National LGBTI Health Alliance
lesbian, gay, bisexual, transgender, intersex and other
sexuality, sex and gender diverse people and communities
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Ms J Dennett
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Parliament House
CANBERRA ACT 2600

BY EMAIL: legcon.sen@aph.gov.au

Dear Secretary

Exposure Draft, *Human Rights and Anti-Discrimination Bill 2012* (Cwth)

Thank you for the opportunity for comment on the exposure draft of the above proposed Bill. We welcome the opportunity to make input on the ways in which the health status of lesbian, gay, bisexual, transgender and intersex Australians might be improved by such legislation.

The National LGBTI Health Alliance (the Alliance) is the national peak health organisation for a range of organisations and individuals from across Australia that work together to improve the health and well-being of lesbian, gay, bisexual, trans/transgender, intersex and other sexuality, sex and gender diverse (LGBTI) people and communities. Formed in 2007, the Alliance includes the major providers of services for LGBTI people in Australia, with 70 Member Organisations drawn from each State and Territory. The Alliance provides a representative national voice to: develop policy and support LGBTI health issues; seek increased commitment to services for LGBTI people; develop the capacities of LGBTI organisations; and support evidence-based decision-making through improved data collection covering sexuality, sex and gender identity.

Comments from the Alliance are restricted to those matters which are of immediate concern to our Members. The views of the Alliance are particularly informed by the need for additional legal measures at the national level which enhance the health and wellbeing of LGBTI people in Australia. The research shows that stigma and discrimination contribute to adverse health outcomes for LGBTI people, notably though not solely in the areas of anxiety, depression and suicidality. Additional protections provide further measures to minimize those adverse health outcomes.

Accordingly, we strongly support the bill and recommend it be passed in the current parliamentary terms. In particular we will focus our comments on those areas relating to the inclusion of sexual orientation and gender identity to the list of protected attributes (section 17). We commend the inclusion of these attributes in the exposure draft. There are, however, a number of areas where these protected attributes could be strengthened or clarified – thus enhancing the objectives of the possible Bill. A number of these matters are considered in more detail in the Alliance's submission of January 2012 to the Department of the Attorney-General (www.lgbtihealth/org.au/ourwork), which we have attached to this submission.

- The exposure draft's coverage of sexual orientation, relationship status and family responsibility provides valuable additional protection. We also note that the Bill allows for 'intersectional' discrimination to be considered within the one complaint looking at multiple attributes rather than requiring multiple complaints to be taken. We support these inclusions and recommend the Committee specifically note their support for these definitions in their report.

- The definition of gender identity is inadequate. We welcome the multi-partisan support for the inclusion of gender identity however feel that the current proposed draft does not necessarily achieve the objectives of the Bill. Members of the Alliance believe that the definition recently passed by the Tasmanian lower house, in their *Anti-Discrimination Amendment Bill 2012* is a significant improvement. We note this definition has received multi-partisan support in Tasmania. One aspect of that improvement is the better inclusion of gender expression/presentation.

- We applaud the Governments stated objective to include protections for intersex people, as stated in the Explantory Notes relating to the current definition of gender identity. Protections being offered for intersex people are an essential part of these proposed changes, but need to be removed from the gender identity provisions and placed as a separate protected attribute. In this regard the Alliance supports the submission of one of our Member Organisations, *Organisation Intersex International Australia*. Specifically we support the inclusion of the definition of 'Intersex' as a protected attribute contained within the Tasmanian *Anti-Discrimination Amendment Bill 2012* and note that Intersex should not be included in exemptions for faith-based organisations.

- As the Alliance argued in January 2012, exemptions in any Bill should be narrow and should include a requirement for transparency on the part of those who are seeking to implement discriminatory practices, whether in the delivery of goods and services or in employment.

- The Alliance welcomes the limitations on religious exemptions with regard to aged care services. This is an important protection for older LGBTI people who may be vulnerable at that stage of their lives, many of whom would have experienced stigma and lived during a period when homosexuality was cruelly stigmatized and sex between men was a criminal offence. Health service delivery in Australia is a universal good, and the provisions in the exposure draft will provide helpful relief to older LGBTI people when their overall health and well-being is beginning to decline. Admission to an aged care facility can be stressful in the best of circumstances, and thus this limit on exemptions is welcome. We recommend the Committee specifically support the inclusion of this protection on their report.

- There are, however, other vulnerable groups of LGBTI people when it comes to service delivery, that deserve equal treatment to that of aged care. This is particularly true of people receiving similar disabilities services in their home, for those living in marginal housing and for those people who are homeless seeking refuge. The Alliance also believes that service deliver relating to mental health and suicide, young people, and school students in generalshould not be discriminated against in the provision of Government-funded services. . The research shows there is no question that permitting continued discrimination on the grounds of sexual orientation, gender identity or sex characteristics would be seriously detrimental to health status and health outcomes.

- As a general principle the Alliance does not support policies or legislation which permit discrimination in employment practices, except where adherence to a particular faith or religious belief is an inherent requirement of a position. We note that the continued discrimination of employees in Aged care facilities is likely to hinder the creation of inclusive service practices and a welcoming environment.

- We would ask the Committee to consider expanding the current restrictions on the exceptions/exemptions to be along the lines of that discussed in the Governments Regulatory Impact Statement for 'Option 3' discussing Religious Exemptions, where no government funded *services* are permitted to discriminate and where discrimination in employment requires service providers to register their intention with the Australian Human Rights Commission or other such form of transparency.

- The Alliance notes that the Government's intention is to ensure all Aged Care funded organisations including those associated to a faith-based provider do not discriminate in their practices. In the proposed draft, the limitation to enact this intention is found under clause 33 (3) with the exemption for religious bodies and educational institutions. We draw the committee's attention however to the following potential 'loopholes' where discrimination by a faithbased provider could arguably occur under another section of the bill. We recommend that the limitation in clause 33 (3) be applied as its own clause giving effect across the entirety of division 4:

  - Clause 34 is a broad exemption for clubs and member-based associations. It is unclear if an aged care service is delivered by a member-based association if discrimination will continue to be permitted.
  - Clause 43 is an exception for employment to perform domestic duties. It is unclear if employment is broad enough to include contracted arrangements and if the co-contribution (or fee for service) in aged care domestic assistance would enable a provider to claim exemption under this clause.
  - Section 6 definition of "Commonwealth funded aged care". Home and Community Care (HACC) services are envisaged to continue until 2015 when they become part of the Home Support program. Currently neither of these services are listed in the definitions, although may be provided for by regulation under sub-clause (c). We remain concerned however that Home Support / HACC should be explicitly included as it currently falls outside the Aged Care Act 1997 and is a significant portion of services provided in the aged care sector.

Finally, the Alliance has noted in the media a range of concerns about the legislation which have no direct relevance to the addition of sexual orientation or gender identity to the list of protected attributes. We do not feel we are specifically qualified to comment on these technical matters. However, we urge the Senate Committee to support the additional protected attributes and recommend the Bill be passed, with whatever amendments the Committee feels necessary.

The Alliance thanks the Senate Committee for the opportunity to comment on the exposure draft for this important Bill. Feel free to contact me if your officers have any queries concerning our submission.

Yours sincerely

Warren Talbot
GENERAL MANAGER