

Friday 4<sup>th</sup> September 2015

**The Secretary**

Senate Legal and Constitutional Affairs Committee  
Senate  
Parliament of Australia  
CANBERRA

Dear Secretary,

**RE: Inquiry into the matter of a popular vote, in the form of a plebiscite or referendum, on the matter of marriage in Australia**

We welcome this opportunity to make a submission concerning the above inquiry, and we do so in our capacity as Project Directors for the Australian Human Rights Centre. The Australian Human Rights Centre was established in 1986 and is based within the Faculty of Law, UNSW. It fosters research, and supports teaching and public debate on a range of human rights issues.

In this submission, we address terms of reference A, B, and D, in this order. The appendices provide a descriptive overview of referenda and plebiscites in other jurisdictions, for the benefit of Committee members.

Our position is that a referendum or plebiscite on marriage equality is both unnecessary and undesirable, and our preference is for the Federal Parliament to address this issue through a vote on the floor of the House of Representatives and in the Senate. We submit that not only is this consistent with the tenets of a representative democracy, but it avoids giving rise to the perception that only supposed minority interests (which are, in fact, shared by a wide number of Australians) are addressed through referenda or plebiscites, while the supposed interests of the broader Australian polity are addressed through the regular machinery of Parliament. This constitutes a case of political exceptionalism, which, unless constitutional circumstances warrant it, should be avoided. Further, the risks of negative outcomes in the referendum process, based on overseas experiences, warn against such an endeavour.

**a) An assessment of the content and implications of a question to be put to electors**

Whilst we do not support a referendum or plebiscite, considering it unnecessary, we emphasise a number of core tenets that are desirable when the Parliament contemplates such measures, if they are unavoidable. These include:

- a question resolved by a cross-party bill through both Houses of Parliament;
- compulsory voting for all Australian on the electoral roll;
- polling booths at all locations that would usually be polling booths at the time of a Federal election, including at embassies and consulates abroad;

- postal and absentee voting provisions in keeping with the process for Federal elections
- public funding for the 'yes' and 'no' campaigns

In terms of the content of the question, it should be straight-forward, so as to avoid confusion in the voters, as experience has shown that referenda and plebiscites fail to change the status quo when the question is drafted using convoluted language. The question should simply refer voters to consider whether any definition of marriage in Commonwealth legislation and other acts by public authorities should be restricted to heterosexual unions. An example of a question along these lines would be:

“Should definitions of marriage in Commonwealth legislation and other official acts be restricted to couples composed of one man and one woman?”

We believe that such straightforward language, while avoiding express mention to the important basic principles of equality and non-discrimination, is less likely to confuse voters, while at the same time restricting the scope of the referendum to federal actions.

**b) An examination of the resources required to enact such an activity, including the question of the contribution of Commonwealth funding to the 'yes' and 'no' campaigns;**

Referenda are both costly and time-consuming. Australia’s last referendum, conducted in 1999, cost \$66 820 894.<sup>1</sup> It has been estimated that a recent proposed referendum on local government would have cost almost twice as much. Commonwealth funding should therefore be commensurate with previous practice, allocating resources to both sides of the campaign in accordance with proportions shown in public polling on the support of same-sex unions across Australia.

**d) Whether such an activity is an appropriate method to address matters of equality and human rights**

In our view, a referendum or plebiscite is not the most appropriate or effective means to address matters pertaining to equality and human rights, including marriage equality. Marriage equality does indeed engage international human rights obligations, through principles of non-discrimination enshrined in the *International Covenant on Civil and Political Rights* (ICCPR), *Universal Declaration of Human Rights* (UDHR) and *International Convention on Economic, Social and Cultural Rights* (ICESCR). These instruments form the “International Bill of Rights”, and therefore play an important role in interpreting issues of fundamental and human rights in countries like Australia. Further, Australia is a party to the ICCPR and ICESCR, and therefore all of its public bodies are bound by the terms of these instruments, especially in this case with respect to equality and non-discrimination. As such,

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<sup>1</sup> Australian Electoral Commission, ‘Costs of Elections and Referendums’  
[http://www.aec.gov.au/Elections/australian\\_electoral\\_history/Cost\\_of\\_Election\\_1901\\_Present.htm](http://www.aec.gov.au/Elections/australian_electoral_history/Cost_of_Election_1901_Present.htm)

the Parliament, as the representative decision-making body of the State Party, is the most appropriate mechanism to remedy any instance of *de jure* discrimination. The foreign affairs power of Parliament specifically gives it the mandate to address this issue, as it has to do with the implementation of international treaties.

