



# *Gay, lesbian, bisexual, transgender and intersex people*

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This information sheet talks about some of the human rights issues faced by gay, lesbian, bisexual, transgender and intersex (GLBTI) people in Australia. It also highlights how a federal Human Rights Act could help deal with these issues.

## **Which human rights are we talking about?**

Human rights are about everyone, and they are very important for GLBTI people in Australia. We are all entitled to the enjoyment of human rights without discrimination of any kind, including discrimination on the basis of sexuality, sex identity or gender identity.

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

- equality before the law
- equal access to work and equal treatment in workplaces
- the highest attainable standard of physical and mental health
- social security
- freedom of expression
- privacy
- family life.

## **What are some of the human rights problems faced by GLBTI people in Australia?**

At the end of 2008, the protection of the human rights of some GLBTI people in Australia took a big step forward when discrimination against same-sex couples was removed from most Commonwealth laws. This included laws about taxation, superannuation, pharmaceutical benefits, aged care, veterans' entitlements, workers' compensation and employment entitlements.

'I received hate mail the first day I walked into the [parliament] house. It came in the form of a letter, anonymous of course. It said: "I hope people like you die, your children don't deserve to be born".'

Human Rights and Equal Opportunity Commission, *Same-Sex: Same Entitlements Report*, National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits (2007), section 17.2.1.

However, GLBTI people still face many human rights challenges in Australia.

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For example:

- young and adult GLBTI people still experience harassment, bullying and discrimination within the general community
- there is discrimination in the workplace, including harassment and diminished career opportunities
- there is discrimination in accessing aged care facilities, with aged care policies not adequately addressing the needs of GLBTI people in Australia
- federal law does not allow formal recognition of the relationship between same-sex couples (for example through civil unions or marriage)
- there are significant levels of homophobia
- people who are sex and gender diverse face difficulties in obtaining official documents that record the sex or gender in which they live.

This participant in a recent Commission blog was born a female, but identifies as a male and would like to be recognised as one. He has not had sex affirmation surgery.

‘According to the TAFE Queensland homepage for my ‘current’ personal details, none of the study I did under a female gender shows up any more. Only the courses I have done since changing my gender from female to male show up. So according to their system I must be two different people...

Ideally I want to change anything and everything that identifies me incorrectly as female. Some business and government departments do help, but there is always a paper trail that I think could be fixed with a more considerate database design. If these trails aren’t eliminated, or minimised, then your medical history... becomes public property. It would be like if a police officer pulled you over and looked up the database and saw that you once had your tonsils out.’

Sex Files blog, Sex and gender diversity project,  
Australian Human Rights Commission, 14 August 2008.

While most states and territories provide some protection from discrimination on the grounds of sexuality, and sex identity or gender identity, **there is no federal law specifically prohibiting discrimination on these grounds (as there is for race discrimination, sex discrimination, disability discrimination or age discrimination).**

## What are the limitations of existing human rights protections for GLBTI people?

There are limited human rights protections for GLBTI people at the moment.

While most states and territories provide some protection from discrimination on the grounds of sexuality, and sex identity or gender identity, there is no federal law specifically prohibiting discrimination on these grounds (as there is for race discrimination, sex discrimination, disability discrimination or age discrimination).

However, if you feel you have been discriminated against because of your sexuality, sex identity or gender identity, you can make a complaint to the Australian Human Rights Commission in certain circumstances.

If your complaint is about discrimination on the ground of *sex or gender identity*, then you can only complain to the Commission if the discrimination was by the federal government or someone acting on behalf of the federal government.

If your complaint is about discrimination on the ground of *sexuality*, then similarly, you can only complain to the Commission if the discrimination was by the federal government or someone acting on behalf of the federal government. But, in addition, the discrimination must have been in the context of employment.

Even if the Commission finds that you have been discriminated against on the basis of your sexuality, or sex identity or gender identity, there are limited options to resolve the situation. The Commission can only *recommend* a remedy. These recommendations are not enforceable, and you cannot apply to have your complaint heard in court.

The Commission has received several complaints from members of the sex and gender diverse community about the recording of their sex on their passport. This includes both:

- people who have undergone sex affirmation surgery and remain married to the person they were married to before undergoing surgery
- people who have not undergone sex affirmation surgery but live in the sex that is different to that noted on their birth certificate.

These people are unable to change their birth certificate to reflect their sex because of state or territory legislation. The federal Department of Foreign Affairs and Trade (DFAT) relies on the information listed on a primary identification document (such as their birth certificate) when issuing a passport. At the time of the complaints, under DFAT policy, a passport could only be issued in a sex that was different to the sex noted on a person's birth certificate or other primary identification document in exceptional circumstances. This affected the person's right to freedom of movement and travel, the right to non-discrimination and the right to privacy. DFAT has made some changes to overcome some of these issues. However, there remains no effective way to challenge these potential human rights breaches under Australia's current system of human rights protection.

## How could we improve human rights protections for GLBTI people?

The Australian Human Rights Commission supports a Human Rights Act for Australia.

A Human Rights Act could help prevent the human rights problems faced by GLBTI people and provide remedies for those human rights breaches that were not prevented.

A Human Rights Act could make a difference in protecting and promoting the rights of GLBTI people by requiring our federal government to carefully consider how decisions impact on human rights.

If Australia had a Human Rights Act, it could:

- make **the federal Parliament consider how laws impact on human rights** – for example, ensuring equal application of all laws to people in the GLBTI community
- make **the federal government respect human rights when developing policy** – for example, when developing aged care policies, the government would need to specifically consider whether the policies meet the needs of older GLBTI people
- make **public servants respect human rights when making decisions and delivering services** – for example, service delivery agencies such as Centrelink would need to make sure they respected the rights of GLBTI people
- provide a range of **enforceable remedies** for breaches of human rights – for example, if an employer discriminated against a person on the basis of their sexuality.

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Over the longer term, a Human Rights Act would also be a powerful tool for fostering a stronger human rights culture in Australia by promoting greater understanding and respect among all people in Australia.

In addition to a Human Rights Act, there is a range of other ways in which the human rights of GLBTI people could be better promoted and protected in Australia. For example:

- enhanced protection of human rights in the Australian Constitution
- the introduction of federal legislation making it unlawful to discriminate against, or vilify, a person on the basis of their sexual preference, sex identity or gender identity, possibly through an Equality Act
- improved procedures for recording a change of sex or gender on official documents such as passports
- a National Human Rights Action Plan, including a focus on the rights of GLBTI people
- a national public education program about human rights that includes discussion of GLBTI rights and addresses homophobia and abuse or harassment against people who are sex or gender diverse.

These and other measures could make a positive difference to human rights protection for GLBTI people.

## **Where can I find further information about the human rights of GLBTI people?**

Australian Human Rights Commission:

[www.humanrights.gov.au/human\\_rights/gay\\_lesbian/index.html](http://www.humanrights.gov.au/human_rights/gay_lesbian/index.html)

NSW Gay and Lesbian Rights Lobby:

[www.girl.org.au/](http://www.girl.org.au/)

Australian Coalition for Equality:

[www.coalitionforequality.org.au/](http://www.coalitionforequality.org.au/)