

## **ADDITIONAL COMMENTS BY THE AUSTRALIAN GREENS**

1.1 The Australian Greens believe in equality for all. Equality is about ensuring that individuals and groups are treated fairly and equally so that everyone can access opportunities and essential standards of living, such as access to adequate health, education and housing, to participate fully in society and live life to their full potential. We believe that this is not only right but it is good for all of us.

1.2 Equality means treating all people with dignity and respect and not distinguishing or treating people unfavourably because of their background or personal characteristics such as sex, race, age, sexual orientation, disability, religion, housing or social status.

1.3 And so, having long championed protection from discrimination on the basis of a person's sexual orientation, gender identity and intersex status, as well as protections against discrimination for same-sex de facto couples, the Australian Greens welcome the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 (the Bill), for establishing those protections.

1.4 However, this Bill is equally significant in what it fails to protect, and we consider that the Bill should abolish the provisions of the *Sex Discrimination Act 1984* (Sex Discrimination Act) that exempt religious bodies from anti-discrimination law.

1.5 Further, we believe the new exemption, stating it is lawful to request information or keep records that allows an individual only to be identified as 'male' or 'female', should be subject to a sunset clause after 3 years.

### **Religious exemptions**

1.6 Freedom of religion is an important human right, but religious bodies should not have a blanket exemption from anti-discrimination law. The present sections 37 and 38 of the Sex Discrimination Act provide broad exemptions from anti-discrimination law for religious bodies, and educational institutions set up for religious purposes, respectively. These exemptions offend against the principle that people should be treated equally, with dignity and respect, so that they can access opportunities and services such as health, education and housing.

1.7 Submissions to this inquiry raised issues about the practical impact of these exemptions. The Public Interest Law Clearing House's submission noted they mean a religious hospital can refuse to employ a gay doctor, a religious school can refuse to enrol a bisexual student or hire a lesbian administrator and a faith-based homelessness shelter can refuse to accept a transgender resident. The submission of Dr Tiffany Jones cited research showing there are students with protected attributes in every education system in Australia, including religious educational institutions, and that these students continue to experience homophobic abuse. Systemic discrimination makes it much harder for a tolerant, rights-oriented culture to flourish. The religious

exemptions in the Sex Discrimination Act do not strike the right balance between freedom of religion and protection from arbitrary discrimination.

### **Recommendation 1**

**1.8 The Bill should remove the exemptions in the *Sex Discrimination Act 1984* from anti-discrimination law for religious bodies, and religious educational institutions.**

### **Exemption for data collection**

1.9 The Australian Greens oppose Item 60 of Schedule 1, allowing a request for information, or the keeping of records, to require that a person be identified as either male or female. Submissions to this inquiry noted the difficulties people face in employment, housing, credit and welfare matters because the associated requests for information, and records kept, do not accommodate their sexual identity.

1.10 The Australian Human Rights Commission's 2009 report about the legal recognition of sex in documents and government records recommended that where possible, sex or gender should be removed from government forms and documents.<sup>1</sup> A further recommendation, that the federal government should develop national guidelines concerning the collection of sex and gender information from individuals, has been implemented, and we understand that the draft 'Australian Government Guidelines on the Recognition of Sex and Gender' will be adopted, commencing from 1 July 2013, envisaging that all agencies will progressively align their business practices accordingly by 1 July 2016. Accordingly, instead of an enduring exemption for all organisations who wish to require any individual to identify as male or female, the Australian Greens would suggest that this exemption be subject to a sunset clause, ending on 30 June 2016.

### **Recommendation 2**

**1.11 Item 60 of Schedule 1, introducing an enduring exemption allowing requests or maintenance of information to require that a person be identified as either male or female, should be subject to a sunset clause, ending on 30 June 2016.**

**Senator Penny Wright  
Australian Greens**

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1 See: <http://www.humanrights.gov.au/sex-files-legal-recognition-concluding-paper-sex-and-gender-2009>.