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Friday, 13th February 2015

BY ELECTRONIC SUBMISSION

## **ASHA Submission re: the Sexual Orientation, Gender Identity & Intersex Rights Snapshot Report Consultation**

### **About ASHA**

The [Australasian Sexual Health Alliance \(ASHA\)](#) is a group of partner organisations established to improve national and local responses to sexual health issues, via a multidisciplinary support network for the sexual health workforce. ASHA was formed as a committee under the [constitution](#) of the [Australasian Society for HIV Medicine \(ASHM\)](#). For more information please see our [Establishment Document](#) or go to our [website](#).

### **General comments**

ASHA is grateful for the opportunity to participate in the Sexual Orientation, Gender Identity & Intersex (SOGII) Rights Snapshot Report consultation. We are supportive of the project's aims to scrutinise both State and Federal laws regarding their impact on Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) people; survey the services available to LGBTI people across Australia; support changes to future government law and policy in areas such as marriage equality and requirements for changing a person's legal gender identity; support improved access to appropriate programs and services for LGBTI people, with our particular focus being on sexual health, and sexual health education; and support the building of a culture of respect for SOGII rights in Australia.

ASHA feels that the material outlined in your SOGII Rights Background Paper is generally reflective of sentiments that we as an organisation also hold. We agree that human rights principles of equality before the law equally apply to LGBTI people and that the State and federal governments should be required to treat all people equally. We would however raise some further comments regarding areas in which we perceive that Australia still has significant improvements to be made in respect to the rights of LGBTI people; these are outlined under the headings below.

## 1. How well SOGII rights are respected and protected in Australia

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

ASHA acknowledges that there are a significant number of ongoing issues that require the protection of SOGII rights, which cannot all be addressed within this brief submission. We have therefore addressed only a limited number, particularly those pertaining to sexual health.

LGBTI people experience significant levels of discrimination,<sup>1</sup> are significantly more likely to be diagnosed with depression or anxiety,<sup>2</sup> and experience violence, harassment and abuse (both physical and mental) at much higher rates than the general population. These and other areas of disadvantage suggest that LGBTI people despite their diversity should be considered a socially marginalised and “vulnerable group”. In particular, their right to participate on an equal basis as full members of society are curtailed by discriminatory policies and practices which, inter alia, deny them opportunities for marriage and partnership formation on an equal basis: factors which in no small way contribute to feelings of isolation, Otherness and stigmatisation, with often negative effects.

It is important to note that there are significant differences between the experiences, needs and hence reforms required for LGB (sexual orientation), transgender (gender identity) and intersex people. While LGB and transgender people share some experiences of discrimination and its impact on their freedoms of sexual expression, for many transgender and intersex people, the issues are more about physical matters; and for intersex people, particularly children, there are also issues of parental guidance and consent.

Transgender and intersex health continues to be neglected in service provision, funding, access and education of healthcare providers. Discrimination towards gender and sexual minorities is common, is not always reported and is rarely prosecuted. In particular, transgender people are denied access to essential gender-affirming treatment across a range of Australian jurisdictions. Denial of access to basic diagnostic and assessment services relating to gender dysphoria is a human rights violation and has been actively implemented in some states, such as Queensland.

With respect to mental healthcare for transgender and intersex people, there is severe neglect and reversing this should be a priority area for health services both nationally and locally. The need for public sector health services (especially in the area of mental health) for transgender people is high given their common background of unemployment, depression and abuse history.

In terms of sexual health, the limiting of freedom of sexual expression of vulnerable groups in society has led to poorer sexual and reproductive health outcomes (this relates to a lack of

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<sup>1</sup> Australian Research Centre in Sex, Health & Society, *Private Lives 2: The second national survey of the health and wellbeing of GLBT Australians*, (2012) ([HERE](#)); L Hillier, T Jones, M Monagle et. al., *Writing themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people*, Australian Research Centre in Sex, Health and Society, La Trobe University, (2010) ([HERE](#)); NSW Gay and Lesbian Rights Lobby, *The Pink Ceiling is Too Low*, (2003);

<sup>2</sup> Australian Bureau of Statistics, *National Survey of Mental Health and Wellbeing*, (2007).

appropriate information on their sexual and reproductive health needs, lack of appropriate training and a tacit assumption that non-heterosexual and non-reproductive forms of sexual expression are secondary, etc.). Hence, promoting equity (rather than equality) of sexual expression should be the focus of ongoing legislative and social reform, in order to acknowledge and provide for the sexual and reproductive health needs of LGBTI people.

