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Thank you for this opportunity to make a submission to the c The Humanist Society of Queensland (HSQ) is a member of the Council of Australian Humanist Societies (CAHS) and so we are interested in equality for all Australians.

We believe that free speech overrides protection for religious belief.

We believe religious belief can be distinguished from race, disability, sexual orientation, gender identity and intersex status.

This is because religious belief is mostly a matter of choice: one cannot choose one's race, one cannot turn back the clock or surgically adjust to perfection a disability. One's sexual orientation, gender identity or one's intersex status is inherent.

Many committed religious people are also gay or have intersex status which conflicts with the adopted beliefs of the religion to which they subscribe.

It is notable that the Northern Territory has not considered that atheists can also be subject to, and frequently are, subject to abuse from religious people.

While that is so, atheists do not ask for protection, but religious people do. This means the religious community has it both ways: their sensibilities are considered to be worthy of an inquiry into vilification law, yet many religious people simultaneously vilify atheists.

Our Submission

We agree with the recommendations of the Discussion Paper generally, but in particular we wish to comment on introducing new protections under the Act for from

- (a) discrimination on the basis of lawful sexual activity; and
- (b) discrimination in favour of religious organisations and practices.

In relation to terminology, we submit:

The term 'sexuality' should be replaced with the term 'sexual orientation' and could be defined in line with the *Sex Discrimination Act* 1984 (Cth). The Act should be amended to include gender identity as a protected attribute rather than the existing attribute of "sex". Intersex status should be included as a protected attribute.

In relation to discrimination on the basis of lawful sexual activity, we submit:

Ministers of religion should be able to refuse to solemnise a marriage or to impose additional conditions on solemnisation, without breaching any obligation under the Marriage Act, or the prohibitions against discrimination on the basis of sexual orientation, gender identity, intersex status or marital or relationship status contained in the Federal Sex Discrimination Act. Marriage under the Marriage Act would still be available to couples by civil marriage celebrants (or by ministers of religion who choose to solemnise same-sex marriages).

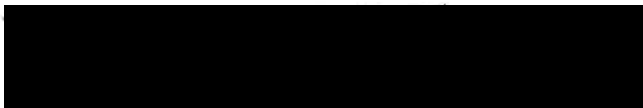
However, it should be unjustifiable discrimination for a religious institution or minister to refuse to solemnise a marriage based on personal conscientious objection unrelated to the formally recognised manifestation of his or her particular religion.

Civil celebrants should not be permitted to discriminate on the basis of religious belief. A civil celebrant only performs the civil marriage process, and is understood as a ‘public authority’ for the purposes of human rights obligations. Prohibiting discrimination on the basis of conscience in solemnising a same-sex marriage would be a permissible and proportionate limitation on the right to freedom of thought, conscience and religion.

There should be no exemption for religious schools from discrimination in employment or school enrolment on the basis sexual orientation, even if the school does not receive public funding. Such exemption means institutions violate the principle that they should award positions on the basis of ability to do the job, maintains divisiveness and oppression of those with different religious beliefs – at times with public money – and encourages divisiveness and prejudice in schools and workplaces.

A “religious freedom” objection to outlawing such discrimination is that those of minority sexual orientations may seek to undermine the religious ethos of an establishment. We maintain that employees may be required by an employer to refrain from criticising religious doctrine on sexuality, advocating or practising sexual diversity to the disruption of the establishment’s pursuits, but they should not be banned, or required to disown their sexual orientation. Individuals should be free to express doctrinal objections to sexual practice, but in schools the state is entitled to require that the legal rights and dignity of all students, and the reality of social diversity, should be fostered.

Those offering services, be it commercial (e.g. catering for weddings), medical (e.g. reproductive medicine) should be prepared to offer the full gamut of legal services, or not practice in that area of enterprise. They can, for example cater for other events, or practice another area of medicine. Refusal to offer services singles out those of different beliefs as second-rate citizens and denies them equal treatment according to law.



President