



CATHOLIC WOMEN'S LEAGUE AUSTRALIA INC.

*Member Organisation of the World Union of Catholic Women's Organisations (WUCWO)
NGO in consultative (Roster) status with the Economic and Social Council of the United Nations*

Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Submission from
Catholic Women's League Australia Inc.
regarding the
***Sex Discrimination Amendment
(Sexual Orientation, Gender Identity and Intersex Status) Bill 2013***

26 April 2013

1. Thank you for the opportunity to make a submission on the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013* (SDA Bill).

Catholic Women's League Australia Inc. (CWLA) is the national peak body representing the League's seven member organisations located throughout Australia. We are a Non-Government Organisation and have consultative (Roster) status with the Economic and Social Council of the United Nations. We are also a member organisation of the World Union of Catholic Women's Organisations.

As a Christian organisation within a democratic society, we recognise our right and responsibility to express a view on matters of public policy. Amongst its aims, CWLA seeks to:

- influence legislative and administrative bodies at all levels of government in order to preserve the dignity of the human person;
- liaise with other organisations and faith communities for the respect of human rights with particular focus on women and children; and
- foster an awareness of cultural diversity.

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2. CWLA holds firmly to the view that when they are appropriately applied, anti-discrimination laws are an important means of protecting a range of human rights. In this instance, however, CWLA has serious misgivings about the inclusion of sexual orientation and gender identity as protected attributes within the *Sex Discrimination Act 1984*. One of the objects of the *Sex Discrimination Act* was 'to give effect to certain provisions of the *Convention on the Elimination of All Forms of Discrimination Against Women* and to provisions of other relevant international instruments.'¹ However neither *CEDAW* or the 'other relevant international instruments', including the *International Covenant on Civil and Political Rights*, makes any explicit reference to sexual orientation or gender identity.

More generally, sexual orientation and gender identity are not accepted categories of non-discrimination in UN treaties or other aspects of international law. The "Yogyakarta Principles" which are presented as a statement concerning the "application of international human rights law in relation to sexual orientation and gender identity" were adopted only by representatives from various non-governmental organisations and United Nations treaty monitoring committee members following a November 2006 conference held in Yogyakarta, Indonesia.

The Principles have been touted as establishing a "universal guide to human rights which affirm binding international legal standards with which all States must comply." Notwithstanding such ambitions, the Principles reflect only the views of a narrow group of self-identified "experts" and are not binding in international law: The Principles have not been negotiated nor agreed to by member states of the United Nations – indeed, not a single UN human rights treaty mentions sexual orientation and repeated attempts to pass resolutions promoting broad homosexual rights has been repeatedly rejected by UN member states.²

¹ *Sex Discrimination Act 1984*, Section 3, Objects.

http://www.austlii.edu.au/au/legis/cth/consol_act/sda1984209/s3.html

² Piero Tozzi, J.D. Six Problems with the "Yogyakarta Principles." (2007) *International Organisations Research Group: Briefing paper. No.1.*

<http://www.c-fam.org/research/iorg/briefingpapers/six-problems-with-the-yogyakarta-principles.html>



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Currently, at least half the Member States of the United Nations oppose using the phrase "sexual orientation and gender identity" even in non-binding documents let alone in hard law treaties.³

3. In seeking to protect a range of human rights, it is essential that anti-discrimination laws also respect and protect the fundamental right to manifest one's religion, beliefs and conscientious convictions in the public square.

To this end CWLA endorses sections 37 and 38 of the *SDA Bill* which continue to provide religious bodies and educational institutions with exemptions for discriminatory conduct in matters fundamental to the practice of their religion. As a signatory to international covenants⁴ which acknowledge that freedom of religion is a fundamental human right, the government is obliged to ensure that freedom of religion and the freedom to manifest religious beliefs in public is recognised and protected in law. This applies equally to participation in religious observance and to the delivery of services by religious people and agencies, in accordance with Article 18(1) of the *International Covenant on Civil and Political Rights*:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Unfortunately, the bill continues to use the language of 'exceptions' and 'exemptions' when these provisions are actually 'protections' of the right of religious freedom. As the Australian Catholic Bishops' Conference explains:

³ Ruse, Austin. Sexual Orientation and Gender Identity are Not Human Rights. Editorial Jan 31, 2013. Catholic Family and Human Rights Institute. <http://www.c-fam.org/fridayfax/volume-15/editorial-sexual-orientation-and-gender-identity-are-not-human-rights.htm>

⁴ Included here is the *International Covenant on Civil and Political Rights* (ICCPR, Article 2(1); Article 26; Article 18(1-3)).

