

Australia's 2015 UPR—NGO Coalition Fact Sheet 15

Sexual Orientation, Gender Identity and Intersex

Introduction

During the 2011 UPR, Australia received three recommendations regarding the need for anti-discrimination laws protecting **lesbians, gay, bisexual, transgender or intersex (LGBTI)**¹ Australians and two recommendations in relation to the recognition of couple relationships involving these populations.

In 2013, Australia introduced national discrimination protections² on the grounds of “sexual orientation”, “gender identity”, “intersex status” and “relationship status”. State and territories are continuing to work towards compliance with the federal law.

While Australia has made some progress towards relationship recognition (civil union schemes in five of the eight jurisdictions) as at June 2015 marriage remains the exclusive domain of man/woman couples.³

Violence against LGBTI people

LGBT⁴ Australians continue to face high levels of violence with 25.5% of LGBT people across the age spectrum identifying they had recently faced verbal abuse, 15.5% facing harassment and 8.7% identifying threats of violence⁵. The rates of violence increase for youth, with 66% of young people experiencing verbal abuse⁶. Currently

there are no specific government programs designed to address violence faced by LGBTI people, with exception of schools based support programs.

The Australian Government has funded Safe Schools Coalition Australia, a program dedicated to supporting schools to be safer and more inclusive for LGBTI young people, based on a Victorian program commenced in 2010.

Proposed Recommendation

Australia should reduce the high levels of violence faced by LGBTI Australians by conducting activities to reduce bullying and harassment of LGBTI people, particularly youth.

Violence against people with Intersex variations

Genital surgeries are forced upon young infants with intersex variations, often resulting in reduced sexual function and sensation⁷. Unwanted hormone and other non-surgical interventions are also imposed on intersex people without their consent. These matters share similarities with the forced sterilisation of people with a disability. The Australian Senate Community Affairs References Committee made a series of recommendations specifically on intersex matters⁸; the UN Rapporteur on violence has called for all States to end forced or coerced medical interventions⁹ as has the Office of the High Commissioner for Human Rights and the World Health Organization.¹⁰

¹ LGBTI communities are not homogeneous and the issues facing each of these population groups, along with the legislative and programmatic solutions, vary.

² *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth)

³ QLD, NSW, ACT, TAS & VIC have civil union/relationship registers. WA, NT & SA recognise couples as domestic partners. All jurisdictions provide largely the same substantive rights to couples.

⁴ It is believed that intersex people experience similar levels of verbal abuse, harassment and threats, however there is no Australian research that includes this population group.

⁵ William Leonard et al, *Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians*, ARCSHS, La Trobe University, Melbourne (2012).

⁶ Elizabeth Smith et al, *From Blues to Rainbows: Mental health and wellbeing of gender diverse and transgender young people in Australia* (2014).

⁷ Morgan Carpenter & members, *Final Submission to the Senate Inquiry on the Involuntary or Coerced Sterilisation of People with Disabilities* Organisation Intersex International Australia (August 2013).

⁸ Senate Community Affairs References Committee, *Report: Involuntary or coerced sterilisation of intersex people in Australia*, Parliament of Australia, (October 2013).

⁹ Juan E. Mendez, *Report of the Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment*, A/HR/22/53, (1 February 2013) 23.

¹⁰ World Health Organization, *Sexual Health, Human Rights and the Law* (2015).

The Australian Government response to the inquiry by the Australian Senate Community Affairs References Committee has been to state that the issue is within the jurisdiction of state and territory governments.¹¹

There is no government funding of support services for people with intersex variations and their families, nor materials for parents and clinicians explaining the issues faced by intersex adult survivors.

Proposed Recommendation

Australia should adopt the Australian Senate's recommendations to ban unnecessary medical intervention (including genital surgeries) on people with intersex variations.

Classification of Sex/Gender

In 2011, Australia improved access to passports in the affirmed gender of Australian citizens without invasive medical procedures and improved access to an 'X' marker (in addition to M and F) for people who did not identify as male or female. In 2013, this policy was extended to all federal government departments and agencies.¹²

However, with the exception of the Australian Capital Territory, state and territory laws governing birth certificates are not consistent with this policy and generally require surgical intervention before sex/gender markers on birth certificates can be changed. Due to a national ban on the freedom to marry for 'same-sex' couples, married different sex couples are required to divorce before one spouse may have their affirmed sex legally recognised. In addition, people with intersex variations may face failures to recognise their sex assigned at birth.

Recent decisions of the High Court of Australia have allowed transgender and gender diverse people to have their legal sex recorded in their affirmed gender without requiring surgery on genitalia¹³ and for legal recognition of sex outside the male and female categories of classification.¹⁴

These decisions were positive for the individuals involved but their impact is limited to specific factual circumstances. There remains a need for

¹¹ *Australian Government response to the Senate Community Affairs References Committee reports: Involuntary or coerced sterilisation of people with disabilities in Australia.* (May 2015).

¹² Attorney General's Department, *Australian Government Guidelines on the Recognition of Sex and Gender* (July 2013).

¹³ *AB & AH v Western Australia* [2011] HCA 42.

¹⁴ *NSW Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11.

comprehensive legislative reform across all state and territories.

Proposed Recommendation

All Australian state and territories should recognise self-affirmed sex/gender on birth certificates without requiring medical treatment, or a person to be unmarried, and should include opt-in classifications other than male or female, such as 'X'.

LGBTI Parenting

Today, all Australian states and territories recognise the mother of a child and her female partner as the parents of a child born into a same-sex headed family. However, Queensland, Northern Territory, Victoria and South Australia¹⁵ currently do not permit same-sex couples to adopt children. This includes children already in their care through long term care orders, step parents or where a family member has passed away asking the couple to care for their children.

This can result in only one parent having a legal connection with the child after the age of 18, which may diminish the legal status of children in terms of intestacy laws and legal relationships with other siblings. Practical issues can also arise before the child turns 18.

Proposed Recommendation

All Australian states and territories should harmonise and provide for the legal protection of children in LGBTI-headed families.

Freedom to Marry

Despite amending 85 laws in 2008/09 to recognise same-sex de facto couples as substantially equal to different-sex de facto couples; overwhelming public support (72%);¹⁶ and the existence of civil unions / relationship registers in most state and territories¹⁷ – the Australian Government has not legislated to allow all couples the freedom to marry.¹⁸

Proposed Recommendation

Australia should legislate for marriage equality.

¹⁵ VIC and SA will review these policies in 2015.

¹⁶ Crosby|Textor Research '*Record Support for same-sex marriage*' Australian Marriage Equality. (2014)

¹⁷ Since the 2011 UPR, the Queensland Government, and the New South Wales Government, have enacted registers to recognise same-sex relationships, joining the ACT, Tasmania and Victoria.

¹⁸ M,A, Neilsen, *Same-sex marriage*, Law and Bills Digest, Parliamentary Library, Commonwealth of Australia (2012).