"Normalising" surgeries are still taking place on intersex people in Australia, often when they are infants and young children and unable to consent in any meaningful sense.<sup>3</sup> Medical interventions are often justified using social and cultural rationales, such as "marriage prospects".<sup>9</sup> Normalisation surgeries deconstruct an intersex physiology and, in turn, construct an identity that conforms to male and female gender categories. More effort should be dedicated to investigating whether this complex medical treatment is either necessary or beneficial. ASHA would support recommendations<sup>4</sup> to end cosmetic genital surgery on infants and children and provide for legal oversight of individual cases. Further, additional support and resources could help the parents and guardians of intersex infants to make informed decisions about the health and safety of their children. If adopted, these recommendations would effectively protect the rights of intersex children and future adults.

Reproduction is another particular area in which LGBTI people are receiving less than equitable support. There are currently insufficient assisted human reproduction (AHR) services for LGBTI people, in particular, transgender and intersex people undergoing surgical gender reassignment, who may wish to access services such as gamete freezing and related technologies. Unfortunately, AHR systems continue to assume that clients are heterosexual and cisgender (non-trans), partnered or married, with access to two incomes, and dealing with infertility. Some or none of these assumptions may be true, which may cause unnecessary difficulties for clients. AHR systems need to be supported to ensure that LGBTI people can be provided equitable treatment, information and resources.

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

There are several areas in which legislative gaps currently exist: infant genital mutilation, anti-discrimination protection and marriage equality. These gaps are identified on the basis of core international human rights law, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which Australia has signed and ratified.

Surgical interventions are still permitted on infants and children with ambiguous genitalia.<sup>8</sup> ASHA would support recommendations<sup>5</sup> to end cosmetic genital surgery on infants and children.

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<sup>3</sup> Senate Community Affairs Committee, *Involuntary Or Coerced Sterilisation Of Intersex People In Australia*, October 2013

<sup>4</sup> Statement on the Senate report 'Involuntary or coerced sterilisation of intersex people in Australia', Organisation Intersex International (OII) Australia, 29 October 2013

<sup>5</sup> Statement on the Senate report 'Involuntary or coerced sterilisation of intersex people in Australia', Organisation Intersex International (OII) Australia, 29 October 2013

ASHA also supports the recommendation to expand anti-discrimination protections to cover LGBTI people, and the recommendation to legislate for marriage equality.

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

These barriers breach the human rights of LGBTI people, and abuses of LGBTI human rights are well documented in Australia in the form of negative impacts on mental health, higher levels of suicide, higher rates of substance abuse, verbal and physical violence as well as economic disadvantage. Promoting the optimal health of LGBTI people requires the realisation and enjoyment of human rights by all LGBTI people.

### **3. What is being done, and what more should be done, to promote a culture of respect for SOGII rights.**

#### What is currently being done to promote a culture of respect for SOGII rights?

ASHA acknowledges the great work currently being done by a number of programs in this space, both at a national level and more locally. ASHA advocates for the increased funding and support of these existing programs. Government leadership in supporting these initiatives is crucial to promoting and ensuring a culture of respect for SOGII rights at a community level. Programs include, but are not limited to:

- the National Safe Schools program, based on the [Safe Schools Coalition Victoria's Supporting Sexual Diversity in Schools: A Guide \(HERE\)](#)
- State and National LGBTI mental health programs, such as the MindOUT program (run by the [National LGBTI Health Alliance](#)), which includes a national LGBTI mental health promotion strategy, *Going upstream: A framework for promoting the mental health of lesbian, gay, bisexual, transgender and intersex (LGBTI) people (HERE)*
- State and National LGBTI youth programs, such as the HEY (Health Equal Youth) Program, which is Victorian Government funded to support the mental health and wellbeing of SOGII young people (see [HERE](#))
- Programs ensuring organisations are LGBTI-friendly, such as the Rainbow Tick program run by [Quality Innovation Performance \(QIP\)](#) and [Gay and Lesbian Health Victoria](#) (see [HERE](#))

#### What more should be done to promote a culture of respect for SOGII rights?

ASHA recommends that:

An additional Commissioner with responsibilities over SOGII discrimination is appointed to empower the Australian Human Rights Commission to address day-to-day discrimination. Additional staffing for the Commissioner for complaints handling would also enable the Commission to deal with discrimination against LGBTI people by providing alternative dispute resolution as well as conducting policy and advocacy activities.

