



Our ref: LS/16/064

Committee Secretary
Select Committee on the Exposure Draft of the Marriage Amendment
(Same-Sex Marriage) Bill
Department of the Senate
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Dear Committee Members,

Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill

The Anti-Discrimination Board of NSW (ADB) thanks the Select Committee for the opportunity to comment on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill (**Exposure Draft**) in areas relating to the Committee's terms of reference, and specifically.

- the proposed exemptions in the Exposure Draft for ministers of religion, marriage celebrants and religious bodies and organisations to refuse to conduct or solemnise marriages, and the extent to which those exemptions prevent encroachment upon religious freedoms;
- the nature and effect of the proposed amendment to the Sex Discrimination Act 1984;
- whether there should be any consequential amendments to this bill, or any other Act, and, if so, the nature and effect of those consequential amendments.

The ADB administers the *Anti-Discrimination Act 1977 (NSW)* (ADA) which makes it unlawful to discriminate in specified areas of public life against a person on grounds which relevantly include their sex, homosexuality and marital or domestic status. The ADA contains, at section 56, an exception from the provisions of the ADA for the following religious activities:

- the ordination or appointment of priests, ministers of religion or members of any religious order;
- the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- the appointment of any other person in any capacity by a body established to propagate religion, or

- any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

The effect of this exception enables religious bodies to conduct their religious practices in accordance with their religious doctrines so that, for example, refusing to ordain women would not constitute unlawful discrimination on the ground of sex.

The ADB is concerned that the proposed exemption in s. 47B of the Exposure Draft does not sufficiently define what types of religious bodies or organisations may legitimately refuse to make facilities, goods and services available to same-sex couples.

The proposed section 47B provides:

- 1) *A religious body or a religious organisation may, despite any law (including this Part), refuse to make a facility available, or to provide goods or services, for the purposes of the solemnisation of a marriage, or for purposes reasonably incidental to the solemnisation of a marriage, if:*
 - a) *the refusal is because the marriage is not the union of a man and a woman; and*
 - b) *the refusal:*
 - i) *conforms to the doctrines, tenets or beliefs of the religion of the religious body or religious organisation; or*
 - ii) *is necessary to avoid injury to the religious susceptibilities of adherents of that religion.*
- 2) *Subsection (1) applies to facilities made available, and goods and services provided, whether for payment or not.*
- 3) *This section does not limit the grounds on which a religious body or a religious organisation may refuse to make a facility available, or to provide goods or services, for the purposes of the solemnisation of a marriage, or for purposes reasonably incidental to the solemnisation of a marriage.*

The *Marriage Act 1961* (Cth) (the **Act**) does not define either 'religious body' or 'religious organisation'. Section 5 defines a 'recognised denomination' as "a religious body or a religious organisation in respect of which a Proclamation under section 26 is in force, whilst section 26 empowers the Governor-General to declare a religious body or a religious organisation to be a *recognised denomination* for the purposes of the Act.

Nothing in the proposed s. 47B appears to limit its operation to religious bodies or organisations that have been formally recognised as such. Accordingly an organisation with no recognised religious connection could claim to be a *religious organisation* based on the beliefs of its owners or members, and could seek to rely on the exception to refuse to make facilities, goods and services available to same-

sex couples, if those facilities, goods and services were for purposes reasonably incidental to the solemnisation of the marriage.

The ADB considers that the exemption in s.47B should be clarified so that only recognised religious bodies and organisation can rely on it. In this way a church hall could seek to rely on the exemption to refuse a venue booking, but a civic function centre could not, regardless of the religious beliefs of its owners.

Yours sincerely,

Elizabeth Wing
Acting President
Anti-Discrimination Board of NSW

Date: *11 January 2017*