



## Factsheet: Lesbian, gay, bisexual, trans, gender diverse and intersex people (LGBTI/SOGII)

### Background information

The LGBTI community are a number of distinct groups with varying issues and experiences. Research suggests that LGBTI people experience higher than average rates of violence, harassment and bullying.<sup>1</sup>

Educational resources like *Sogi's Story* have been developed which encourage learning and awareness of issues around sexual orientation and gender identity.<sup>2</sup>

### Key issue – Anti-discrimination and exemptions

In 2011, 98 pieces of federal legislation were amended to remove discrimination towards same-sex couples and their children.<sup>3</sup> In 2013, the *Sex Discrimination Act 1984* (Cth) was amended to include the prohibition of discrimination on the basis of sexual orientation, gender identity and intersex status (SOGII).<sup>4</sup>

Following these amendments, states were given until July 2014 to ensure that all laws were amended to be consistent with the new federal provisions. In July 2014, a 12 month extension to the exemption of state and territory anti-discrimination laws from the operation of the SDA. The exemption expires on 31 July 2015.

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.<sup>5</sup> The Human Rights Commissioner will establish a religious freedom roundtable in late 2015 which will consider, in part, the scope of exemptions to the *Sex Discrimination Act 1984* (Cth) for service providers to LGBTI people.

### Recommendation

***State and territory laws be brought into compliance with the Sex Discrimination Act 1984 (Cth).***

### Key issue – Historical convictions for homosexual acts

Consensual sexual activity between men is no longer illegal in Australia. Legislation expunging historical criminal convictions for consensual homosexual sex has been passed in South Australia, New South Wales and Victoria. The remaining states and territories are yet to establish legislation for expunging these records. This leaves men with criminal records based on redundant legislation.<sup>6</sup>

The Australian Defence Force expunges these records on request.

## **Recommendation**

***The Commission recommends that all jurisdictions pass legislation expunging historic criminal convictions for consensual homosexual sex.***

## **Key issue – Marriage equality**

The *Marriage Act 1961* (Cth) defines marriage as ‘the union of a man and a woman to the exclusion of all others, voluntarily entered into for life’. This law discriminates against same-sex couples and people with diverse sex and genders by denying them access to the civil institution of marriage.

De facto relationship status does afford legal rights similar to marriage. However, establishing de facto status requires proof of a relationship, the status of which is decided by an independent third person (a judicial officer).<sup>7</sup>

Where one partner to a marriage changes their gender, they are required to get divorced in order to amend their birth certificate. Some couples may be unable to access the institution of marriage if one partner is intersex and their birth certificate is absent a male or female sex marker.<sup>8</sup>

## **Recommendation**

***The Commission recommends that the Australian Parliament legislate to provide marriage equality as a matter of priority.***

## **Key issue – Surgical intervention of intersex infants**

Infants with intersex characteristics often face non-essential intervention where they are surgically assigned to a particular sex. The rationale for this procedure is generally based on psychosocial reasoning such as minimising family concerns or reducing confusion around gender identity. These children may not have the opportunity to express their gender identity or may later face psychological damage due to an incorrect imposition of sex and gender.<sup>9</sup>

## **Recommendation**

***The Commission recommends that Government conduct an inquiry into the issue of surgical intervention on intersex infants.***

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<sup>1</sup> W Leonard, M Pitts, A Mitchell, A Lyons, A Smith, S Patel, M Couch and A Barrett, *Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians*, Monograph Series Number 86, (The Australian Research Centre in Sex, Health & Society, La Trobe University, 2012).

<sup>2</sup> Commonwealth Forum of National Human Rights Institutions, *Sogi's Story*. At <http://www.sogistory.com/main> (viewed 22 June 2015)

<sup>3</sup> Australian Human Rights Commission, *Same Sex Same Entitlements Report (2008)*. At: <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/same-sex-same-entitlements> (viewed 24 June 2015).

<sup>4</sup> *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (Cth).

<sup>5</sup> *Sex Discrimination Act 1984* (Cth).

<sup>6</sup> Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights 2015*, p 64. At <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/resilient-individuals-sexual-gender-identity/publications/resilient-individuals-sexual-gender-identity/publications/resilient-individuals-sexual-gender-identity> (viewed 22 June 2015).

<sup>7</sup> Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights 2015*, p 23.

<sup>8</sup> Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights 2015*, p 24.

<sup>9</sup> Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation Gender Identity & Intersex Rights 2015*, p 57.