**Submission to Australian Human Rights Commission Sexual Orientation, Gender Identity and Intersex (SOGII) Rights Consultation**

One of my favourite campaigns of recent times – *It Gets Better* – performs a valuable role, letting vulnerable LGBTI youth know that, while the homophobia, biphobia, transphobia and intersexphobia they may be experiencing is awful, for *most* of them, it will get better. I emphasise the word most here because we should always remember that it does not get better for everyone.

Meanwhile, as the LGBTI movement itself ‘ages’, many of us are increasingly celebrating the past, and reflecting on significant community milestones (such as last year’s 30th anniversary of the decriminalisation of male homosexuality in NSW, or the 40th anniversary of Sydney’s Gay & Lesbian Mardi Gras which is now only three years away). But, while absolutely necessary, looking backwards should never obscure the challenges that remain ahead.

This consultation, including an examination of legislation, policies and practices by government(s) that unduly restrict sexual orientation, gender identity and intersex rights, provides an opportunity to highlight some of the major obstacles which continue to prevent LGBTI Australians achieving full equality. In this submission, I will concentrate on six such areas:

1. Involuntary or coerced sterilisation of intersex children

These unjustified practices – surgeries performed with the aim of ‘normalising’ intersex children according to the expectations of their parents, their doctors, and/or society at large, so that they conform to an exclusionary man/woman binary model of sex – are human rights abuses, plain and simple.

Obviously done without the child’s consent, such practices can involve sterilisation, as well as other ‘cosmetic’ (ie unnecessary), largely irreversible surgery on genitalia to make their bodies fit within the idea of what a man or woman ‘should’ be, ignoring the individual involved and their fundamental rights to bodily integrity, and personal autonomy.

That these practices continue in 2015 is abhorrent – and the fact the Commonwealth Government has yet to formally respond to the Senate’s 2013 Report into this issue (<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/~/media/Committees/Senate/committee/clac_ctte/involuntary_sterilisation/second_report/report.ashx>) is, or at least should be, a scandal.

1. Restrictions on the rights of transgender people

Another group within the LGBTI community whose rights continue to trail those whose identities are based on sexual orientation (lesbian, gay and bisexual people) are transgender Australians.

This includes the fact there continue to be ‘out-of-pocket’, in many cases quite significant, expenses for medical support for trans\* people simply to affirm their gender identity. This is a denial of their human rights – access to trans\* surgeries and related medical services should not be restricted by the capacity to pay, but instead should be fully publicly-subsidised through Medicare.

The ongoing requirement that married transgender Australians must divorce their spouses in order for their gender identity to be legally recognised is also a fundamental breach of their rights, and must end.

1. Processing and resettlement of LGBTI refugees in countries which criminalise homosexuality

Australian Governments, of both persuasions, are guilty of violating the human rights of LGBTI refugees. These are people who are (often) fleeing persecution on the basis of their sexual orientation, gender identity or intersex status, and seeking our protection.

Australia’s response? To detain them, indefinitely, in inhumane prison camps on Nauru and Manus Island. For many, while detained they are at risk of prosecution under the laws of Papua New Guinea and/or Nauru, both of which continue to criminalise male-male intercourse. Even after they are found to be refugees, they are then ‘resettled’ in these countries, in effect exposing people who have fled persecution to potentially more persecution.

While I believe the offshore processing and resettlement of *all* refugees is unjust, it should be recognised it has a disproportionately negative impact on LGBTI refugees.

1. Denial of the right of LGBTI students to an inclusive education

It is encouraging that greater numbers of young LGBTI people feel comfortable in disclosing their status at an earlier age – and for some, that they attend genuinely inclusive schools. However, this inclusion is by no means universal.

For example, the recently developed national Health & Physical Education curriculum does not even include the words lesbian, gay or bisexual, and does not guarantee students will be taught comprehensive sexual health education (even omitting the term HIV). This is a massive failure to ensure all students learn vital information that is relevant to their health.

Similarly, while the national Safe Schools Program is a welcome initiative to counter homophobia and bullying, participation in the program is optional, with most schools (and even some entire jurisdictions) opting out. The right to attend school free of discrimination should not depend on a student’s geographic location, or their parent/s’ choice of school.

Finally, religious exceptions to anti-discrimination legislation (in all jurisdictions outside Tasmania), mean many LGBTI students are at risk of discrimination, *by their school*, simply for being who they are.

1. Limitations on anti-discrimination protections

Students are not the only LGBTI individuals let down by Australia’s current anti-discrimination framework. These same religious exceptions mean that, in most jurisdictions, LGBTI people can be discriminated against in a wide range of areas of public life, both as employees and people accessing services, in education, health, community services and (as employees) in aged care.

The attributes which are protected under anti-discrimination law also vary widely, with intersex people only truly protected under Commonwealth and Tasmanian law, different definitions of transgender (including extremely narrow protections in Western Australian legislation), and NSW excluding bisexual people altogether.

Finally, only four jurisdictions have vilification protections for (some) members of the LGBTI community – with no Commonwealth LGBTI equivalent of section 18C of the *Racial Discrimination Act*.

1. Ongoing lack of marriage equality

I include this not because I consider it as important as the issues listed above, but simply as someone who has been engaged to be married for more than five years – and has no idea how much longer he will have to wait to exercise the same rights as cisgender heterosexual couples, with the only difference being who I love. Marriage discrimination is wrong, it is unjust, and it must go.

This submission is by no means comprehensive – there are a variety of other issues which I have excluded due to arbitrary word length restrictions (including mental health issues, anti-LGBTI violence, and discrimination against rainbow families – with my partner and I able to adopt in Sydney, but not Melbourne or Brisbane).

In conclusion, while it *does* get better, and over time, it most certainly *has* got better, there are still many ways in which the rights of LGBTI Australians continue to be denied – and about which we, as LGBTI advocates and activists, should remain angry, and most importantly, take action.

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