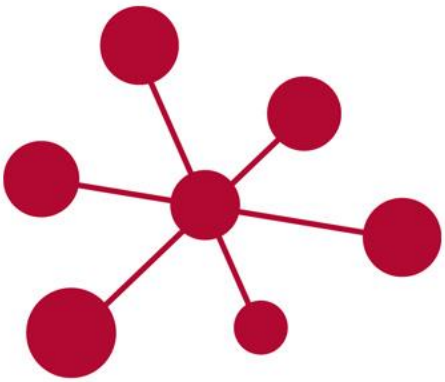

public interest
ADVOCACY CENTRE

Inquiry into Arrangements for the Postal Survey

31 January 2018

Endorsed by:

Community Legal Centres NSW (CLCNSW)

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1. Introduction

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles difficult issues that have a significant impact upon disadvantaged and marginalised people. We ensure basic rights are enjoyed across the community through legal assistance and litigation, public policy development, communication and training.

Our work addresses issues such as:

- homelessness;
- access for people with disability to basic services like public transport, education and online services;
- Indigenous disadvantage;
- discrimination against people with mental health conditions;
- access to energy and water for low-income and vulnerable consumers;
- the exercise of police power;
- the rights of people in detention, including the right to proper medical care; and
- government accountability, including freedom of information.

1.2 PIAC's work on democracy and human rights

PIAC has a long history of advocacy on issues relating to democracy, such as electoral systems and electoral reform. This includes submissions to both the First[1] and Second[2] Electoral Reform Green Papers in 2009.

PIAC has also long called for the equality of lesbian, gay, bisexual, transgender and intersex (LGBTI) Australians, including previous submissions in relation to marriage equality,[3] and Commonwealth anti-discrimination protections.

In August and September 2017, PIAC represented the plaintiffs in one of the High Court challenges to the constitutional validity of the Government's same-sex marriage law postal survey (*Wilkie & Ors v The Commonwealth of Australia & Ors*[4]).

1.3 Endorsed by Community Legal Centres NSW

This submission is endorsed by Community Legal Centres NSW (CLCNSW). CLCNSW is the peak body for almost forty community legal centres (CLCs). These independent, community-led

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1 PIAC, *Deepening Democracy: Submission to the Australian Government in response to the Electoral Reform Green Paper*, 23 February 2009, available at: https://www.piac.asn.au/2010/07/13/09-02-23-piac-electoral-reform-sub/

2 PIAC, *Accessing Democracy: Submission to the Australian Government in response to the Electoral Reform Green Paper – Strengthening Australia's Democracy*, 27 November 2009, available at: https://www.piac.asn.au/2010/07/13/09-11-27-piac-sub-on-electoral-reform/

3 PIAC, *What's sex got to do with it? Submission to the Standing Committee on Legal & Constitutional Affairs Legislation Committee in response to its inquiry into the Marriage Equality Amendment Bill 2010*, 2 April 2012, available at: https://www.piac.asn.au/2012/04/13/whats-sex-got-to-do-with-it-submission-to-the-sc-on-l-and-calc/

4 M106/2017, available here: http://www.hcourt.gov.au/cases/case_m105-2017

organisations provide free legal assistance to people and communities across NSW every day, at times when this help is needed most. CLCNSW leads, supports and collaborates with CLCs to deliver access to quality legal services, champion social justice and advocate for more equitable laws, policies and legal systems.

2. Recommendations

Recommendation 1

The Committee should recommend against the process of a postal survey being used to resolve issues of fundamental human rights.

Recommendation 2

The Committee should find that a dual approach to enforcement, including both civil remedies and criminal offences for vilification, would have been preferable in providing protection against vilification.

Recommendation 3

The Committee should find that the consent of the Attorney-General should not have been required for civil penalty enforcement action to proceed.

Recommendation 4

The Committee should find the time limit for making applications for enforcement of civil penalty provisions for vilification under the Safeguards Act should have been at least 6 months.

Recommendation 5

The Committee should recommend that protections against vilification on the basis of sexual orientation, gender identity and sex characteristics be inserted into the Sex Discrimination Act 1984.

3. 'Not an acceptable decision-making method'

PIAC submits that, as part of considering the legislative basis for the postal survey (terms of reference (c)) and 'all aspects of the conduct of the collection and related matters' (terms of reference (h)), it is important for the Committee to acknowledge and engage with the substantive flaws and dangers in the same-sex marriage law postal survey.

