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DIVERSITY
COUNCIL
AUSTRALIA

5th February 2015

Mr Tim Wilson
Human Rights Commissioner
Australian Human Rights Commission

By email: SOGII@humanrights.gov.au

Dear Commissioner,

Please find following Diversity Council Australia's submission in response to the Commission's release of the SOGII Snapshot Report Background Paper.

As you are aware, DCA is the independent, non-profit workplace diversity advisor to more than 250 organisations across the private and public sector – many of whom are among Australia's largest and leading diversity employers. DCA is a business council whose [member organisations](#) are estimated to employ more than one million Australians, representing around 10 per cent of the Australian workforce.

In partnership with our member organisations, our mission is to:

- Lead debate on diversity in the public arena;
- Develop and promote the latest diversity research, thinking and practice; and
- Deliver innovative diversity practice resources and services to enable our members to drive business improvement.

DCA and its members welcome this consultation. Our members are at the forefront of leading practice in the inclusion of LGBTI employees in the workplace as well as having long recognised the benefits of pro-actively preventing workplace discrimination and harassment, and effectively managing issues and complaints when they arise. This commitment is driven by social and legal imperatives, as well as good business practice.

We are pleased to offer our strong support for the principles of fairness, inclusion and anti-discrimination on which this important consultation is based.

Please feel free to contact myself or DCA's Policy and Research Manager Jo Tilly on 0432 561 232 should you require any further information about our submission.

Yours sincerely

Lisa Annese
Chief Executive Officer

DCA Submission on the SOGII Snapshot Report Background Paper

The workplace experience of LGBTI employees:

DCA and its members understand there is much to be gained in reputation, recruitment, retention, productivity and market share from ensuring workplaces are welcoming and inclusive of all employees and customers, irrespective of sexual orientation, gender identity or intersex status.

Nonetheless, DCA's research has found significant concerns about continued discrimination among Australian LGBTI employees.

In its research, *Working for the Future* we found 16% of gay men and lesbians said they had been discriminated against at work on the basis of their sexual orientation. They were also more likely than straight employees to strongly disagree or disagree that, in their job, people treated each other with respect (26% vs 17%), and were less likely to indicate people are chosen for jobs on the basis of their competency (50% vs 70%).

Overt discrimination, harassment, bullying and victimisation, while not an insignificant problem, is only part of the discussion, with research also indicating there are other significant consequences for individuals and organisations where LGBTI people feel unable to be honest about their sexual orientation or gender identity at work.

In a US survey of almost 3,000 LGBT employees¹, almost half (48%) of LGBT respondents reported being closeted at work, with substantial negative consequences. In short, those who were out flourished at work, while those who were in the closet languished or left and:

- Those who were not out, reported significantly greater feelings of being stalled in their careers and greater dissatisfaction with their rates of promotion and advancement (52% vs 36%);
- Those who were not out, were 40% less likely to trust their employer than those who were; and
- Employees who remained closeted were 73% more likely to leave their companies within the next three years.

The researchers found that closeted workers suffered anxiety about how colleagues and managers might judge them and expended enormous effort concealing their orientation, leaving them less energy for work.

Moreover, those who felt forced to lie about their identity and relationships typically didn't engage in collegial banter about things like weekend activities – which forged important workplace bonds. Some 42% of closeted employees said they felt isolated at work, versus only 24% of out employees.

¹ Hewlett, S.A. & Sumberg, K. (2011, July 1). For LGBT workers, being "out" brings advantages. *Harvard Business Review*.

Key SOGII rights issues in Australia

1. Exemptions in anti-discrimination law:

The introduction of the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* was an important step forward in extending anti-discrimination protection coverage across the Australian community.

However, DCA is strongly of the view that the current exemptions and exceptions in anti-discrimination law at both State and Commonwealth level, diminish the appropriate coverage of anti-discrimination protections for LGBTI people. DCA is of the view that religious exemptions on any grounds should be specifically limited to those circumstances where there is a specific religious element to employment or the provision of goods and services, mirroring inherent requirement and genuine occupational qualifications in other areas.

