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From: Kendall Lovett and Mannie De Saxe,
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SUBMISSION to Discussion Paper:-
CONSOLIDATION OF COMMONWEALTH ANTI-DISCRIMINATION LAWS.

We are pleased that the complexity of these laws is being addressed and the five listed Acts consolidated into a single act for ease of reference and interpretation and as a key component of Australia's Human Rights Framework. Australia does not have a Bill of Rights and at least this may well bring a better understanding to its citizens' rights and obligations in anti-discrimination law.

We have noted the various questions asked about different aspects of anti-discrimination law listed in the Discussion Paper's preliminary introduction on how they should be addressed and why they need to be answered. We intend to address only those relating to the section on exceptions and exemptions in the legislation covered.

Religious Exemptions

We urge the Australian Government to examine its reasons for exempting religious institutions from complying with certain parts of any of its anti-discrimination legislation. Australia has become multi-cultural, multi-lingual and multi-religions. For instance, one is not born religious. One is taught religious beliefs. There are now here in Australia a great many religions with countless contrary beliefs, none of which can be said to be right --only different. So why should a secular authority like the Australian Government accept their differences yet exempt all of them from complying with the laws it makes to protect those of its citizens with acceptable human sexual difference?

The Government should also note that its continued practice of exempting religious institutions from paying income and business taxes has a bankrupting influence on its own treasury considering that some religious groups are said to be "the hidden giants of the economy. In an era of corporate regulation, they are virtually unaccountable." (*Charity Inc*, Business Review Weekly, page 45, 24-30 March 2005.) Surely that is financial discrimination against individual Australian citizens and business houses? If the government treats them all as charities then there needs to be a financial limit which when reached that charity should be required to provide an annual income to be assessed. After all, those of us who receive an age pension are required to submit any income changes on a regular basis to Centrelink in case a limit has been reached and our fortnightly pension reduced. So why is there no accountability for religious charities?

Limited protection for difference

The Australian Government offers only limited protection to a considerable number of its citizens because of difference from some other citizens. How acceptable is this in a democracy? Lesbians, gay men and all others referred to as in same-sex relationships is the

group the government allows the religious institutions to discriminate against because the group is not heteronormal sexually even though the Government has accepted the group as equal to heteronormative relationships? That's limited protection for a large group of its citizens due to the Government's religious exemption policy.

The power the government of the day provides to the religious lobby against the wishes of an approved group of its citizens is well-illustrated here in the State of Victoria. The previous state government passed legislation to temper in part the religious exemption clauses in its Equal Opportunity legislation with what it termed an "*inherent requirements test*." It was due to take effect halfway through the following year of 2011 to give religious organisations time to become conversant with it. However, in between there was a statewide general election won narrowly by the Opposition. Without warning the new government suspended parliamentary rules and passed amending legislation which removed the test.

Inherent requirements test

We think that those working on the consolidation of federal anti-discrimination processes should consult the current shadow attorney-general of Victoria for the information on the *inherent requirements test* which required religious organisations to justify employment discrimination. The qualifying attribute was to be the inherent requirement of the job not the beliefs or activities, sexual orientation, gender identity, lawful sexual activity, marital status and parental status of the job applicant. Nevertheless, we are not suggesting that the requirements test balances religious freedom with the fundamental human rights of everyone to equality and protection against discrimination. It is still only a limited protection. The religious exemption does not recognise that in at least the major religious institutions there is existing prejudice together with entrenched and systemic discrimination against difference. Therefore, the Government itself is a party to the discrimination it is endeavouring to prevent.

Exemption is religion's secret weapon

By providing religious exemption the government is in fact sanctioning and legitimising false claims made against lesbian, gay, bi, transgender and intersex (lgbti) people by the teachings of the major religions. Religious exemption allows harassment and ostracism to flourish. Religious exemption encourages the growth of prejudice. Religious exemption promotes hate of difference because the religious fundamentalists are led to believe they have the right to denigrate the lifestyle of lgbti people. Why is it that in our courts those accused of assault and murder offer a defence of "*gay panic*" for their actions very often? It is more likely such violent actions against gay people are incited by the utterances of fundamentalists and others ratified by *religious exemption* which excludes them from complying with anti-discrimination against lgbti people.

Homophobic harassment in schools and in aged care establishments continues much as it always has despite the 2008 fundamental changes the Australian Government made to more than eighty-four Commonwealth laws removing discrimination against same-sex couples and the children of same-sex relationships. Bringing equality for same-sex relationships with heterosexual relationships also meant that the change to one of the laws provided same-sex couples with the status of de facto, enabling Centrelink to force any such of its clients, out of the closet and on to the lower interdependent pension payment. This may have seemed fair but in reality they had been forced to hide their relationship for most of their adult life due to harassment, ostracism and fear of physical assault. A great many of them as aged pensioners found that their contemporaries were not prepared to accept them any more than they themselves were prepared for their new de facto status and the government's interdependency category. Sadly, in some cases on the death of a lifelong partner, ostracism exacerbates loneliness for the remaining same-sex partner. The trouble too, was that no attempt had been

made to educate and provide cultural training for carers or service workers. The same could be said for school children and young people especially in religious schools.

Probably, the most hurtful and the most detestable consequence of ostracism, harassment, bullying and physical assault, which are all endemic within the discriminatory area of religious dogma, is suicide. To our knowledge there have been no specific studies on suicide attempts by lgbti seniors here in Australia, nor any linking religious dogma to suicide but there has been at least one study on suicide attempts by same-sex attracted young women and young men up to 30 years of age with an average age of 21.

A national study presented at the *Suicide Prevention Australia* national conference revealed the following figures of those who had attempted suicide:-

Gay male: 20.8%; heterosexual male: 5.4%; bi/undecided: 29.4%;

Lesbian female: 28%; heterosexual female: 8.3%; bi/undecided female: 34.9%.

We have every reason to believe that these statistics would closely resemble those in a study of lgbti seniors who were in religious, private or government aged care facilities or local government community home care and who had lost a lifelong same-sex relationship partner.

Under the heading, Emotional well-being, in the study presented at the *Suicide Prevention Australia* national conference, it commented that “considering the overwhelming hardships same-sex attracted youth are facing, the fact remains that over half surveyed felt positive about their sexuality. This highlights that there is nothing intrinsically negative about being attracted to people of the same sex, rather it is society’s attitudes towards homosexuality (and lesbianism) that lead to many negative experiences.” Study source: Australian Research Centre in Sex, Health and Society (ARCSHS), Melbourne.

Conclusion

For us the obvious solution to the problem the Government has created for itself and to the detriment of its lesbian, gay, bi, transgender and intersex communities is to 1) withdraw its religious exemption from all its anti-discrimination laws; and 2) immediately add a statutory unit about the need to understand and apply meaning to anti-discrimination law in practice in all teaching material, using for instance *how to accept, to live with and to work with culturally different same-sex attracted people without demeaning them* as an example of the practice of the law. Such must apply to all primary, secondary and higher education institutions –government, private and religious as well as including those offering short courses and adult education. 3) If 1 and 2 prove too difficult, either in part or altogether, then we urge the Government to provide sufficient funding for the building of lgbti-specific aged-care facilities in each state and territory.

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for Lesbian & Gay Solidarity (Melbourne).