While the result of the survey preceded changes to the law to achieve marriage equality, PIAC does not accept that this welcome outcome makes the process a successful one, or one that should be repeated for similar issues that may arise.

3.1 The exercise was an unnecessary and expensive one

It is worth recalling that the postal survey was of no legal effect. The only place that could introduce marriage equality – the Commonwealth Parliament – was still required to pass legislation to achieve this change.

A survey of popular opinion was unnecessary for Parliament to be able to make a legitimate and informed decision on the issue of marriage equality. Since Federation, Parliament has made countless decisions on contentious issues of human rights, including changes to the *Marriage Act* itself, without such a process.

As an exercise in gauging public opinion, the process merely confirmed opinion polling, conducted extensively over many years, that indicated the majority of Australians supported granting the right to marry to all couples, irrespective of sexual orientation, gender identity or sex characteristics.

PIAC also expresses concern that, if the result of the postal survey had been different, the introduction of marriage equality would likely have been delayed for some time, irrespective of the merits of this reform (which are not dependent on its popularity) and contrary to the human rights of lesbian, gay, bisexual, transgender and intersex Australians.

While recognising that the final cost of $80.5 million came in below the anticipated $122 million cost of the postal survey, this is still a significant amount of taxpayers' money to spend on a process that was unnecessary.

3.2 The process was hurtful and divisive

Advocates for the LGBTI community expressed serious concerns about the likely impact of a compulsory attendance plebiscite or postal survey process on community harmony and safety.

These concerns were realised. While much public debate during the process of the postal survey was respectful, it was also accompanied by acts of violence, intimidation, harassment and vilification directed particularly at LGBTI people, their families, friends and supporters.

The Australia Institute and the National LGBTI Health Alliance survey of 9,500 LGBTIQ+ Australians and their allies between 16 October and 14 November 2017[5] found that

- Experiences of verbal and physical assaults reported by LGBTIQ+ respondents in the 3 months following the announcement of the postal vote more than doubled, compared to the 6 months prior to the announcement.
- LGBTIQ+ respondents suffering depression, anxiety and stress increased by more than a third after the announcement of the vote, compared to the 6 months before the announcement.
- Almost 80% of LGBTIQ+ people and almost 60% allies said that they found the marriage equality debate considerably or extremely stressful.

PIAC understands that organisations representing the LGBTI community will provide further evidence to the Committee demonstrating the harmful impact of the postal survey process.

The United Nations Human Rights Committee observed that

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5 Dr Saan Ecker and Ebony Bennett, *Preliminary results of the coping with marriage equality debate survey*, December 2017, The Australia Institute and the National LGBTI Health Alliance, available at http://www.tai.org.au/sites/defualt/files/P447%20Briefing%20note_LGBTIQ%2B%20coping%20survey%20preliminary%20results.pdf accessed 8 January 2018.

> [R]esort to public opinion polls to facilitate upholding rights under the Covenant in general, and equality and non-discrimination of minority groups in particular, is not an acceptable decision-making method and that such an approach risks further marginalizing and stigmatizing members of minority groups (articles 17 and 26).[6]

3.3 Circumventing and undermining the role of Parliament

PIAC notes, and obviously accepts, the decision of the High Court that the same-sex marriage law postal survey was a constitutionally valid exercise of power.

However, PIAC maintains its concern about the apparent circumvention and undermining of the democratic role of Parliament.

The postal survey was adopted in response to the Senate's decision to twice reject legislation for a compulsory attendance plebiscite.[7] Despite this rejection, the government pursued a process that was, in substance, a postal plebiscite (and indeed was referred to by the responsible Minister, Senator Cormann, as a 'voluntary postal plebiscite'[8] and the Prime Minister as a 'vote'[9]).

This perception – that the postal survey was, in a practical sense, a postal plebiscite or postal vote – is reinforced by the involvement of the Australian Electoral Commission throughout the process, the fact that participation was limited to people aged 18 or over on the electoral roll and that there was a similar close-of-rolls process to an ordinary election.

The resort to an opinion poll to determine an issue of fundamental human rights is also a matter of significant concern.

This was a significant departure from the historical norms of Australian parliamentary democracy. Senator Dean Smith articulated this concern when outlining his reasons for opposing a traditional plebiscite, as initially proposed by the Government:[10]

> I cannot countenance a proposition that threatens to undermine the democratic compact that has seen Australia emerge as one of the most stable parliamentary democracies in the world.

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6 United Nations Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, 9 November 2017 (advance unedited version), available at: http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/INT_CCPR_COC_AUS_29445_E.pdf accessed 8 January 2018.

