

MINORITY REPORT

BY COALITION SENATORS

1.1 Coalition senators are broadly supportive of the provisions of the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013. They acknowledge that discrimination on the grounds of sexuality or sexual orientation runs counter to the essential tolerance and inclusiveness which characterise Australian society today. They also acknowledge that there are conspicuous gaps in the present array of federal human rights legislation in dealing with the sometimes complex issue of a person's sexual identity. Broadly speaking, the present bill addresses those gaps.

1.2 However, Coalition senators cannot support the committee majority's Recommendation 1 in the report. Recommendation 1 proposes that religious organisations not be entitled to an exemption in respect of sexual orientation, gender identity and intersex status in connection with the provision of Commonwealth-funded aged care services. In the opinion of Coalition senators, the removal of such an exemption could compromise the capacity of some religious organisations to operate aged care facilities in accordance with the principles which underpin and define their existence.

1.3 It is acknowledged that Commonwealth-funded religious organisations presently providing aged care took a variety of positions during this inquiry on the suitability of this exemption, and that some such organisations felt no need for the protection such an exemption might afford them. Equally, other religious organisations argue for the maintenance of this exemption in order to preserve the ethos and values of their faith systems.

1.4 The Australian Christian Lobby argued for the exemption in these terms:

[R]eligious organisations do not seek to discriminate by exercising their freedom of religion. Rather they seek to employ staff most able to contribute to the religious ethos of the organisation, or to act consistently with their aims as an organisation and with their beliefs as an individual.¹

1.5 The Catholic Women's League Australia points out that:

In seeking to protect a range of human rights, it is essential that anti-discrimination laws also respect and protect the fundamental right to manifest one's religion, beliefs and conscientious convictions in the public square.²

1 Australian Christian Lobby, *Submission 26*, p. 1.

2 Catholic Women's League Australia, *Submission 15*, p. 3.

1.6 They go on to quote Catholic Health Australia as follows:

Catholic hospitals and aged care services today care for any person of any faith or none, race, gender, or sexual orientation who seeks services to be provided to them in a way that is consistent with Catholic teaching. Catholic hospitals and aged care services in this regard do not discriminate against anyone, and do not need protection of blanket exceptions from discrimination laws. That said, Catholic hospitals and aged care services do not provide services that are inconsistent with Catholic teaching. To not provide a service on grounds of Catholic teaching is not to discriminate, rather it is a simple limiting of services that Catholic organisations chose to offer as fulfilment of their religious belief.³

1.7 Coalition senators do not believe the committee majority has adequately addressed the operational concerns of some religious bodies operating faith-centred services. Further, it is hard to understand why such operational considerations would be taken into account and exempted under legislation in respect of the operation of educational or health facilities, but not in relation to aged care facilities, where nearly identical concerns arise.

1.8 This legislation presents an opportunity for multipartisan reform of the laws as they affect discrimination against lesbian, gay, bisexual, transgender and intersex people. The inclusion of Recommendation 1 in the majority report, however, fails to acknowledge the strong differences of view presented to the committee on the question of aged care services, and thus undermines the opportunity for a multipartisan approach.

1.9 Accordingly, Coalition senators recommend as follows:

Recommendation

1.10 That the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 stand as presented, i.e. that it continue to provide that religious exemptions in section 37 of the *Sex Discrimination Act 1984* apply in respect of sexual orientation, gender identity and intersex status in connection with the provision of Commonwealth-funded aged care services.

Senator Gary Humphries
Deputy Chair