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31 January 2012

Assistant Secretary  
Human Rights Policy Branch  
Attorney-General's Department  
Robert Garran Offices  
3-5 National Circuit  
BARTON ACT 2600

By e-mail: [antidiscrimination@ag.gov.au](mailto:antidiscrimination@ag.gov.au)  
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Dear Sirs

**Re: Consolidation of anti-discrimination laws**

Thank you for the opportunity to provide our views in relation to your discussion paper regarding the proposed consolidation of Commonwealth anti-discrimination laws.

In our feedback, we address the following:

1. the fundamental problem with the codification of human rights;
2. religious exemptions.

**The codification issue**

The project to consolidate existing Commonwealth anti-discrimination law into a single Act is expressed as being "a key component of Australia's Human Rights Framework".

As such, it would appear to be the beginning of an attempt to codify human rights into a written bill. The proposal is analogous to preparing a charter or bill of rights. In our

respectful submission, such a project is not only fraught with difficulty but is in fact an impossibility. Further, it is counter-productive. Let us explain.

The proposed legislation seeks to codify moral concepts, being concepts of right and wrong. It seeks to codify the protection of human dignity, also termed as "rights". Yet, we live in a diverse society where each "right" can be pitted over against another "right". Take, for example, the right to life. This would appear to be a fundamental right that is worthy of protection. Yet, at least in our present society, it is not inalienable. Take the life of an unborn child within a mother's womb, which is pitted against the right of a mother's choice. Which right is paramount, and which will be codified?

Another example, in the discrimination context, is the "right" to religious freedom. Such right would grant each person the freedom to act in a way that is consistent with their conscience and religious beliefs. Yet, conscience and religious beliefs are made up of numerous value judgments that by their very nature contain principles of right and wrong. These value judgments, to those who fall within the "wrong" category, might be considered discriminatory.

How does a just society best ensure a balance between these competing "rights"? We do not consider that codification by way of a comprehensive antidiscrimination bill, or by way of a charter of rights, achieves the intended result. An anti-discrimination charter seeks to focus on a fictional "lone rights-bearer", holding up his or her list of "human rights" or "grounds for discrimination". Yet, no such fictional person exists and no such list provides a just analysis of society's competing interests. A theoretical ground for "discrimination" subverts the reality that society consists of practical, real life situations which cannot be categorised in some abstract way.

This issue was well addressed by Peter Quinlan SC in "*The Human Rights delusion: A defence of the narrative tradition of the common law*" (2010) 10 UNDALR 69. His cogent arguments address the method by which society ought best to protect human dignity and develop a just culture. Such outcome is best achieved not by charter or code, but by building on the narrative tradition of the common law. The method has withstood the test of time, and results in an incremental development of the law in real life situations, where competing interests can be carefully considered by the courts.

Accordingly, we submit that the proposal to develop a single charter consolidating all anti-discrimination laws is unwise. Indeed, we consider that it will result in increased confusion and division within society, with conflicting "rights" pitted one against another.

### Religious exemptions

We have already touched upon the matter of religious exemption in our above example. We now address your specific questions under the category "Exceptions and Exemptions".

In response to Question 20, we oppose the introduction of a general limitations clause. Your recognition that "a general limitations clause would provide flexibility to adapt to changing standards and community expectations over time" demonstrates the inherent uncertainty in any general exemption. It would result in a nebulous concept that would be at the whim of the decision maker, and his or her interpretation of the prevailing community standard, to determine right and wrong. This would be most undesirable. We recommend maintaining specific exemptions that are clear on their terms.

In response to Question 21, we support maintaining an exception relating to inherent requirements/genuine occupational qualifications. An example is that religious based schools ought lawfully to be allowed to require, and make it a qualification for gaining employment or cause for termination of employment, that all staff confess and practice the faith taught within the school. Such practice of the faith may potentially include membership of the particular church from which the school draws its members. It may also include personal practices consistent with such faith. Such inherent requirement may also apply to other occupations where the practical functions of the job are connected with the beliefs of the employee.

In response to Question 22, we support maintaining full exemption for religious institutions in relation to discrimination on the grounds of sexual orientation and gender identity. Again these matters are fundamental to the Christian faith that we as organisation confess and maintain. As has become apparent in the recent debate over same-sex marriage, there are many within Australian society who hold to the truth of Scripture. Whilst we appreciate that not all believe this truth, those who do hold to the Scriptures maintain that homosexuality is against the clear teaching of the Bible and against God's intended will for mankind. Freedom of religion in our society includes the freedom of individuals to exercise

their religious practices according to conscience and in accordance with their doctrinal teachings. To allow otherwise would, in fact, be result in the curtailment of religious freedom. Accordingly, the full exemption for religious institutions should be maintained.

We thank you again for the opportunity to provide this feedback.

If you wish to meet with us to discuss this or any other issue, please feel free to contact ARPA on 0408 441159 or by emailing [arpa@frca.org.au](mailto:arpa@frca.org.au).

With Christian greetings,

[SIGNATURE REMOVED]

Gary Kleyn  
Chairman

[SIGNATURE REMOVED]

Warnar Spyker  
Secretary

**About ARPA:** The Association for Reformed Political Action (ARPA) is a non-partisan Christian organisation that encourages our elected representatives to maintain and promote the Christian foundations of our Australian society. ARPA provides advice and leadership on social and political issues to its grassroots supporters and encourages them to engage in the public sphere. ARPA is affiliated with the Free Reformed Churches of Australia, whose 4000+ members form 15 congregations and operate seven (7) John Calvin Schools across Australia.