



**Attorney-General  
Minister For Emergency Management**

09/12455

The Hon Julia Gillard MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

*Julia*  
Dear Prime Minister

s 47C

s 47C

[REDACTED] to introduce legislation which amends the *Sex Discrimination Act 1984* (SDA) to introduce protections against sexual orientation and gender identity discrimination, in line with our 2010 election commitment.

Since the exposure draft HRAD Bill was released in November 2012, it has fostered vigorous debate about the extent of potential reforms, and various components have been the subject of criticism from certain sectors. The Senate Legal and Constitutional Affairs Committee inquiry received over 3000 submissions.

The Committee tabled its report on 21 February 2013 and proposed a significant expansion to the draft Bill's original policy parameters. It recommended increasing the range of protected attributes to include domestic violence and irrelevant criminal record. It also proposed removing exceptions for religious organisations in the provision of services where that would otherwise be unlawful, and require organisations relying on exceptions to provide a document outlining this reliance to prospective employees, service users and members of the public.

The Committee further recommended a wide range of definitional and technical amendments. It accepted the Government's proposal to remove Paragraph 19(2)(b), which would have extended discriminatory conduct to that which "offends or insults", on the grounds it could have a negative impact on freedom of expression. It also recommended amending justifiable conduct to be based on a test of 'reasonableness', and redefining 'employment' and 'voluntary and unpaid work'.

s 47C, s 47E(d)

s 47C, s 47E(d)

Coalition Senators also issued a Dissenting Report, which recommended discontinuing the proposed legislation for the purported reason that its provisions would "violate fundamental human rights". However, Coalition Senators did indicate support for discrete amendments to the SDA to include sexual orientation and identity as a protected attribute.

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s 47C , s 47E(d)

s 47C , s 47E(d)

s 47C , s 47E(d)

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lesbian, gay, bisexual, transgender and intersex community is particularly vulnerable to discrimination and would benefit from these protections being available for the first time at the Federal level. s 47C , s 47E(d)

s 47C , s 47E(d)

s 34(1)(d)

s 47C

However, I seek your approval for consequential policy issues, including insertion of definitions of 'sexual orientation', 'gender identity' and 'intersex status', exceptions for conduct in compliance with existing Commonwealth, State and Territory laws, and exceptions to reflect the current coverage of the sexual discrimination protection for voluntary bodies, sport and businesses engaged in data collection. I also propose an exception for conduct done in direct compliance with the *Marriage Act 1961*, to provide greater certainty and minimise debate on the issue of same-sex marriage in consideration of this Bill.

The introduction of these protections is broadly supported by the key interest groups and major parties. While including these grounds in the SDA will require resolution of some policy and drafting issues, I consider it highly desirable that these protections are established during this Parliamentary term.

s 34(3)

s 34(3)

s 47C

s 47C

s 34(3)

s 34(3)

I have copied this letter to the Minister for Finance and Deregulation, Senator the Hon Penny Wong, and the Minister for the Status of Women, the Hon Julie Collins MP.

The action officer for this matter is s 22(1)(a)(ii) who can be contacted on s 22(1)(a)(ii).

Yours sincerely

s 22(1)(a)(ii)

MARK DREYFUS QC MP

14/3/13

Encl: Request for variation to Autumn 2013 legislative program

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s 34(1)(d)

