Coalition Of Activist Lesbians Australia Inc.

Submission to the
Senate Legal and Constitutional Affairs Committee

Re Exposure Draft of *Human Rights and Anti-Discrimination Bill 2012*

December 2012

COALITION OF ACTIVIST LESBIANS AUSTRALIA INC. (COAL)

A United Nations Accredited Non-Government Organisation

Working for the human rights and participation of lesbian women.

COAL aspires to being part of Australian society where

respect for differences,

the rule of law,

the dignity of all humans,

and the widest possible human rights observances are shared equally by all.

1. **The Coalition of Activist Lesbians Australia Inc. (COAL)** was formed in 1994 as a human rights organisation to work towards full participation of lesbian women, and ending all forms of discrimination against lesbians. COAL embraces the guiding principles of the United Nations human rights conventions generally and the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) in particular. COAL is a national community organisation that advocates on behalf of Australian lesbians to all levels of government as well as other sectors of society. We work to identify and promote positive approaches in human rights, social inclusion, youth affairs, health, housing, workforce issues, ageing issues, education, anti-discrimination/equal opportunity, social justice and other areas. These core interests have been addressed through research papers, submissions to governments and others, training and education, community publications, action research, personal narratives, art and other cultural works, conference presentations, seminar participation, community education and participation in consultative, advisory and management structures. It is necessary for lesbian women to be able to be represented by autonomous lesbian organisations as too often representations through Gay Lesbian Bisexual Transgender Intersex (GLBTI) channels are insufficient and confusing for lesbian women and even the general population.

2. **COAL supports** in principle the *Human Rights and Anti-Discrimination Bill 2012* (HRAD Bill) with some recommended changes as below, and further recommends that it be passed in this parliamentary term. It is important that this Bill not be held over until after the next election. Despite support from major political parties, delay may put at risk elements of the Bill that are essential to the human rights and full inclusion of lesbians.

3. **COAL supports** the inclusion of sexual orientation in the Bill as this best embraces lesbian women's identity and community .However, as regards lesbians been seen part of 'sexual orientation' and GLBTI discussions and community generally we ask that serious and respectful consideration be given of the issues discussed below at paragraphs 4, 6, 7 and 8.

4. **COAL contends** that lesbian women suffer double detriments – as women and as lesbians – as has been established in anti-discrimination reports etc. COAL therefore supports the protection of lesbians from discrimination on the basis of being a distinct community. Thus lesbian women's experiences of discrimination differ from those of homosexual men and bisexual, trans or intersex persons. Therefore, it is necessary to take into account the need for lesbian groups to lawfully assemble, convene and conduct their business as single-sex organisations.

5. **COAL recommends** that the single inherent requirement/genuine occupational qualifications exception, as currently exists for religious organisations for example, be extended to cover other areas besides the workplace, such as lesbian-specific/single-sex community organisations. Religious organisations are allowed through current state/territory and commonwealth regimes to discriminate on the basis of their belief systems and religious practices. An inherent requirement rationale based on lesbian organisations' belief systems * and practices should be available in both employment and all other areas including membership of community organisations. Lesbian organisations should be enabled to apply an inherent requirement rationale based on their specific belief systems and practices concerning single-sex operation and activities. * Reference to belief systems here includes dealing with past discriminations and prejudice, current lifestyles and connections with family-of-association (rather than biological-based).

6. **COAL recommends** that as regards lesbian community groups the inherent requirement should be based on prior involvement with lesbian community, positive identification as a lesbian, recognition by other members of the group and shared understandings of lesbians' and women's social, political and cultural status. The fuller enjoyment of human rights for Australian lesbian women will be possible only when lesbian groups can operate without detriment or discrimination as single-sex and limited gender entities.

7. **COAL recommends** that sexual orientation and gender identity be defined as separate identities, not as a conflation of both, and that care be taken to avoid misapplication of these terms. COAL believes that that the conflation of sexual orientation with gender identity is problematic for lesbian women as one refers to the enduring nature of the romantic and sexual expression of a person's sexuality, whereas the other refers to a person's identification with a socially accepted gender role or category. Sexual orientation and gender identity are distinct things and this Bill should reflect this distinction without equivocation. The Bill should reflect that lesbians are respected and acknowledged as fully autonomous and responsible women and not merely the female counterpart of homosexual men or bisexual or trans or intersex persons.