Previously, the Australian Federal Parliament has acted decisively to resolve issues of *de jure* and *de facto* discrimination through a Parliamentary vote, and not extra-parliamentary means such as referenda or plebiscites. Examples of this include the passage of the *Racial Discrimination Act 1975*, and more recently, amendments to the *Sex Discrimination Act 1984* in 2013, the latter of which provides protection from discrimination for LGBTI Australians in specific areas of public life. In other Commonwealth jurisdictions, including New Zealand and the United Kingdom, a parliamentary vote has been the preferred mechanism to address questions of equality, including marriage equality (see appendix one). For these reasons, we see no adequate precedent for a referendum or plebiscite on this issue in the Australian context.

Moreover, we are concerned at the potential implications of a polarising debate, particularly for LGBTI people, who are already exposed to high levels of discrimination across different areas of public life in Australia.<sup>2</sup> This burden of discrimination, which is well-documented, is associated with subsequent disparities in health, as well as labour market outcomes, for lesbian, gay and bisexual people, and trans and intersex people too.<sup>3</sup> On the basis of this consistent and compelling evidence, we are concerned that a referendum in particular, and to a lesser extent, a plebiscite, has the potential to expose LGBTI people to political discourse that is damaging to their health and wellbeing. A study conducted in the United States, for example, found that subjecting a minority social group to a ballot measure concerning their rights could ‘promote animosity’ and solidify damaging attitudes, rather than encourage a true democratic contestation, marked by an exchange of views.<sup>4</sup> Appendix three outlines a number of spikes in discrimination and negative impacts on LGBTI populations as a result of plebiscites and referenda on the matter.

Relatively few jurisdictions across the world have used plebiscites and referenda, as detailed in Appendix three. A number of states in the United States of America have used public ballots for referenda and plebiscites connected to their normal election cycle (that is, the voter, alongside choosing their representatives, would vote on said measures about the definition of marriage). Those mechanisms were only available because they were already imbued in the legislative and constitutional processes of said US states, and are not warranted in a country like Australia, where such mechanisms are not the normal praxis.

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<sup>2</sup> Hillier, L., Jones, T., Monagle, M., Overton, N., Gahan, L., Blackman, J., Mitchell, A. (2010). *Writing Themselves in 3: The Third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people*. Melbourne: LaTrobe University. See also: Robinson, K.H., Bansel, P., Denson, N., Ovenden, N., Davies, C. (2014). *Growing Up Queer: Issues Facing Young Australians Who Are Gender Variant and Sexuality Diverse*. Sydney: Young and Well CRC and the University of Western Sydney; and; Australian Human Rights Commission (2015). *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights 2015*. Sydney: Australian Human Rights Commission.

<sup>3</sup> Sabia, J.J. and Wooden, M. (2015). *Sexual Identity, Earnings and Labour Market Dynamics: New Evidence from Longitudinal Data in Australia (Melbourne Institute Working Paper Series No. 8/15)*. Melbourne: Melbourne Institute of Applied Economic and Social Research. See also: Horner, J. & Roberts, N. (2014). Time to recognize sexual orientation as a social determinant of health, *Medical Journal of Australia*, 200(3): 137.

<sup>4</sup> Donovan, T., & Tolbert, C. (2013). Do Popular Votes on Rights Create Animosity Towards Minorities?, *Political Research Quarterly*, 66(1): 910-922.

Furthermore, Ireland, the most recent example of a national referendum on the matter, only adopted this mechanism because the definition of marriage was an important part of their Constitutional system, again, differently from Australia, where the matter is the object of ordinary legislation, not constitutional amendment.

