



**Ministerial Advisory Committee on
Gay, Lesbian, Bisexual, Transgender and Intersex
Health and Wellbeing.**

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Level 20
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15 June 2009

National Human Rights Consultation Secretariat
Attorney-General's Department
Central Office
Robert Garran Offices
National Circuit
BARTON ACT 2600

**Re: Submission to the *National Human Rights Consultation*
Reference: AGWW-7T2349**

On behalf of the Victorian Ministerial Advisory Committee on Gay, Lesbian, Bisexual Transgender and Intersex Health and Wellbeing (GLBTI MAC), I would like to thank you for the opportunity to provide comment on *National Human Rights Consultation*. Whilst the GLBTI MAC's submission (attached) focuses on GLBTI specific issues, the GLBTI MAC supports any moves to ensure everyone in Australia is treated with dignity and respect and enshrine rights to freedom, equality and fairness for all.

Our submission:

- discusses the adverse health and wellbeing impacts of systemic discrimination and abuse,
- highlights gaps in existing human rights protections for GLBTI Australians,
- strongly advocates for the development of a federal law that prohibits systemic discrimination on the grounds of sexual discrimination and gender identity and
- strongly supports the development of an *Australian Human Rights Act* that addresses the above gaps and enshrines GLBTI Australian's, civil, political, economic, environmental, cultural and social rights and responsibilities.

We would like to take this opportunity to thank the National Human Rights Consultation Committee, Attorney General's Department and all those involved in the consultation process for promoting discussion about ways to protect and promote human rights in the future. We look forward to the outcome of the consultation and look forward to hearing how the Australian Government will promote human rights, based on the belief in the fundamental equality of all persons, including GLBTI Australians.

Yours sincerely

Rowena Allen
Chair GLBTI MAC

Ian Gould
Deputy Chair GLBTI MAC

Submission to the National Human Rights Consultation, June 2009

Introduction

The Ministerial Advisory Committee on Gay, Lesbian, Bisexual, Transgender and Intersex Health and Wellbeing (GLBTI MAC) in Victoria welcomes the opportunity to provide input to the *National Human Rights Consultation* and applauds the federal Government's commitment via the independent Committee to hear people's ideas about human rights and talk about ways to protect and promote human rights in the future. Whilst this paper focuses on GLBTI specific issues, the GLBTI MAC supports any moves to ensure everyone in Australia is treated with dignity and respect and enshrine rights to freedom, equality and fairness for all.

The GLBTI MAC was established to provide advice to the three Victorian Human Services Ministers and the Department of Human Services on action required to promote and support the health and wellbeing of GLBTI Victorians. It also works to influence departmental programs and funded services in the areas of inclusivity and service responsiveness and to ensure optimal access to mainstream and, where appropriate, specialist health and human services.

The GLBTI MAC submission acknowledges and supports the:

- Australian Marriage Equality submission on removing discriminatory provisions of the Australian Marriage Act which prevent same-sex partners entering civil marriages and prohibit the recognition of overseas same-sex marriages¹
- Human Rights Law Resource Centre *Fact sheet on Human Rights and Gay, Lesbian, Bisexual, Transgender and Intersex Communities*²
- Australian Human Rights Commission's *Let's Talk about Rights (GLBTI specific)* National Human Rights Consultation Toolkit, February 2009³
- Australian Human Rights Commission's, Sex and Gender Diversity project's concluding paper, *Sex Files: the legal recognition of sex in documents and government records*, NSW, March 2009⁴
- Submission to this consultation by Gay and Lesbian Health Victoria
- Joint submission of the ALSO Foundation and the Victorian Gay and Lesbian Rights Lobby.

Australia has signalled its intention to protect the rights of GLBTI Australians by ratifying the:

- *International Covenant on Civil and Political Rights*
- *International Covenant on Economic, Social and Cultural Rights*
- *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*⁵
- Statement made at the United Nations General Assembly in December 2008, to support international human rights protections include sexual orientation and gender identity⁶.

¹ Furness. *Submission to the National Human Rights Inquiry from Australian Marriage Equality*. Accessible at: [www.humanrightsconsultation.gov.au/www/nhrcc/RWPAttach.nsf/PublicbySrc/Australian_Marriage_Equality_AGWW-7Q7TZ2.doc/\\$file/Australian_Marriage_Equality_AGWW-7Q7TZ2.doc](http://www.humanrightsconsultation.gov.au/www/nhrcc/RWPAttach.nsf/PublicbySrc/Australian_Marriage_Equality_AGWW-7Q7TZ2.doc/$file/Australian_Marriage_Equality_AGWW-7Q7TZ2.doc)

² Human Rights Law Resource Centre. *Fact sheet: Human rights and Gay, Lesbian, Bisexual Transgender and Intersex Communities*. Accessible at: www.hrlrc.org.au/files/factsheet-glbti-community.doc

