

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

INQUIRY INTO SEXUALITY DISCRIMINATION

SUBMISSION BY THE

AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

19 JULY 1996

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1. The Church has upheld and taught consistently that the inherent and inviolable dignity of every human being, without exception, must be the foundation for any examination of individual and communal rights and responsibilities.

2. This Australian Catholic Bishops' Conference supports attempts by parliaments to proscribe conduct which unjustly discriminates or vilifies members of the Australian community on whatever basis.

3. In his Second Reading Speech concerning the *Sexuality Discrimination Bill 1995 [1996]*, Senator Spindler noted that its origin was the debate, in 1994, surrounding the *Human Rights (Sexual Conduct) Act*. In particular, he noted, "It was triggered by the narrow ambit of that legislation, limited as it was to the right to privacy under the ICCPR and the missed opportunity it represents in its failure to deal with discrimination in a comprehensive way." The concerns of this Bishops' Conference regarding that legislation are a matter of public record in two respects: (a) the Acting President of Conference, Archbishop Little, wrote to the then Attorney-General, Mr Lavarch, on 27th October, 1994; (b) Archbishop D'Arcy gave evidence to the Senate Committee inquiring into the legislation.

4. Clause 26(2) makes it unlawful "for a person, by public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of people on the ground of the sexuality or transgender identity of the person or members of the group." I am not aware of any corresponding legislative attempt to protect from vilification, in gay and lesbian mardi gras parades, persons like Pope John Paul II, Mother Mary McKillop, and groups of consecrated religious women.

5. The *Sexuality Discrimination Bill* provides an exemption from its terms for a number of entities including "Religious Bodies" (cl.28). Earlier (cl.5), the Bill defines "educational authority" and "educational institution." Regrettably, unlike similar provisions in the *Sex Discrimination Act 1984* (s38) where there is no doubt concerning the exemption of "educational institutions established for religious purposes" from the provisions of that Act, in the draft Bill there is no express nexus between the exemption provided for "religious bodies" and "educational institution[s]." It is of some comfort that Senator Spindler advised the then Chairman of the National Catholic Education Commission that the proposed Bill does not, and is intended not, to infringe upon the exemption provided by s38 of the *Sex Discrimination Act 1984*, that the Bill is intended to provide appropriate exemptions from its provisions - including religious schools and teaching institutions - and that the Bill "does not promote homosexuality." I would expect that the drafting flaw noted to be corrected so as to conform with the assurance provided by Senator Spindler.

6. Cls.80 & 82 refer to assistance to a complainant in proceedings before the Commission and the Federal Court. In order to ensure equality before the law, will similar assistance be available to those accused of discrimination?

7. Part 5 of the Bill refers to a "Sexuality Discrimination Commissioner." The express terms of that Part, however, refer to the "Sex Discrimination Commissioner." You will be aware that such an officer exists already under the regime of the *Sex Discrimination Act 1984* (Part V). Moreover, the person contemplated by Senator Spindler's Bill would exercise his or her functions under the auspices of the Human Rights and Equal Opportunity Commission. You will be aware that the

functions of the Human Rights and Equal Opportunity Commission include the promotion, by way of public discussion and the provision of information, of human rights. With such a broad charter, one might be legitimately concerned how public discussion and the provision of information would be confined to unjust discrimination and not broadened to the promotion of homosexual relationships.

8. In the light of Senator Spindler's claim that the *Sexuality Discrimination Bill* "does not promote homosexuality", it would be most important that nothing is done, by legislation or by this Senate Inquiry, to undermine or to compromise the essential authority and responsibility of parents to educate their children at home, and to have them educated in the school of their choice, according to the tenets and practice of their own religious tradition, especially in matters concerning marriage, family and sexuality. The most recent affirmation of this principle is the Pontifical Council for the Family's *The Truth and Meaning of Human Sexuality: Guidelines for Education within the Family* (8th December, 1995), a copy of which can be made available to your Committee if requested. In this regard, cl.107 of Senator Spindler's Bill concerning same sex couples is notable for its attempt to confer rights, albeit limited, on same sex couples. To the degree that it can provide protection from unjust discrimination, and that it provides protections against discrimination similar to those accorded to persons living in a *de facto* relationship, it is hardly objectionable. It is quite another thing, however, if it blurs the distinction between marital and non-marital relationships, or if it is used as a vehicle to diminish the significance of marriage between a man and a woman as recognised by the common law tradition, and by statute such as in the *Marriage Act* 1961 (ss46(1) and 69(2)) and the *Family Law Act* 1975 (s43(a)).

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