## Further contact

For further information in relation to this submission, please contact Dr Lucas Lixinski at [l.lixinski@unsw.edu.au](mailto:l.lixinski@unsw.edu.au) or 02 9385 6685. Alternatively, his postal address is:

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Yours sincerely,



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Project Director  
Health, sexual orientation and human rights



**Dr Lucas Lixinski**  
Project Director



**Darren Ou Yong**  
Centre Intern

## Appendix one – summary of types of measures adopted by different jurisdictions overseas for the recognition of same-sex unions

Year	Country or state name	Legislation, court ruling, constitutional reform, plebiscite
2001	Netherlands	Legislative amendment of the Dutch Civil Code. Labour Party bill. [ <a href="#">Dutch original</a> ] <ul style="list-style-type: none"> <li>Proposed by Labour Party junior member / undersecretary of the Dutch executive cabinet, Job Cohen</li> <li>Product of a multipartisan (presumed) parliamentary special commission</li> </ul>
2003	Belgium	Legislative amendment of the Belgian Civil Code. Private member's bill. <ul style="list-style-type: none"> <li>Presented in the Senate by six parliamentarians from different parties.</li> </ul>
2005	Spain	Legislative amendment to the Spanish Civil Code, inter alia. Socialist Party bill. [ <a href="#">Spanish original</a> ] <ul style="list-style-type: none"> <li>Presented by the Socialist Party government cabinet's Minister of Justice to the Congress of Deputies (lower house)</li> <li>Subsequently rejected by the Senate (upper house), where the opposition held the majority</li> <li>Subsequently adopted by the Congress of Deputies, as it holds the power to override the upper house</li> </ul>
	Canada	2003 onwards: judicial decisions began to legalise same-sex marriage in multiple provinces and territories  Proposal of bill on same-sex marriage to Supreme Court by Liberal government to assess constitutional validity  Legislation: <i>Civil Marriage Act 2005</i> , introduced by the Liberal minority government. Liberal Party bill.
2006	South Africa	Constitutional court ruling extending common law definition of marriage to same-sex spouses, setting a deadline for Parliament to reflect this in legislation: <i>Minister of Home Affairs v Fourie</i> .  Legislation: <i>Civil Union Act 2006</i> , introduced by the Minister of Home Affairs after Cabinet approval.
2009	Norway	Legislation
	Sweden	Legislation

<b>2010</b>	<b>Portugal</b>	Legislation Constitutional court ruling: upheld as constitutional
	<b>Iceland</b>	Parliament
	<b>Argentina</b>	Legislation
<b>2012</b>	<b>Denmark</b>	Legislation: PM-introduced bill
<b>2013</b>	<b>Brazil</b>	National Council of Justice ruling
	<b>France</b>	Legislation
	<b>Uruguay</b>	Legislation
	<b>New Zealand</b>	Legislation
<b>2014</b>	<b>England and Wales</b>	Legislation
	<b>Scotland</b>	Legislation
	<b>Finland</b>	Legislative amendment
<b>2015</b>	<b>Luxembourg</b>	Legislation
	<b>Ireland</b>	Plebiscite
	<b>United States</b>	Judicial ruling

## Appendix two – experience of different states in the United States of America in terms of choosing constitutional or legislative avenues

1998: Alaska	Legislatively referred constitutional amendment
2000: Nebraska	Initiated constitutional amendment
2002: Nevada	Initiated constitutional amendment
2004: Arkansas	Initiated constitutional amendment
2004: Georgia	Legislatively referred constitutional amendment
2004: Kentucky	Legislatively referred constitutional amendment
2004: Louisiana	Legislatively referred constitutional amendment
2004: Michigan	Initiated constitutional amendment
2004: Mississippi	Legislatively referred constitutional amendment
2004: Missouri	Legislatively referred constitutional amendment
2004: Montana	Initiated constitutional amendment
2004: North Dakota	Initiated constitutional amendment
2004: Ohio	Initiated constitutional amendment
2004: Oklahoma	Legislatively referred constitutional amendment
2004: Oregon	Initiated constitutional amendment
2004: Utah	Legislatively referred constitutional amendment
2005: Kansas	Legislatively referred constitutional amendment
2005: Texas	Legislatively referred constitutional amendment
2006: Alabama	Legislatively referred constitutional amendment
2006: Colorado	Initiated constitutional amendment
2006: Idaho	Legislatively referred constitutional amendment
2006: South Carolina	Legislatively referred constitutional amendment
2006: South Dakota	Legislatively referred constitutional amendment
2006: Tennessee	Legislatively referred constitutional amendment
2006: Virginia	Legislatively referred constitutional amendment
2006: Wisconsin	Legislatively referred constitutional amendment
2008: Arizona	Legislatively referred constitutional amendment
2008: California	Legislatively referred constitutional amendment
2008: Florida	Initiated constitutional amendment
2009: Maine	Initiated veto referendum
2012: North Carolina	Legislatively referred constitutional amendment

