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Draft Principles to Inform Federal Anti-Discrimination Laws

National Roundtable on Discrimination on the Basis of Sexual Orientation and Gender Identity

The Gender Centre Inc.

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On Friday, 28th October 2012, representatives of several organisations and N.G.O.s active in the amelioration of legal and social rights for various L.G.B.T.I.Q. communities met at the Australian Human Rights Centre, University of N.S.W., to discuss basic principles of human rights for these communities and to draft a set of recommendations to be passed on to the Federal Government to inform its current project to improve the Federal Anti-Discrimination Act and to assist the government's efforts to remedy the faults in the current Act.

Although time was limited, some progress was made and the document below was circulated for general comment.

[Circulated Document, December 2012]

1. Protected attributes

1.1 Participants asserted the need to provide anti-discrimination protections to everyone within the L.G.B.T.I.Q. community, including intersex people. This included the following commentary on identified attributes:

- **Sexual Orientation** – It was noted that current state definitions for sexual orientation were too prescriptive (homosexuality, bisexuality, heterosexuality) and do not currently reflect what is understood by the term sexual orientation. Participants also drew attention to the lack of protection for people who were 'asexual'. Participants noted the bi-partisan support for sexual orientation to be included within the bill.
- **Gender Identity (and Gender Expression/Presentation)** – Participants affirmed the scope of protections embodied in the proposed Tasmanian anti-discrimination Bill's definition of gender identity, which encompasses appearance and mannerisms, rather than identity alone. Participants noted that the coalition's published position at the last election did not include public support for 'gender identity' and the need for broad education on the issues with Liberal and National M.P.s.
- **Relationship status** – Participants noted their support for the Senate Inquiry into the effectiveness of the Sex Discrimination Act, specifically Recommendation 4 which sought to include same-sex relationships within the proposed definition. It was noted that the Coalition supported this during the previous election campaign.
- **Intersex** – Participants strongly supported the inclusion of protection for people experiencing intersex. The definition included within the Tasmanian anti-discrimination bill was noted for support in a Federal bill.
- **Disability (H.I.V.)** – Participants noted their support for the continued protection of people living with H.I.V. under disability discrimination laws, including protection from their status being disclosed.

1.2 Participants noted the importance of protecting individuals from discrimination on the basis of multiple personal attributes without needing to lodge multiple claims. (e.g. discrimination faced by an Asian lesbian with hearing impairment or a bisexual H.I.V. positive male cross dresser)

2. Exemptions

2.1. Participants supported the inclusion of a general limitations clause in any proposed anti-discrimination law (the proposed Act) rather than of a large number of permanent exceptions or exemptions (hereafter referred to as exemptions), particularly where these exemptions impact upon vulnerable groups such as older people or children/young people. Any general limitations clause should contain a proportionality test in keeping with international human rights law standards.

2.2. Participants highlighted their opposition to broad exemptions on the grounds of religion. Moreover, they asserted that where there is receipt of public funding, or a body is acting as an agent of government, religious exemptions should not be permitted.

2.3. Participants proposed that where religious exemptions are envisaged under the proposed Act, there should be an emphasis on the principles of openness, transparency, and the intention to rely on the exemption should be made public. This would ensure that those individuals potentially impacted by the exemption can be fully informed about the nature and extent of likely discrimination when engaging with religious organisations.

2.4. Participants asserted that exemptions, if permitted, should be of a temporary, rather than permanent, nature.

2.5. Participants noted that where exemptions are proposed, clarity is required in terms of who exactly the proposed exemptions apply to.

3. Advocacy and alliances

3.1. Participants affirmed the need to build strong alliances with other bodies who oppose exemptions (including religious organisations), as well as progressive allies and human rights experts who advocate for law reform in this area.

3.2. Participants noted the importance of trans & intersex advocates being heard by M.P.s and supported an advocacy approach that recognised the need for distinct advocacy on sex and gender diverse matters.

3.3. Participants proposed that L.G.B.T.I.Q. organisations and allies converge on Canberra in the final sitting week(s) of Federal Parliament (week commencing 26th November 2012), to lobby Members of Parliament and key Ministers directly.

4. Proposed Key Advocacy Messages

The below represent five key messages for advocacy, that will be reviewed once the exposure draft of the proposed Act has been released.

4.1. This is an overdue and welcome reform that will significantly benefit the L.G.B.T.I.Q. community.

4.2. Definitions of 'Sexual Orientation and Relationship Status' protections should be broad and inclusive.

4.3. Definitions of 'Gender Identity' should be inclusive of appearance and mannerisms or separately protected under a definition of 'gender expressions/presentation'.

4.4. Intersex people should be protected under anti-discrimination laws on the basis of their 'biological sex characteristics'.

4.5. Exemptions for religious organisations should be limited but, if permitted, provide for transparency by requiring the organisation in question to publish their intention to rely on the exemption.

4.6. Broad exemptions on the grounds of religion should be opposed, particularly where they affect young and old or otherwise vulnerable populations (i.e. the provision of schooling or aged-care services), and/or where organisations receive Government funding or act as agents on behalf of Government.

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The Gender Centre is committed to developing and providing services and activities, which enhance the ability of people with gender issues to make informed choices. We offer a wide range of services to people with gender issues, their partners, family members and friends in New South Wales. We are an accommodation service and also act as an education, support, training and referral resource centre to other organisations and service providers. The Gender Centre is committed to educating the public and service providers about the needs of people with gender issues. We specifically aim to provide a high quality service, which acknowledges human rights and ensures respect and confidentiality.