7 The first time in November 2016, and again in August 2017.

8 See Media Release, *Commitment to a National Plebiscite on Same Sex Marriage*, 8 August 2017, available at: https://www.financeminister.gov.au/media-release/2017/08/08/commitment-national-plebiscite-same-sex-marriage accessed on 10 January 2018, Media Release, *Next Steps for a National Plebiscite on Same Sex Marriage*, 9 August 2017, available at: https://www.financeminister.gov.au/media-release/2017/08/09/next-steps-national-plebiscite-same-sex-marriage accessed on 10 January 2018.

9 See Transcript, *Press Conference with Senator the Hon Mathias Cormann, Acting Special Minister of State*, 8 August 2017, available at: https://www.financeminister.gov.au/transcript/2017/08/08/joint-press-conference accessed on 10 January 2018, Transcript, *Joint Press Conference – Australian Marriage Law Postal Survey*, 15 November 2017, available at: https://www.financeminister.gov.au/transcript/2017/11/15/joint-press-conference-australian-marriage-law-postal-survey accessed on 10 January 2018, Transcript, *Second Reading Speech: Marriage Amendment (Definition and Religious Freedoms) Bill 2017*, available at: https://www.pm.gov.au/media/second-reading-speech-marriage-amendment-definition-and-religious-freedoms-bill-2017 accessed on 10 January 2018.

10 Dean Smith, *Not voting for plebiscite is a vote for parliamentary democracy*, 13 September 2016, Sydney Morning Herald, available at: http://www.smh.com.au/comment/openly-gay-liberal-senator-dean-smith-wont-vote-on-samesex-marriage-plebiscite-20160913-grf006.html accessed on 11 January 2018.

> Every three years (or thereabouts), Australians go to the polling booths and entrust a select number of our fellow citizens with an enormous responsibility.
>
> The people chosen as members of the Parliament are expected to make decisions on the full gamut of issues that confront the nation in the course of a parliamentary term, foreseen or unforeseen.
>
> This is how it has been in Australia since 1901. Never was it intended by our forebears that there be a proviso attached to this covenant saying there should be exemptions for issues that prove controversial.
>
> I have never heard a candidate standing for election say they want to represent their community, except on issues where it's all too difficult, in which case they will contract-out their responsibilities as a legislator.
>
> Yet, this is effectively what the plebiscite proposal is – a willing admission by some that an institution which has served the nation well for 115 years is suddenly, on one issue alone, not up to the job.

While PIAC accepts that there may be a place for public surveys or plebiscites on certain issues (for example, to select a national anthem or flag) we strongly believe that issues of fundamental human rights should not be resolved in this way. We agree with the conclusion of the UN Human Rights Committee that this was 'not an acceptable decision-making method' in the circumstances.

It is clear from other submissions made to this Inquiry that, notwithstanding the significant amount of money that was spent on the postal survey, many Australians from culturally and linguistically diverse ('CALD') communities found it very difficult to access information about the postal survey in their first language, and to understand what legislative outcomes would follow when the results were finalised (see, for example, the Submission of Deaf Australia, dated 23 January 2018, regarding the lack of materials produced in Auslan). The failure to ensure that all sectors of the community could easily access information about the postal survey may have led to lower rate of participation in the survey from diverse communities. This, in turn, further calls into question the validity the use of the postal survey as a barometer of public opinion, especially on issues of fundamental human rights.

In our view, issues of human rights – which often touch on the rights of vulnerable minority groups – should generally be resolved through ordinary and well-established parliamentary process, which are well understood by the entire community. This would avoid some of the pitfalls of the same-sex marriage law postal survey identified earlier.

Resolving issues of human rights through parliamentary processes, or where relevant through the courts, also reduces the risk of majoritarianism, where the human rights of minority groups are rejected, or not recognised, simply because they are unpopular rather than because they lack merit. For example, previous reforms to recognise the rights of LGBTI Australians – such as the

decriminalisation of homosexuality in the states and territories, beginning with South Australia in 1975 – may have been delayed if they were subjected to processes like the postal survey.

3.4 Undermining confidence in the ABS

PIAC is also concerned that the decision to require the Australian Bureau of Statistics to undertake the postal survey threatens politicisation of its role and an erosion of its reputation as an independent and impartial body that deals in matters of statistical analysis.