**Appendix three – detailed overseas experiences on referenda to amend ordinary legislation, including information on negative consequences and comparison with Australian law**

<p><b>California, USA</b> Population-initiated statutory referendum  7 March 2000</p>	<p>Proposition 22 – initiated statutory referendum to add S 308.5 to the Californian <i>Family Code</i>, restricting marriage to heterosexual couples. Passed with 61% in favour.</p> <p>[NB The statute was subsequently found to contravene the <i>California Constitution</i>.]</p> <p><u>Legal basis</u></p> <ul style="list-style-type: none"> <li>• 5% of voters at the last gubernatorial vote (<i>California Constitution</i> Art II S 8(b)) submit the statutory proposal to the state attorney-general: <i>California Election Code</i> S 9001.</li> <li>• After proposal is submitted, there is a 30-day review period during which amendments are possible.</li> <li>• Once this is completed, the attorney-general fulfils procedural requirements before putting the proposal to the ballot. Further amendments can be submitted during this period, but delay the process because they must be signed by all proponents: <i>California Election Code</i> SS 9002-4.</li> </ul> <p><u>Comparison with Australian law</u></p> <ul style="list-style-type: none"> <li>• Australian voters may not submit statutory initiatives to be subject to a referendum.</li> </ul> <p><u>Backlash and other responses</u></p> <p>‘\$8,422,913 was spent supporting the measure. \$4,829,543 was spent opposing it.’ [<a href="#">Ballotpedia</a>]</p> <p>Much of the money and most of the volunteers on the pro-22 side came from churches. Opponents included leaders of mainline Protestant churches and liberal denominations. The pro-22 campaign disavowed any anti-gay motives - and said its goal was to let Californians define marriage for themselves.</p> <p>Exit polls found the measure was supported about equally by men and women and by all races and income groups. It was opposed by young voters and by about two-thirds of Democrats, but Republicans backed it by 6-1. Sixty percent of Catholics and 68 percent of Protestants supported the measure, while 79 percent</p>
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	<p>of Jewish voters opposed it. [<a href="#">CBS News</a>]</p> <p>Following a finding of unconstitutionality, the legislature put forward the impugned text as a constitutional amendment—Proposition 8—which was adopted by voters.</p> <p>May 2009: This was upheld by the California Supreme Court in <i>Strauss v. Horton</i>.</p> <p>August 2010: U.S. District Court overturned Proposition 8 in <i>Perry v Schwarzenegger</i>, issuing injunction against the enforcement of the constitutional amendment.</p> <p>June 2013: U.S. Supreme Court ruled that initiative proponents did not have standing to appeal the federal court ruling.</p> <p><i>Anti-discrimination complaints</i></p> <table border="1" data-bbox="435 943 1401 1137"> <thead> <tr> <th></th> <th>#% on the basis of sexual orientation</th> <th>Total complaint intakes</th> </tr> </thead> <tbody> <tr> <td>2012</td> <td>*</td> <td>1766</td> </tr> <tr> <td>2013</td> <td>*</td> <td>1298</td> </tr> <tr> <td>2014</td> <td>8% (~108)</td> <td>1353</td> </tr> </tbody> </table> <p>These figures were expressed diagrammatically, rather than numerically. They are annexed. [California Human Rights Commission sources <a href="#">2012</a>   <a href="#">2013</a>   <a href="#">2014</a>]</p>		#% on the basis of sexual orientation	Total complaint intakes	2012	*	1766	2013	*	1298	2014	8% (~108)	1353
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<p><b>Maine, USA</b> Population-initiated veto referendum</p> <p>3 November 2009</p>	<p>52.9% of voters approve a veto referendum to overturn an act authorising same-sex marriage. The following question was posed to voters:</p> <p style="padding-left: 40px;">Do you want to reject the new law that lets same-sex couples marry and allows individuals and religious groups to refuse to perform these marriages? Yes / No</p> <p><u>Legal basis:</u> <i>Maine Constitution</i> Art IV S 1</p> <p style="padding-left: 40px;">the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any Act, bill, resolve or resolution passed by the joint action of both branches of the Legislature</p> <p><u>Comparison with Australian law</u></p>												

