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**SEXUAL ORIENTATION, GENDER IDENTITY AND INTERSEX STATUS RIGHTS (SOGII)**

**SUBMISSION TO THE**

**AUSTRALIAN HUMAN RIGHTS COMMISSION**

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**About the Gay and Lesbian Rights Lobby NSW**

Established in 1988, the NSW Gay & Lesbian Rights Lobby (GLRL) is the peak organisation for lesbian and gay rights in NSW. We provide referral and educative resources on gay and lesbian rights to the media, policy makers and the community.

Our mission is to achieve legal equality and social justice for lesbians, gay men and their families.

\* While bisexual, intersex, trans and gender diverse issues are not formally in the GLRL’s mandate there are specific and ongoing issues for these communities in regard to SOGII rights We welcome and recommend direct consultation with representative groups regarding the protection of the rights of bisexual, intersex, trans and gender diverse people.

This submission has been produced by the

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**NSW GLRL SOGII SUBMISSION**

## How well SOGII rights are respected and protected in Australia:

**- What are some specific and ongoing issues that require the protection of SOGII rights?**

Some key issues requiring protection of SOGII rights are:

**Anti-vilification protections**

While there are effective federal protections against racial vilification, there are no similar federal protections against anti-LGBTI vilification. This is despite the fact that there is substantial evidence that LGBTI Australians also experience significant amounts of violence, intimidation and abuse, both physical and verbal.

**Anti-discrimination**

Discrimination on the basis of SOGII remains pervasive in Australia.[[1]](#footnote-1) Legislative anti-discrimination schemes in each jurisdiction continue to provide exemptions for such discrimination in certain contexts, particularly when committed by religious bodies or organisations. Such exemptions are problematic in employment and the provision of public services (education, aged care, health care, housing and domestic violence services in religious organisations) and uphold a discriminatory social order whereby LGBTI citizens do not enjoy the same rights or protections as heterosexuals under Australian Law.

**Marriage Equality**

Marriage equality has broad community support[[2]](#footnote-2). Marriage reforms are essential to uphold the human rights of sexual and gender minorities. In particular, the *Marriage Act 1961* should be amended to define marriage as the ‘union of two people' irrespective of sex, sexual orientation, gender identity or intersex status.

**Diverse parenting**

Most same-sex families are now equally recognised in federal and state laws, however legislation regarding parenting, adoption and surrogacy is not uniform across Australia, meaning that there are states where LGBTI parents are treated unequally before the law. In addition, children born through commercial surrogacy arrangements or who live in co-parenting arrangements with more than two parents have limited legal recognition of their families.[[3]](#footnote-3)

**Practice of ‘gay ‘conversion’ therapies’**

There is little evidence to suggest that conversion therapy is effective. In fact, individuals who have undergone conversion therapy are likely to suffer negative mental health effects.[[4]](#footnote-4) Practitioners are rarely accredited therapists or counsellors, as such, this is a dangerous and unregulated practice with detrimental effects on often vulnerable and troubled young Australians.

**- What legal protections currently exist, and how effective are they?**

The exceptions outlined above greatly diminish the efficacy of anti-discrimination legislation for LGBTI victims. Further, the attributes protected by anti-discrimination legislation are not uniform, leaving some LGBTI citizens disadvantaged in certain jurisdictions. Finally, anti-discrimination legislation generally sets a high bar for victims to prove their claim, which may discourage them taking action against discriminators.

In terms of marriage equality, although there are provisions for commitment ceremonies, this does not entitle an individual the same right before the law, nor does it meet the human rights requirement of equal treatment by the government.

**- What non-legal mechanisms of protection exist, and how effective are they?**

While legislative reform is extremely necessary, it is not alone sufficient to guarantee protection for LGBTI people. Policy reform is equally necessary. Two examples of successful interventions are:

**Young People**

The Safe Schools Coalition, funded by the Federal Government, is dedicated to making schools safer and more inclusive for same sex attracted, intersex, trans and gender diverse young people across Australia. The programme is ‘opt-in’ but rapidly growing and has the potential to improve the lives of thousands of students.