Indeed, the *Sydney Morning Herald* reported that of ABS staff members taking part in a workplace survey

- 74 per cent of respondents did not believe the bureau was the right agency for the job, and
- 82 per cent believed the exercise would hurt the bureau's reputation both in Australia and internationally. [11]

One staff member quoted in the article sums up many of these concerns, describing the exercise as

> A large, high-profile, heavily politicised, controversial project, outside our sphere of expertise, to be done in a very short timeframe using methods known to be statistically unsound, outside the legal framework that normally covers voting in Australia.

This should not be understood as a criticism of the ABS. It appears to have performed the task given to it very well. However, PIAC remains of the opinion that it is a job the ABS should not have been asked to perform, or be asked to perform again in future.

Given that exercises like the national census rely significantly on the cooperation and goodwill of the community for their success, the reputation of the ABS as an independent, impartial and expert body is essential to its effectiveness.

Recommendation 1

The Committee should recommend against the process of a postal survey being used to resolve issues of fundamental human rights.

4. Anti-vilification measures: limitations and opportunities

In this section, we respond to term of reference (e), namely 'protections against offensive, misleading or intimidating material or behaviour, especially towards affected communities.'

4.1 Vilification measure welcome

The inclusion of a protection against vilification in s 15 of the *Marriage Law Survey (Additional Safeguards) Act* 2017 was welcome. It provides:

[11] Noel Towell, *'Rush job': grave doubts at ABS over same-sex marriage survey*, 17 August 2017, Sydney Morning Herald, available at: http://www.smh.com.au/federal-politics/political-news/rush-job-grave-doubts-at-abs-over-same-sex-marriage-survey-20170816-gxx8ml.html accessed on 11 January 2018.

A person (the first person) must not vilify, intimidate or threaten to cause harm to another person or persons if the first person engaged in the conduct that vilified, intimidated or threatened the other person or persons because of any of the following:

¶a) the other person or persons have expressed or hold a view in relation to the marriage law survey question;

¶b) the first person believes that the other person or persons hold a view in relation to the marriage law survey question;

¶c) the religious conviction, sexual orientation, gender identity or intersex status of the other person or persons.

This offence attracts a civil penalty provision of 60 penalty units.

We understand the number of legal actions likely to be brought under this section will be small and indeed there may be none at all.

This should not, however, be understood to be because such vilification did not occur. PIAC is aware of numerous media reports of behaviour that appears may have breached this provision. We expect that a range of organisations, especially those representing people from the lesbian, gay, bisexual, transgender and intersex community, will provide material to the Committee outlining acts or materials that may have contravened this section.

Nor, of course, does it follow that the prohibition was unnecessary. In PIAC's view, these provisions have demonstrated that there should be no obstacle to the introduction of permanent protections against vilification on the basis of sexual orientation, gender identify and sex characteristics. However, the provisions as introduced do have a number of shortcomings that may limit their utility and effectiveness.

4.2 Standing

Actions regarding vilification under the Safeguards Act are able to be brought by either:

- The Electoral Commissioner (see s 19(2)(a)(i) of the Safeguards Act)
- A 'notifying entity' approved by the Attorney-General (see s 19(4))

A 'notifying entity' is a person or organisation approving content for advertisements, or other forms of political communication, during the postal survey (see ss 5 and 6).

The involvement of the Electoral Commissioner as an independent government agency (and one with a history of involvement in legal actions for breaches of Commonwealth law) in this type of enforcement is appropriate with respect to the postal survey.

PIAC also recognises the benefits of a third party or representative process for enforcement as a means of reducing the burden on individuals who have been adversely affected by vilification during the postal survey period. Requiring people who have already been adversely impacted to take action to protect/enforce their rights is one of the recognised shortcomings of anti-discrimination laws more generally.

PIAC, however, has concerns with the involvement of the Attorney-General in approving 'notifying entities' to commence actions. This risks politicisation – or the appearance of politicisation – of the process and may undermine public confidence.

PIAC is also concerned that there is no separate avenue for individuals who were vilified during the campaign and wish to take action, to do so. In PIAC's view, a 'dual' approach that also establishes a personal right to seek a remedy for vilification is the preferable one.

The approach adopted to vilification in NSW under the *Anti-Discrimination Act 1977* (ADA) is instructive.

Under the ADA, transgender vilification is made unlawful (s 38S), with an individual right to make a complaint (s 87A(1)) as well as the potential for complaints by representative bodies (s 87A(1)(c)) that have, amongst other things, the consent of the person affected and a sufficient interest in the subject of the complaint (s 87C(1)).