	<ul style="list-style-type: none"> <li>• Australian voters may not use a referendum to propose and/or enact statute, as the terms of the referendum are drafted by the Australian legislature.</li> <li>• Australian voters may not propose to repeal statute using a referendum.</li> </ul>																					
<p><b>Maryland, USA</b> Initiated statutory referendum</p> <p>6 November 2012</p>	<p>Maryland Question 6 saw 52.4% of voters approve the adoption of <i>Civil Marriage Protection Act</i> in a referendum</p> <p><u>Legal basis:</u> <i>Maryland Constitution</i> Art XVI S 1</p> <p>(a) The people reserve to themselves power known as The Referendum, by petition to have submitted to the registered voters of the State, to approve or reject at the polls, any Act, or part of any Act of the General Assembly, if approved by the Governor, or, if passed by the General Assembly over the veto of the Governor;</p> <p><u>Comparison with Australian law</u></p> <ul style="list-style-type: none"> <li>• Australian voters do not have the option of initiating a referendum to approve or repeal an Act of Parliament.</li> </ul> <p><u>Backlash and other responses</u></p> <p><i>Hate crimes</i></p> <table border="1" data-bbox="435 1263 1401 1424"> <thead> <tr> <th></th> <th># on the basis of sexual orientation</th> <th># reported hate crimes overall</th> </tr> </thead> <tbody> <tr> <td>2012</td> <td>7</td> <td>35</td> </tr> <tr> <td>2013</td> <td>7</td> <td>51</td> </tr> </tbody> </table> <p>2014 statistics are not available at time of writing. [FBI source <a href="#">2012</a>   FBI source <a href="#">2013</a>]</p> <p>Complaints of discrimination before the Maryland Commission of Civil Rights ('MCCR'):</p> <table border="1" data-bbox="435 1659 1401 2016"> <thead> <tr> <th></th> <th># on the basis of sexual orientation</th> <th>Total complaint intakes / total complaints closed overall</th> </tr> </thead> <tbody> <tr> <td>2012</td> <td>24 (in the context of employment)</td> <td>* / 721</td> </tr> <tr> <td>2013</td> <td>28 (employment), 2 (public housing)</td> <td>737 / 1172</td> </tr> <tr> <td>2014</td> <td>15 (employment), 2 (public housing)</td> <td>713 / 908</td> </tr> </tbody> </table>		# on the basis of sexual orientation	# reported hate crimes overall	2012	7	35	2013	7	51		# on the basis of sexual orientation	Total complaint intakes / total complaints closed overall	2012	24 (in the context of employment)	* / 721	2013	28 (employment), 2 (public housing)	737 / 1172	2014	15 (employment), 2 (public housing)	713 / 908
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	<p>* The 2012 annual report did not identify the number of complaint intakes. [MCCR source <a href="#">2012</a>   MCCR source <a href="#">2013</a>   MCCR source <a href="#">2014</a>]</p>									
<p><b>Washington state, USA</b> Initiated statutory referendum  6 November 2012</p>	<p>Referendum 74, 53.7% of voters approved the adoption of <i>Engrossed Substitute Senate Bill 6239</i>, which legalised same-sex marriage</p> <p>The ballot language read:</p> <p>The legislature passed Engrossed Substitute Senate Bill 6239 concerning marriage for same-sex couples, modified domestic-partnership law, and religious freedom, and voters have filed a sufficient referendum petition on this bill.</p> <p>This bill would allow same-sex couples to marry, preserve domestic partnerships only for seniors, and preserve the right of clergy or religious organizations to refuse to perform, recognize, or accommodate any marriage ceremony.</p> <p>Should this bill be: [ ] Approved [ ] Rejected</p> <p><u>Legal basis:</u> <i>Washington State Constitution Art II S 1(a)</i></p> <p>[...] [T]he number of valid signatures of legal voters required upon a petition for a referendum of an act of the legislature or any part thereof, shall be equal to four per centum of the number of voters registered and voting for the office of governor at the last preceding regular gubernatorial election.</p> <p><u>Comparison with Australian law</u></p> <ul style="list-style-type: none"> <li>Australian voters may not propose to repeal statute using a referendum.</li> </ul> <p><u>Backlash and other responses</u></p> <p><i>Hate crimes</i></p> <table border="1"> <thead> <tr> <th></th> <th># on the basis of sexual orientation</th> <th># reported hate crimes overall</th> </tr> </thead> <tbody> <tr> <td>2012</td> <td>52</td> <td>272</td> </tr> <tr> <td>2013</td> <td>49 (1 on gender identity)</td> <td>291</td> </tr> </tbody> </table> <p>2014 statistics are not available at time of writing. [FBI source <a href="#">2012</a>   FBI source <a href="#">2013</a>]</p> <p>The Washington State Human Rights Commission has not published biennial reports with statistics since 2007.</p>		# on the basis of sexual orientation	# reported hate crimes overall	2012	52	272	2013	49 (1 on gender identity)	291
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<p><b>Maine, USA</b> Initiated</p>	<p>52.6% of voters approve a referendum on <i>An Act to Allow Marriage Licenses for Same-Sex Couples and Protect Religious Freedom</i>. The</p>									