For example, DCA supports continued exceptions where a religious body employs a person as a priest, minister of religion etc. Similarly, if a religious school employs a teacher of religion it would appear reasonable for that person to be required to adhere to the relevant religion and its tenets.

DCA does not support general exemptions for religious bodies for any acts and practices. For example, it should be unlawful to discriminate against a school bus driver hired by a religious organisation on the grounds of his or her sexual orientation. We would encourage the Government to narrow the focus of current religious exemptions to bring them into line with the approach to exemptions taken for all other employers.

This is a particularly critical issue in the context of growing outsourcing of government functions – especially in the areas of education, health, aged care and community services – to the private sector where employers are increasingly religious organisations.

2. Building a culture of respect for SOGII rights among the Australian community:

In 2010, DCA partnered with ACON and Stonewall UK, to establish the *Pride In Diversity* (PiD) program designed to assist Australian employers to develop diversity and inclusion policies to specifically support LGBTI employees. PiD provides employers with resources, training and consulting services, member forums, networking, and research to support the inclusion of LGBTI people in workplaces and promotes LGBTI inclusion more broadly in the community through events such as the [Australian Workplace Equality Index](#) awards.

DCA strongly supports profiling the leading practice being undertaken by employers, including DCA members, who are already carrying out great initiatives to support their LGBTI employees as a way of progressing cultural change in the community. Highlighting leading practice sends an important message to employers across the board about the business imperative of creating workplaces which are diverse and inclusive of LGBTI people, but also speaks to the wider community about the importance of respect, inclusion and tolerance.

The restrictions on the size of submissions in the current consultation do not permit DCA to provide details of leading practice employers, but we would be very happy to assist the Commission by providing detailed case studies at a later time.

DCA also supports the development of targeted workplace resources, particularly for SMEs, to improve the general lack of awareness and understanding amongst the general community about legal protections for LGBTI people at work, and resolution options available to individuals with complaints. While many larger employers have effective workplace diversity and inclusion programs in place and policies and procedures to support LGBTI employees, many smaller employers do not. Such resources could also clarify issues such as the distinction between bullying and unlawful discrimination and the most appropriate course of action for complainants and employers.

The development such resources would also further facilitate community debate and education for individuals and businesses about legal rights, respect and inclusion for LGBTI people.

3. Marriage:

Despite the significant impact on same sex couples and their children of the reform of 85 Commonwealth laws in 2009, it is clear that access to civil marriage remains an important outstanding issue for LGBTI people.

With an increasing number of nations² (and individual states including in the US and Mexico) providing for same sex marriage, the non-recognition of same sex marriages in Australia creates practical difficulties for Australian business, both administratively and in relation to their efforts to attract international talent.

Principles of equality require that any formal relationship recognition available under law to opposite sex couples should also be available to same sex couples, including civil marriage.

This key human rights principle in the *International Covenant on Civil and Political Rights*,³ (ICCPR) states that all people 'are equal before the law and are entitled without any discrimination to the equal protection of the law'. State Parties are required to ensure all individuals can enjoy the rights set out in the ICCPR without discrimination, and discrimination is forbidden in *any law* and in *any field regulated by public authorities*⁴.

While the ICCPR does not specifically mention 'sexual orientation', the phrase 'other status' has been interpreted to include 'sexual orientation' and the United Nations Human Rights Committee has emphasised the obligation on all parties to the ICCPR to provide 'effective protection' against discrimination based on sexual orientation.⁵

² 17 countries now permit same sex marriage, on a national level

³ *International Covenant on Civil and Political Rights* (ICCPR), opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁴ Articles 2 & 26

⁵ See Australian Human Rights Commission, 2012, *Marriage equality in a changing world: Position Paper On Marriage Equality* at: https://www.humanrights.gov.au/lesbian-gay-bisexual-trans-and-intersex-equality-0#_edn10