In addition to this civil mechanism, the ADA also creates a criminal offence for vilification that applies to public acts that incite hatred towards, serious contempt for, or severe ridicule of, transgender persons (s 38T). This offence, as well as similar offences for vilification on the basis of race,[12] homosexuality[13] and HIV/AIDS status,[14] attract both fines and potential imprisonment.

The dual approach adopted in NSW is not perfect, with criticisms raised in the 2013 NSW Parliamentary Inquiry into Racial Vilification Law in NSW.[15] This included suggestions that a civil penalty provision be added as a third layer, sitting between the civil offence and criminal offence[16] – although this proposal was not adopted by the Committee reviewing these laws.[17]

Nevertheless, PIAC supports the adoption of (at least) a dual approach in this area, and notes that adopting a dual approach in the Safeguards Act could have allowed individuals affected by vilification to make complaints to the Australian Human Rights Commission (as is the case with complaints of racial vilification), rather than relying on notifying entities approved by the Attorney-General.

Recommendation 2

The Committee should find that a dual approach to enforcement, including both civil remedies and criminal offences for vilification, would have been preferable in providing protection against vilification.

12 Section 20D
13 Section 49ZTA
14 Section 49ZXC
15 NW Parliament Standing Committee on Law and Justice, *Racial Vilification Law in New South Wales*, 3 December 2013, available at: https://www.parliament.nsw.gov.au/committees/DBAssets/Inquiry/TOR/2260/Racial%20vilification%20terms%20of%20reference.pdf accessed on 16 January 2018.
16 Ibid, page 67.
17 Ibid, pages 68-69.

4.3 Requiring the consent of the Attorney-General

PIAC also expresses its concern that the consent of the Attorney-General is required before action can be taken under the Safeguards Act (s 19(3)). This requirement unnecessarily and inappropriately politicises the protection of rights under the Safeguard Act.

This is particularly the case for offences of vilification arising during a highly-politicised process in which the former Attorney-General adopted a strong public position in favour of one side of the argument (in favour of change).

PIAC recognises that similar veto powers exist under the NSW ADA, for example in relation to the offence of racial vilification (see s 20D). However, this issue was also considered by the Parliamentary Inquiry into Racial Vilification Law in NSW, with the cross-party Committee commenting that:[18]

> The predominant concern with the consent requirement is that it unnecessarily politicises serious racial vilification matters. Additionally, it was suggested that removing the consent power would convey the message that serious racial vilification offences are treated the same as all other criminal offences. The Committee supports both of these arguments, particularly as it has been the practice of the previous 23 years.[19] We therefore recommend that the NSW Government repeal the requirement for the Attorney General to consent to prosecutions of serious racial vilification.

PIAC submits that this approach, removing all political involvement in determining whether civil penalty actions should proceed, should have been adopted in the Safeguards Act.

Recommendation 3

The Committee should find that the consent of the Attorney-General should not have been required for civil penalty enforcement action to proceed.

4.4 Time limit for making an application

PIAC's final concern with the enforcement provisions under the Safeguards Act relates to the three-month time limit for making applications (s 19(5)).

This time limit is far too short. With the relevant period for conduct that may constitute vilification finishing on the day the results of the same-sex marriage law postal survey was announced (15 November 2017), that means at the very latest any application must be made by 15 February 2018 (although the time period for making applications with respect to alleged breaches earlier during the postal survey will have already expired).

Given most people invested in the public debate surrounding this issue were focused on the subsequent parliamentary debate until the passage of the *Marriage Amendment (Definition and Religious Freedoms) Act 2017* on Thursday 7 December 2017, and the intervention of end-of-

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18 NSW Parliament Standing Committee on Law and Justice, *Racial Vilification Law in New South Wales*, 3 December 2013, p76, available at: https://www.parliament.nsw.gov.au/committees/DBAssets/Inquiry/TOR/2260/Racial%20vilification%20terms%20of%20reference.pdf accessed on 16 January 2018.

19 The Committee had earlier noted that 'The Committee understands that the Attorney General vested its consent power to the Director of Public Prosecutions in 1990 and that this amendment would align with current practice.'

year/summer holidays, it is an unreasonably short timeframe for applications to be prepared and lodged.

This timeframe compares poorly against equivalent timeframes for vilification complaints in other settings. For example, racial vilification complaints are generally required to be brought to the Australian Human Rights Commission within 6 months (s 46PH *Australian Human Rights Commission Act 1986*), complaints of vilification under the NSW ADA must generally be lodged within 12 months (s 89B(2)(b)) and proceedings for offences of racial vilification must be commenced within 6 months (s 179 *Criminal Procedure Act 1986*).