<p>statutory referendum</p> <p>6 November 2012</p>	<p>following question was posed to voters:</p> <p style="text-align: center;">Do you favor a law allowing marriage licenses for same-sex couples, and that protects religious freedom by ensuring that no religion or clergy be required to perform such a marriage in violation of their religious beliefs?</p> <p><u>Legal basis: Maine Constitution Art IV S 1 (see above)</u></p> <p><u>Comparison with Australian law (see above)</u></p> <p><u>Backlash and other responses</u></p> <p><i>Hate crimes</i></p> <table border="1" data-bbox="435 822 1401 983"> <thead> <tr> <th></th> <th># on the basis of sexual orientation</th> <th># reported hate crimes overall</th> </tr> </thead> <tbody> <tr> <td>2012</td> <td>19</td> <td>52</td> </tr> <tr> <td>2013</td> <td>10</td> <td>25</td> </tr> </tbody> </table> <p>2014 statistics are not available at time of writing. [FBI source <a href="#">2012</a>   FBI source <a href="#">2013</a>]</p> <p><i>Anti-discrimination complaints</i></p> <table border="1" data-bbox="435 1178 1401 1579"> <thead> <tr> <th></th> <th># on the basis of sexual orientation</th> <th># of overall complaints filed</th> </tr> </thead> <tbody> <tr> <td>2008</td> <td>32</td> <td>1399</td> </tr> <tr> <td>2009</td> <td>19</td> <td>1132</td> </tr> <tr> <td>2010*</td> <td>50</td> <td>1191</td> </tr> <tr> <td>2011</td> <td>45</td> <td>1337</td> </tr> <tr> <td>2012</td> <td>25</td> <td>1272</td> </tr> <tr> <td>2013</td> <td>35</td> <td>1266</td> </tr> <tr> <td>2014</td> <td>26</td> <td>1567</td> </tr> </tbody> </table> <p>*Statistics from 2009 onwards are included in light of the Maine 2009 referendum mentioned above. [Maine Human Rights Commission source <a href="#">2014</a>]</p> <p>Mainers' acceptance of gay marriage up, according to new poll [<a href="#">Bangor Daily News</a>]</p>		# on the basis of sexual orientation	# reported hate crimes overall	2012	19	52	2013	10	25		# on the basis of sexual orientation	# of overall complaints filed	2008	32	1399	2009	19	1132	2010*	50	1191	2011	45	1337	2012	25	1272	2013	35	1266	2014	26	1567
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<p><b>Slovakia</b></p> <p>Population-initiated plebiscite</p>	<p>Conservative church backed group Alliance for Family gathered 400,000 signatures calling for a vote on the law. Referendum failed because 21.4% of citizens voted, below the 50% requirement. Those who voted were 90% in favour of banning same-sex marriage.</p>																																	