**Ageing and aged care**

In July 2012 the Federal Government announced the development of an LGBTI Ageing and Aged Care Strategy.[[5]](#footnote-5) Initiatives like this which focus on the particular needs of LGBTI communities shed light on the inequalities and historical marginalisation faced by elderly LGBTI people, and provide a way forward to redressing these issues.

## Examples of legislation, policies and practices by government that unduly restrict SOGII rights.

**- What legal barriers exist to SOGII rights?**

As discussed above, legal barriers to equality exist in regard to marriage equality, in recognising diverse parenting rights, and in anti-discrimination and anti-vilification legislation.

**- What policy barriers exist to SOGII rights?**

**Health and Wellbeing Policy**

Gay and lesbian people are at increased risk of a range of mental health issues including depression, anxiety disorders, self-harm, suicidality and suicide.[[6]](#footnote-6) Research has shown that experiences of social exclusion and discrimination, violence and abuse, and the lack of inclusion in health policies all contribute to these differential rates. [[7]](#footnote-7) A whole of government approach, through a LGBTI health and wellbeing strategy, is required to address these issues.

**LGBTI Youth**

To help combat bullying, harassment, violence and exclusion suffered by LGBTI youth and promote equal rights for all students, there should be a commitment to a responsive health and physical education curriculum and syllabus that makes explicit reference to LGBTI people and includes a focus on promoting tolerance, positive relationships and providing information about HIV and STIs.

**- What impact do these barriers have on the lives of LGBTI individuals?**

These barriers perpetuate the notion that LGBTI citizens are not entitled to the same rights as the rest of the community. The experience of inequality can often lead to social stigma and further discrimination, mental health issues, substance abuse and suicidal behaviour. [[8]](#footnote-8)

## What is currently being done, and what more could be done to promote a culture of respect for SOGII rights?

More inclusive legislation and policies are required so the principle that all citizens are entitled to equal rights before the law is supported at a government level. Legislative reform must be supported by cultural change, and there is a need for strong inclusive leadership – both from government, and in the community. Visibility is critical, and there is room for more effective communication, education and public awareness campaigns to help effect change and promote a culture of respect for SOGII rights.

1. Successive national and local level studies have documented the burden of morbidity and mortality associated with this discrimination, which exerts a significant toll on the health and wellbeing of LGBTI Australians (Hillier et al., 2010; Leonard et al., 2012; Pallotta-Chiarolli & Martin, 2009). Horner, J. (2013). In their own words: Lesbian, gay, bisexual, trans\* and intersex Australians speak about discrimination. Sydney: NSW Gay and Lesbian Rights Lobby, 26. [↑](#footnote-ref-1)
2. A 2014 Crosby Textor poll, commissioned by Australian Marriage Equality shows 72% of Australians want same-sex marriage legalised - <http://www.crosbytextor.com/news/record-support-for-same-sex-marriage/>. [↑](#footnote-ref-2)
3. http://glrl.org.au/index.php/Rights/Parenting/Overview-Lesbian-and-gay-parenting [↑](#footnote-ref-3)
4. The American Psychological Association conducted the world's largest sexual orientation-change efficacy study which found that conversion and reparative interventions caused harmful mental health effects such as increased anxiety, depression, suicidal thoughts and sometimes loss of sexual functions. <http://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf> [↑](#footnote-ref-4)
5. <https://www.dss.gov.au/sites/default/files/documents/08_2014/national_ageing_and_aged_care_strategy_lgbti_print_version.pdf>. [↑](#footnote-ref-5)
6. ACON Health Outcome Strategy 2013-2018 Mental Health and Wellbeing, pg 2: [http://www.acon.org.au/sites/default/files/HOS-Mental- Health-2014.pdf](http://www.acon.org.au/sites/default/files/HOS-Mental-%20Health-2014.pdf) [↑](#footnote-ref-6)
7. 2015 NSW LGBTI Election Issues Paper, compiled by ACON, NSW GLRL and Positive Life p5. [↑](#footnote-ref-7)
8. ACON Health Outcome Strategy 2013-2018 Mental Health and Wellbeing, pg 2: [http://www.acon.org.au/sites/default/files/HOS-Mental- Health-2014.pdf](http://www.acon.org.au/sites/default/files/HOS-Mental-%20Health-2014.pdf) [↑](#footnote-ref-8)