Indeed, the cross-party Committee reporting on the Parliamentary Inquiry into Racial Vilification Law in NSW recommended that the time limit for prosecutions for vilification under the NSW provisions be extended to 12 months to be consistent with the time limit for lodging complaints of vilification under the NSW ADA.

PIAC submits that the timeframe for making applications for civil penalty enforcement of vilification under the Safeguards Act should have been at least 6 months, to align with the time limit for complaints of racial vilification under the *Australian Human Rights Commission Act*.

Recommendation 4

The Committee should find the time limit for making applications for enforcement of civil penalty provisions for vilification under the Safeguards Act should have been at least 6 months.

4.5 Support for expanded protections against vilification

Despite PIAC's concerns and criticisms of some aspects of the vilification protections under the Safeguards Act, the passage of the Safeguards Act highlights the need for ongoing protections against vilification on the basis of sexual orientation, gender identity and sex characteristics.[20]

PIAC submits that the Parliament should seize this opportunity to develop and pass permanent protections.

This is important for a number of reasons, including long-standing high rates of homophobic, biphobic and transphobic abuse reported by LGBTI Australians. For example, data compiled by the Australian Human Rights Commission shows that:[21]

- LGBTI young people report experiencing verbal homophobic abuse (61 per cent), physical homophobic abuse (18 per cent) and other types of homophobia (nine per cent) [and]

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20 Noting that the term 'sex characteristics' is supported as a replacement for the term 'intersex status' by intersex organisations such as OII Australia and others, as advocated in the *Darlington Statement* in March 2017: available at: https://oii.org.au/darlington-statement/ accessed on 1 January 2018.
The term sex characteristics is also used in the *Yogjakarta Plus 10* statement, adopted on 10 November 2017, where it is defined as 'each person's physical features relating to sex, including genitalia and other sexual reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty'. See: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf accessed on 17 January 2018.

21 Australian Human Rights Commission, *Face the Facts: Lesbian, gay, bisexual, trans and intersex people*, 2014, available at: https://www.humanrights.gov.au/sites/default/files/7_FTF_2014_LGBTI.pdf accessed on 17 January 2018.

- Transgender males and females experience significantly higher rates of non-physical and physical abuse compared with lesbians and gay men.

As noted earlier, in the research conducted by The Australia Institute and the National LGBTI Health Alliance, these already high rates of abuse and harassment were exacerbated during the same-sex marriage law postal survey process.

Such intolerance cannot be expected to disappear from public life with the conclusion of the same sex marriage law postal survey process and the realisation of marriage equality.

Introducing Commonwealth protections against vilification would build on an emerging consensus at state and territory level, with at least some parts of the LGBTI community covered under anti-vilification laws in New South Wales, Queensland, Tasmania and the Australian Capital Territory.[22] The Northern Territory Government is also currently actively considering the introduction of prohibitions against vilification, both racial and anti-LGBTI.[23]

The introduction of protection against vilification on the basis of sexual orientation, gender identity and sex characteristics (intersex status) could be accommodated within the existing *Sex Discrimination Act 1984*, where these attributes are already protected against discrimination.

PIAC also recognises that there is a case for similar permanent protections against vilification on the basis of religious belief.

However, we note that the introduction of such a measure is complicated by the fact there is currently no Commonwealth anti-discrimination law which prohibits discrimination on the basis of religion or religious belief, meaning that, unlike for anti-LGBTI vilification, a new framework covering this area will need to be developed.

We anticipate these issues will be considered as part of the current Religious Freedom Review being chaired by Phillip Ruddock.[24]

Recommendation 5

The Committee should recommend that protections against vilification on the basis of sexual orientation, gender identity and sex characteristics be inserted into the Sex Discrimination Act 1984.

22 Alastair Lawrie, *A Quick Guide to Australian LGBTI Anti-Discrimination Laws*, July 2017, available at: https://alastairlawrie.net/2017/07/29/a-quick-guide-to-australian-lgbti-anti-discrimination-laws/ accessed on 17 January 2018.

23 Northern Territory Department of the Attorney-General and Justice, *Discussion Paper: Modernisation of the Anti-Discrimination Act*, September 2017, available at: https://justice.nt.gov.au/__data/assets/pdf_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf accessed on 17 January 2018.

24 See Department of the Prime Minister and Cabinet, *Religious Freedom Review*: https://pmc.gov.au/domestic-policy/religious-freedom-review accessed on 25 January 2018.