7 February 2015

## **Plebiscite with three questions**

- Do you agree that only a bond between one man and one woman can be called marriage?
- Do you agree that same-sex couples or groups should not be allowed to adopt and raise children?
- Do you agree that schools cannot require children to participate in education pertaining to sexual behaviour or euthanasia if the children or their parents don't agree? [Unofficial translation, [Wikipedia](#)]

### Legal basis

The facultative referendum may be held when proposed by at least 350,000 citizens presented in the form of petition, or when it is agreed on by the Parliament (the proposal can be made by MPs or government). It is then proclaimed by the president within the 30 days period from the petition or from the Parliament's resolution. Before the proclamation itself, the president may ask the Constitutional Court for its assessment of the presented question whether the subject of the referendum corresponds to the Constitution or constitutional laws (this option was added to the Constitution based on the amendment no. 90/2001 Z. z. for the reason of controversial constitutionality of some referendums and the attempts made to them). [[Central European Political Studies Review](#)]

### Comparison with Australian law

- Both Slovak and Australian parliaments may put a plebiscite to voters.
- Australian voters do not have the option of petitioning for a referendum.
- The results of an Australian plebiscite would not have direct legal effect, unlike the Slovak referendum.

### Backlash and other responses

The Pope's prior endorsement of the referendum is a relevant factor while considering potential responses to the referendum.

### OSCE ODIHR:

Information is sparse on hate crimes and anti-discrimination complaints in Slovakia, especially because Slovakia does not record the bias motivations of hate crimes.

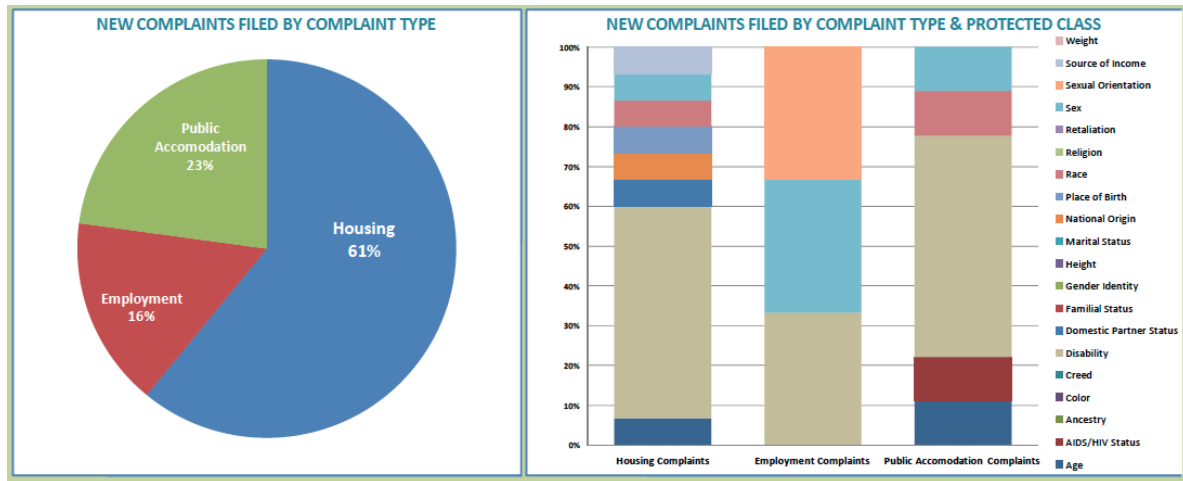
Section 140 of the Criminal Code of Slovakia on the aggravation of penalties in cases of bias-motivated crime entered into effect in 2013. The amendment includes sexual orientation among the protected characteristics listed in the provision.

Initiative Otherness reported one incident that took place during Rainbow Pride [in 2013], during which a large group threatened and threw eggs and bottles of water at attendees.

The United Nations Committee on the Elimination of Racial Discrimination (CERD) recommended that Slovakia take action to ensure the effective investigation and prosecution of hate crimes, and that the state provide the Committee with comprehensive hate crime statistics.

## Appendix four – Californian anti-discrimination complaints graphs

2012



2013

