

Lesbian, gay, bisexual, trans, gender diverse and intersex people



Australian
Human Rights
Commission

Australia's third UPR | 2021

Background

Since Australia's appearance at the second cycle of the UPR in 2015, Australia has passed legislation amending the definition of marriage under the *Marriage Act 1961* (Cth). The new definition classifies marriage as a union of 'two people', removing discrimination against same-sex couples and people with diverse sex and genders by allowing them access to the civil institution of marriage. The Commission [welcomes the passing](#) of marriage equality legislation.

Since 2015, legislation has been passed expunging historical criminal convictions for consensual homosexual sex in Queensland, the Northern Territory, the Australian Capital Territory, Tasmania and Western Australia. The Commission commends the fact that all Australian states and territories have now enacted legislation to right this historical wrongdoing.

Key issue - Medical interventions on people born with variations in sex characteristics

People born with variations in sex characteristics in Australia have increasingly raised concerns about human rights violations with the Commission, the Australian Government and the United Nations (UN), especially in relation to medical interventions conducted without the full and informed consent of the person involved. Concern is particularly acute in relation to infants and children who are at particular risk of human rights violations.

Most recently, the [concluding observations of the Committee on the Rights of the Child](#) called for the Australian Government to "enact legislation explicitly prohibiting coerced sterilisation or unnecessary medical or surgical treatment, guaranteeing bodily integrity and autonomy to intersex children as well as adequate support and counselling to families of intersex children." In 2017, the UN Human Rights Committee also made comments on the issue when considering Australia's obligations under the ICCPR.

In 2013, the Senate Community Affairs References Committee undertook an inquiry into the involuntary or coerced



sterilisation of intersex people in Australia. [The Committee's final report](#), the Committee made a number of recommendations to better protect the human rights of intersex people. Sterilisation is relevant as it is a medical intervention that has been undertaken without personal consent on people born with variations in sex characteristics.

The Commission is currently completing project to consider how best to protect the human rights of people born with variations in sex characteristics in the context of medical interventions. The project has had two focusses; identifying current practices and approaches, taking into account the lived experiences of people born with variations in sex characteristics and their families, and; outlining a framework to adequately protect individual human rights of people born with variations in sex characteristics into the future.

As part of this project, the Commission consulted with a broad range of individuals and organisations who are affected by this issue. Stakeholder consultation has allowed individuals born with variations in sex characteristics, parents and carers, medical professionals, academics and human rights organisations the opportunity to contribute to the development of the final report, expected to be published by the end of 2020.



Recommendation

The Government implements the recommendations of the Commission's report to ensure a nationally consistent human rights-based approach to medical interventions on people born with variations in sex characteristics



Key Issue – exemptions from discrimination law and religious freedom legislation

The Commission strongly supports the introduction of enforceable protections against religious discrimination for all people in Australia (**see fact sheet: race and religion**).

The [Commission is concerned](#), however, that recent draft legislation released by the government may allow people to make a statement of belief even if the statement would otherwise be discriminatory on the basis of a person's race, sexual orientation, disability or other protected attribute. The Commission has recommended a number of significant amendments to the legislation. This legislation has not yet been passed.

In the absence of other protections against religious discrimination, the *Sex Discrimination Act 1984* includes exemptions that allow some clubs and religious service providers to discriminate against LGBTI people in service provision, employment, education and sports. The government has commissioned [a review of these exemptions by the Australian Law Reform Commission](#).

Recommendation

Government introduce a religious discrimination law that protects all people in Australia consistently with international human rights law and other Commonwealth discrimination laws