In addition to tackling discrimination, a comprehensive strategy is required to end violence, abuse and harassment against LGBTI people. It is well known that a significant proportion of the LGBTI community in Australia have experienced homophobic or transphobic abuse, harassment or violence in their lives. Furthermore, this is an ongoing issue, which is known to particularly have an effect on young LGBTI people. Given the disproportionate levels of violence experienced by LGBTI people, ASHA recommends that the SOGII Rights Report propose further funding be provided for the implementation of anti-homophobia and anti-transphobia campaigns both in-school and beyond, human rights education campaigns, national data collection for homophobic and transphobic violence, improved support services to victims of violence and development of policies and resources for education institutions to end violence, abuse and harassment.

Documentation of gender-based violence (especially against men who have sex with men (MSM) and transgender people) should be incorporated into data collection such as HIV behavioural surveillance in the Australian context. This data collection has already become routine in other countries.

Community-based education activities should be implemented to promote changes in attitudes towards transgender patients in the health and employment sectors. Broadly speaking, training on sexuality issues remains neglected across medical, nursing, and psychology training curricula in Australia, and transgender and intersex issues receive almost no attention whatsoever.

Support is provided for precedent-setting prosecutions of health authorities and other agencies that continue to deny services to LGBTI people.

The requirements for prescribing gender-affirming hormones and related medications under the Pharmaceutical Benefits Scheme (PBS) require to be changed. Current PBS requirements impede access, are arbitrary in wording, lack reference to transgender people and make for difficult ethical choices for prescribing doctors. When the PBS Authority system precludes treatment with such medications, the costs of private prescriptions are prohibitive. It is suggested that the addition of “gender-affirming treatment” or similar language, as indications for treatment of transgender people, be added to relevant regulations in the PBS Authority system.

Conferences on transgender health are supported to occur on a regular basis (or supported to run in conjunction with the ANZPATH conferences). A move in this direction was achieved with Queensland Health supporting the first-ever conference on transgender health in Cairns, in 2012.

Research is supported regarding rates of Sexually Transmitted Infections (STIs) in the LGBTI population. Data in this topic is unfortunately limited in Australia, except among MSM. This in turn could help ensure appropriate services and interventions are provided.



Provision of gender-affirming treatment of transgender people in the corrections systems is made available to people regardless of whether they were diagnosed with gender dysphoria prior to, or after, incarceration. Unfortunately, transgender people are often denied treatment for gender dysphoria in corrections systems, especially if they are diagnosed after incarceration.

Education programs are provided for managers in large employer workplaces to encourage more sensitive handling of employees undergoing gender transition.

A sustained program of community education and engagement is put into action to address the continued exemption from anti-discrimination legislation afforded to religious institutions, especially in the areas of education, employment and service provision. This issue causes significant challenges for young same sex attracted young people, to the detriment of their rights to education and their mental health and well-being, as well as to LGBTI employees in a wide range of publicly funded services. It is inappropriate for Australian institutions operating in the public, secular arena to have the legal capacity to actively discriminate against some of the most vulnerable members of society.

Dedicated staffing is required to begin a process of stakeholder dialogue and community education to find acceptable solutions to all these situations. This would be a constructive step forward in addressing the multiple challenges to the realisation of universal human rights for all Australians.

The rights LGBTI people enjoy are included in all Commonwealth human rights education programs, so that day-to-day discrimination, harassment and violence can be addressed at the community level.

Thank you for the opportunity to provide comment on this important and timely issue. Please do not hesitate to contact us should you have any questions regarding our submission.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Deborah Bateson', is written over a light blue circular graphic element.

Dr Deborah Bateson

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On behalf of our partner organisations (more information [HERE](#)):



**ashm**

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