted after that date.

1.17 The committee received 128 submissions to the inquiry. For administrative purposes, 38 of these submissions were categorised as 'form letters' (or variations of form letters).<sup>21</sup> All of the 'form letter' submissions expressed opposition to the Bill.

1.18 The committee published examples of each type of form letter on the committee's website, along with all other public submissions received from organisations and individuals. The submissions published on the committee's website are listed at Appendix 1 to this report.

1.19 The committee did not hold any public hearings for this inquiry due to its detailed examination and consideration of broad-ranging anti-discrimination policy matters during the recent inquiry into the Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012.

### **Acknowledgement**

1.20 The committee thanks those organisations and individuals who made submissions.

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19 Senate Legal and Constitutional Affairs Legislation Committee, *Sex and Age Discrimination Legislation Amendment Bill 2010*, March 2011, p. 1.

20 Government Response, Senate Standing Committee on Legal and Constitutional Affairs, *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality*, May 2010, p. 1.

21 A submission was categorised as a form letter where it contained a specific, or easily identifiable, template of words. A submission was included as a variation to a particular form letter where the template of words was modified but could still be identified as having derived from a form letter, or where the template was supplemented with additional material.