³ Australian Human Rights Commission. *Let's Talk About Rights. National Human Rights Consultation Toolkit*. February 2009. Accessible at: www.hreoc.gov.au/letstalkaboutrights/downloads/HRA_GLBTI.doc

⁴ Australian Human Rights Commission. *Sex Files: the legal recognition of sex in documents and government records Concluding paper of the sex and gender diversity project*. March 2009. Accessible at: http://www.humanrights.gov.au/genderdiversity/sex_files2009.html

⁵ Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity. 2007. Accessible at: www.yogyakartaprinciples.org/principles_en.htm

That statement made it clear that people who are sex and gender diverse have the same human rights as everyone else.

The terms of reference of the National Human Rights Consultation commit the Australian Government to *the promotion of human rights, based on the belief in the fundamental equality of all persons*⁷. Given this, **the GLBTI MAC strongly believes that discrimination on the basis of sexual orientation or gender identity must be fully addressed in that national commitment.**

1. Which human rights and responsibilities should be protected and promoted?

Human rights and freedoms particularly relevant to GLBTI people include the right to:

- equality and non discrimination before the law
- the highest attainable standard of physical and mental health
- equal access to work and equal treatment in workplaces
- social security
- freedom of expression
- freedom of movement
- privacy
- marry
- form a family.

In particular the GLBTI MAC would like to highlight that patterns of health and illness within the GLBTI communities are primarily related to the impact of discrimination which can be called heterosexism⁸, homophobia⁹ and transphobia¹⁰.

The GLBTI MAC strongly believes that being GLBTI is not a risk factor for poor health and wellbeing but the *stigma and discrimination* GLBTI people are subject to can trigger, expose or compound multiple risk factors such as drug and alcohol use, violence, isolation, high rates of depression, homelessness, unsafe sex practices and exposure to sexually transmissible infections such as HIV and hepatitis C.

National and international studies have demonstrated a link between GLBTI people's experiences of heterosexist, homophobic/transphobic abuse and increased levels of stress, smoking, substance abuse, depression, anxiety, suicidal ideation, and reduced social support^{11, 12, 13, 14, 15}. These experiences can be compounded if GLBTI people avoid or delay seeking care because of actual or perceived prejudice on the part of health care providers and institutions.

⁶ Yade, Verhagen. *Statement on Human Rights, Sexual Orientation and Gender Identity*. 2008. Accessible at: www.droitslgbt2008.fr/documents/?mode=download&id=2, p.5-6. As cited by Graham Innes, March 2009, *Launch of Sex Files: the legal recognition of sex on documents and government records*.

⁷ National Human Rights Consultation Terms of Reference. Accessible at: www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Terms_of_Reference

⁸ The belief that everyone is, or should be, heterosexual and that other types of sexuality are unhealthy, unnatural and a threat to society.

⁹ The fear and hatred of gay and lesbian people and of their sexual desires and practices.

¹⁰ Fear and hatred of people who are transgender or transsexual.

¹¹ King, Semlyen, Tai, Killaspy, Osborn, Popelyuk. A systematic review of mental disorder, suicide, and deliberate self harm in lesbian, gay and bisexual people. *BMC Psychiatry*, 8(1), 70. 2008.

¹² King, McKeown, Warner, Ramsay, Johnson, Cort. Mental health and quality of life of gay men, lesbians and bisexuals in England and Wales - Controlled cross-sectional study. *British Journal of Psychiatry*, 183, 552-558, 2003.

¹³ Pitts, Smith, Mitchell, Patel. *Private lives: A report on the health and wellbeing of GLBTI Australians*. Melbourne: Gay and Lesbian Health Victoria, The Australian Research Centre in Sex, Health and Society, 2006.

¹⁴ McNair, Kavanagh, Agius, Tong. The mental health status of young adult and mid-life non-heterosexual Australian women. *Australian and New Zealand Journal of Public Health*, 29(3), 265-271, 2005.

The effects of this abuse are even more pronounced on the wellbeing of vulnerable subgroups within the GLBTI community. For example, a recent national survey of the health and wellbeing of same sex attracted young people (SSAY) found that of the 75% of respondents who had experienced homophobic bullying at school, 60% had harmed themselves¹⁶. Findings also demonstrated that SSAY who experienced physical and verbal abuse fared worse on almost every health and wellbeing indicator than SSAY who had not.

Other vulnerable subgroups within the GLBTI community who are at increased risk of poorer health outcomes due to discrimination and abuse include: Indigenous GLBTI people; GLBTI people from culturally and linguistically diverse backgrounds; older GLBTI people; and GLBTI people with disabilities^{17 18}.