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While the rights of everyone must be respected, including the right to be protected from unjust discrimination, this should not be pursued in a way which undermines religious freedom.

The language of exemptions and exceptions is misleading and fails to recognise that religious freedom is not a special permission to discriminate granted by government but a fundamental human right that government is obliged to protect.⁵

4. CWLA also notes that unlike the draft *Human Rights and Anti-discrimination Bill 2012* (Clause 33(3)), the *SDA Bill* does not introduce a limitation on these exceptions if the discrimination is connected with the provision of Commonwealth-funded aged care services.

This is a welcome acknowledgment that religious organisations that operate aged care centres should not be subject to government interference and direction on how the doctrine, tenets or beliefs of their religion are fulfilled and exercised. As Catholic Health Australia explain:

Catholic hospitals and aged care services today care for any person of any faith or none, race, gender, or sexual orientation who seeks services to be provided to them in a way that is consistent with Catholic teaching. Catholic hospitals and aged care services in this regard do not discriminate against anyone, and do not need protection of blanket exceptions from discrimination laws. That said, Catholic hospitals and aged care services do not provide services that are inconsistent with Catholic teaching. To not provide a service on grounds of Catholic teaching is not to discriminate, rather it is a simple limiting of services that Catholic organisations chose to offer as fulfilment of their religious belief.⁶

⁵ Australian Catholic Bishops Conference. *Response to Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper*, February 2012, Submission number 197.

⁶⁶ Catholic Health Australia. *Submission to Senate Legal and Constitutional Law Committee on Exposure Draft of Human Rights and Anti Discrimination Bill*, Dec 2012. Retrieved at <http://www.cha.org.au/advocacy/aged-care.html>



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Certainly, if Catholic health and aged care services are unable to provide services because they are not in keeping with Catholic teaching, “those whom we are unable to assist in the way they would wish will, of course, be treated with courtesy, respect and compassion as they seek alternatives.”⁷

5. CWLA also affirms the inclusion of a new exemption into subsection 40(2) which makes it clear that introducing protections against discrimination on the basis of sexual orientation does not affect the current policy position regarding same-sex marriage (Item 52). The *Explanatory Memorandum* (p.6.) explains:

The UN Human Rights Committee has stated that it does not consider a refusal to grant marriages between people of the same sex in and of itself to be a violation of the rights under the ICCPR, including Article 26. It is not contrary to the ICCPR for a State to refuse to do so, provided that the status of marriage does not give couples treatment that is more favourable than couples who are not married and have no possibility of being married because of the restriction on the basis of sexual orientation. As a result of the 2008 same-sex reforms, all couples, whether married or de facto, opposite-sex or same-sex, are given the same treatment by Commonwealth law.

The Marriage Act, 1961 does not unjustly discriminate against people on the basis of sexual orientation and gender identity. Persons may form different types of relationships, but “marriage” is a term reserved for a particular kind of relationship which is inherently and uniquely oriented to bearing and raising children. No one is disadvantaged when a society retains a distinctive name for these relationships.

⁷ Catholic Health Care Australia. *Code of Ethical Standards for Catholic Health and Aged Care Services in Australia*. June 2001. Part 1 Section 4, pg.6. <http://www.cha.org.au/code-of-ethical-standards.html>

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6. In conclusion, CWLA does not support the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013*. If the bill is to proceed, however, it is important that religious protections are maintained and that the bill is not used to progress same-sex marriage laws.

Thank you, again, for the opportunity to make this submission. We wish the Committee well in their deliberations.

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