*Consultation on protection from discrimination on the basis of sexual orientation and sex and/or gender identity*

**Human Rights and Equal Opportunity Commission**

26 November 2010

I welcome the opportunity that HREOC has provided to contribute to discussions on ensuring the protection of Australian citizens from discrimination based on sexuality and sex and/or gender identity. I wish to draw attention to certain exemptions from discrimination that are currently provided for in Australian law.

Every organisation and individual should be held accountable for acts of discrimination against others by the relevant government bodies, yet the exemptions given to religious bodies in Australian Equal Opportunity Acts suggest that religious doctrines and practices are prioritised over those instruments of the law that are designed to uphold equality and justice for all citizens. I have concentrated on the Victorian law only here, as it affects me as a Victorian citizen, however similar provisions are made in other State and Territory laws.

Sections 82 and 83 of the Equal Opportunity Act 2010 (Victoria) allow religious bodies to discriminate against GLBTI individuals (including in employment and in the provision of education) if such action “conforms with the doctrines, beliefs or principles of the religion” and is deemed necessary in order to “avoid injury to the religious sensitivities of adherents of the religion”. Further, Section 84 allows religious bodies to institute any type of discriminatory practice if not to do so would breach their unique belief system. First, the principles of equality and justice should be the overlying and guiding principles in such circumstances regardless of whether they contradict religious doctrine and practice, and the protection of all individuals, including GLBTI individuals, from such discrimination by religious bodies (or by any institution) should be a priority. Second, the injury done to GLBTI individuals because of acts of discrimination by religious bodies far outweighs the injury done to religious adherents. Ironically, religious bodies often discriminate against their own adherents. This type of discrimination does not just relate to the refusal to admit GLBTI individuals to full membership and participation in their respective religious community, but also to direct and indirect bullying, intimidation and pressure that a non-GLBTI or heterosexual person would not endure.

Such acts of discrimination would be otherwise unlawful if the organisation was not religious. It is inconsistent and unjust that the same act (for example, an employer firing an employee because they are not heterosexual) is counted as discrimination in one instance, and not in another, based on the type of employer. Yet it is deemed legal for religious bodies to discriminate against GLBTI individuals based on the idea that they have special beliefs that need protecting, and that are separate from the purview of the law. Here the protection of religious sensibilities is put before the protection of individuals from discrimination and harassment. Such doctrines, beliefs or principles as they are referred to in Sections 82 and 83 are only “inherent” to a particular position because the religious body has made them so. An evaluation of whether a candidate meets the requirement of an employment position should be based only upon their skills and experience and not upon a part of their identity that they have no control over, and which does not affect their ability to undertake tasks.

These laws fail to recognise that religious organisations are ‘man’-made institutions, as is the law. Religious doctrines and principles are an entirely different matter to one’s personal faith, which the law cannot adjudicate against. This is evidenced by the fact that there are many GLBTI people of faith who belong to and participate in their respective religious tradition, regardless of whether the relevant religious bodies ‘allow’ this or not, as they have no jurisdiction over a person’s faith. Indeed a person’s spirituality and faith can be a positive force in their lives. A person’s religious faith does not discriminate as faith is for human beings, yet religious organisations can and do by falling back upon the ‘naturalness’ of outdated prejudices, and these laws allow them to do so freely and with legal pardon. Religious bodies are established to provide official, public structures to guide their adherents, and as such they are called to serve and to provide for all of their members. If they exist to serve their members, and the wider community, they should surely be called to do so for all human beings, whether members or not, and not only some, based on a preferred sexual orientation.

The law can be a key regulator here, as the state has a responsibility to govern all institutions, including religious institutions. Yet in granting certain exemptions from discrimination to religious institutions which would otherwise be unacceptable in non-religious institutions, does not the government concede its deference to Church authority, and condone the continuing discrimination of GLBTI individuals by religious decision-making bodies? Religious groups should and do have the freedom to create and maintain their own guidelines for membership, however these rules should not overrule the laws of the country in which the institution belongs when they endorse or provide for discrimination against certain individuals.

Increasingly the law has been and continues to be changed to address and prevent discrimination against GLBTI individuals in all areas of life, including in employment, and in the provision of services and economic benefits. Yet there is a gap in the law that permits discrimination against GLBTI individuals by certain institutions that needs to be addressed. It is unjust that religious institutions, in many ways the last network of institutions that can actively and legally discriminate against GLBTI individuals, remain immune to these laws. Surely all institutions come under the purview of the law. It follows that if the Australian government and its key bodies are committed to taking the welfare and livelihood of its GLBTI citizens seriously – which it has already demonstrated through its comprehensive 2008 law reforms – that discrimination by and exclusion from participation in religious institutions based on an individuals’ sexual orientation is unlawful, and that these institutions are called to task for instances of such discrimination.

GLBTI individuals are discriminated against and penalised in Australian law because of who they are, and not because of something they do, the latter of which the law is designed to penalise. This is most apparent in the exemptions from discrimination the law provides to religious bodies and organisations.

I am hopeful that during this review of legislation some consideration is given to the injustice of these exemptions from discrimination that the current Victorian law provides for, within the framework of improving the legal protections from discrimination against GLBTI individuals. Thank you once again for this opportunity to provide feedback.