The evidence is clear and unequivocal that homophobic discrimination is an underlying cause of ill health and reduced social wellbeing specific to GLBTI communities. The GLBTI MAC supports the conclusion of *Private lives: A report on the health and wellbeing of GLBTI Australians*¹⁹ that

“The single most important contribution to improved health and wellbeing in GLBTI people is likely to be increased legitimisation and acceptance of their lives, their relationships and of the positive contribution they make to society. Legislative reform to remove discrimination and stigmatisation clearly has a large contribution to make.”

Within the context of available resources, inclusive programs, policies and services must be provided to eliminate discrimination and promote the health and wellbeing of GLBTI Australians.

2. Are human rights sufficiently protected and promoted?

The GLBTI MAC applauds the raft of Commonwealth legislative reforms such as the *Same-Sex Relationships Bill 2008* and the *Family Law Amendment Bill 2008* that remove some areas of discrimination and recognises some of the rights and responsibilities of GLBTI people, same-sex couples and their children. However, there are still rights not enshrined in law for **all** GLBTI Australians, such as the right to:

- marry (except civil unions/registration of same sex partnerships which are permitted in ACT, Tasmania and Victoria)
- have overseas civil unions recognised
- adopt children (except same sex couples in ACT, WA, the same sex step parent in Tasmania and individual GLBT people in NSW)
- lesbian access to IVF and Assisted Reproductive Technology in South Australia
- access to IVF by surrogates of gay men (except in ACT, WA and Victoria by 2010)
- national recognition of the non biological mother as ‘parent’
- have marital status deemed irrelevant when someone requests a change in legal sex
- change sex on documents, to reflect a person’s lived-in sex and gender identity, without surgery being the only criteria for change

¹⁵ Couch, Pitts, Mulcare, Croy, Mitchell, Patel. *Tranznation: A report on the health and wellbeing of transgender people in Australia and New Zealand*, Australian Research Centre in Sex, Health and Society, Victoria, 2007.

¹⁶ Hillier, Turner, Mitchell. *Writing themselves in again – six years on: The second national report on the sexuality, health and well-being of same sex attracted young people*, Melbourne: Australian Research Centre in Sex, Health and Society La Trobe University, 2005.

¹⁷ Barrett. *My people: Exploring the experiences of gay, lesbian, bisexual, transgender and intersex seniors in aged care services*. Melbourne: Matrix Guild Victoria Inc and Vintage Men Inc., 2008.

¹⁸ Mann, Horsley, Saunders, Briggs, Mitchell. *Swimming upstream: Making places welcoming. A report on the needs of gay, lesbian and bisexual people in ‘hard to reach’ groups* Melbourne, 2006.

¹⁹ Pitts et al. op. cit. p.63.

- travel freely overseas based on travel documents that reflect one's preferred gender identity, not one dependant on sex affirmation surgery
- appropriate placement of gender diverse people in prison/detention facilities.^{20 21}

3. How could Australia better protect and promote human rights?

The GLBTI MAC strongly advocates for:

- development of a federal law that prohibits systemic discrimination on the grounds of sexual discrimination and gender identity
- improved procedures for recording a change of sex or gender on official documents and government records as recommended by the Australian Human Rights Commission, in the 2009 Sex Files report²²
- development of an *Australian Human Rights Act* that addresses the above gaps and enshrines GLBTI Australian's, civil, political, economic, environmental, cultural and social rights and responsibilities.

By crafting and enacting such an act, a comprehensive education and awareness raising campaign in; schools, government departments, health care institutions and the general community, must challenge heterosexism by including rights related to sexual orientation and gender identity.

Conclusion

Australia is the only developed democracy without a national Human Rights Act or constitutional protection for GLBTI people.

The GLBTI MAC supports a comprehensive Australian Human Rights Act that enshrines the fundamental civil, political, economic, social and cultural rights that are necessary for all people to participate fully in our community. An Australian Human Rights Act would bring Australian laws in line with the international sexual orientation and gender identity standards and covenants to which we have been signatories.

Such an act, reviewed after four years, could address disadvantage and discrimination, improve public services, and promote more responsive and accountable government.

An Australian Human Rights Act could be modelled on legislation such as the *Victorian Charter of Human Rights and Responsibilities (2006)* extending the Act to include social and cultural rights, similar to the Human Rights Acts in the United Kingdom and the ACT.

An Australian Human Rights Act is vitally important for creating a culture and framework that honours and respects human diversity and that enshrines in legislation every person's right to enjoy his or her basic human rights free from discrimination.

For further information please contact:

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²⁰ Human Rights Law Resource Centre. Op cit.

²¹ Australian Human Rights Commission. *The Sex and gender diversity project, concluding paper. Sex Files: the legal recognition of sex in documents and government records*, p.8, 2009.

²² *ibid.*