8. **COAL recognises** that the diversity of interests and groups in 21st century Australian society may occasionally give rise to contradictions or competing rights**. COAL further recommends** that efforts should be made to ensure through statute law, policy and practices that groups such as lesbian women are not disregarded or even discarded through high profile lobbying of other groups, and that ways of peaceful co-existence be ensured through human rights and anti-discrimination provisions.

9. **COAL recommends** that religious affiliation should not be an excuse or reason to claim exclusion from the terms of the HRAD Bill. Women predominate in the services, e.g. community services, employment services, schools, child care centres, aged care services, as workers, voluntary workers, parents and end users or clients. Lesbians, as women, should be assured that their ability to access the services of, or be employed by religious organisations, will be protected by law. Lesbians, as women, are over-represented as workers in human services and as such deserve no less, and no more than equal access to and participation as service clients. Religious organisations and faith-based services must respect the law of the land and not be allowed to act partially or diffidently towards other groups through the provision of exemptions. Discrimination and prejudices on the basis of a woman's lesbian identity are clearly out of step with 21st century multi-dimensional society.

10. **COAL recommends** that all human services (including education) and businesses, regardless of religious affiliation, must comply with the terms of the Bill, without any exclusions. As regards aged care, the Australian population is an ageing population with the baby boomers entering their retirement years. The same is true of the lesbian community. However, because we are both lesbian and WOMEN, lesbians form a high proportion of those living close to the poverty line (often as working poor) or actually in poverty. As women, lesbians generally have smaller superannuation funds for retirement. Lesbians, as women who it is known have longer lifespans than males, will be more likely to call on the services of aged care facilities. Additionally lesbians often lack family supports to call on for health, ageing and other challenges. It is imperative that lesbians are assured their human rights will be respected and that they can live their lives free from discrimination.

11. **COAL recommends** that all services, regardless of religious affiliation, and which receive government funding and/or subsidies, should be prevented from discriminating against lesbian women when delivering services to the community. Lesbians as women who may be differently-abled, have mental health issues, are homeless, parents, or vulnerable and at risk

in any way, should be protected by the full extent of the law. Lesbians, as citizens and tax payers, have a right to gain support from services that are government funded.

12. **COAL recommends** that, in the event that religious organisations are granted "permanent exceptions" from discrimination laws, such religious organisations be legally obliged to declare which communities/groups they exclude from their service provision and employment in all their advertising, brochures, websites and employment advertising and position descriptions. This enforcement may at least serve to protect lesbian women from direct discrimination within those services.

13. **COAL recommends that**, further to the Bill, a Commissioner be appointed who is responsible for sexual orientation and gender identity, to supplement existing Commissioners in the areas of race and sex, and that, that role be legislatively included in the job description. COAL further recommends that the role of this Commissioner include giving equitable and just attention to autonomous lesbian groups and those lesbian women who may be represented by same rather than subsuming them under the GLBTI rubric.

14. **COAL recommends** that intersectional discrimination be recognised as a protected attribute and be incorporated within the remit of the Human Rights Commission. Lesbians continue to be discriminated against by the intersections of sex, sexual orientation, race, mental and physical ability, financial status, and social status, to name a few. COAL further recommends that the Bill include provision for recognition of groups with special requirements relevant to their specific needs and that focal reference be given to that group's articulation of their specific needs.

15. **COAL believes**, as a lesbian organisation, it can only speak on behalf of members of the lesbian community and trusts that other sexual diversity and GLBTI organisations and communities will be vocal on their own behalf. It is essential that lesbian voices are heard directly, not supressed through the dominance of other sexual minorities or presumed or reinterpreted by other/generalist organisations and those with decision making powers. We trust that this will be respected with reference to consultations for and further drafting of this Bill.

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