



# The AIDS Council of South Australia

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Submission to the Inquiry by the Senate Legal & Constitutional Committee:

Sex Discrimination Amendment (Sexual Orientation, Gender  
Identity and Intersex Status) Bill 2013

ACSA Submission to the Inquiry by the Senate Legal & Constitutional Affairs Committee - Sex Discrimination Amendment  
(Sexual Orientation, Gender Identity & Intersex Status)

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# Glossary of acronyms

ACSA	AIDS Council of South Australia
DSM	Diagnostic and Statistical Manual of Mental Disorders
GLBTI	Gay, Lesbian, Bisexual, Transgender and Intersex
MSM	Men who have sex with Men
PWID	People Who Inject Drugs
SSA	Same Sex Attracted

# Glossary of terms

## **Gender diversity**

Put simply, gender can be thought of as a person looking, dressing, acting or identifying as male or female. Some people are born not identifying with, or feeling connected to, either a male or female persona. Some common terms for people who are sex and gender diverse include transgender, transsexual or intersex (HREOC, 2008).

## **Heteronormativity**

The powerful heterosexual social and political structures and normative principles that we are immersed in from early on in life. This social construct contributes to and maintains the assumption that the human population is heterosexual, that heterosexuality is the norm, and any other sexuality/relationship is deviant and/or immoral (Rondahl, 2005).

## **Heterosexism**

An ideological system that denies, denigrates, oppresses and stigmatises any non-heterosexual behaviour, self-identity, community or relationship (Herek 1995, cited in Langley 2001).

## **Homophobia**

An irrational fear or hatred for homosexuals and homosexuality (Brown, 1993: 1254, cited in Plummer 2001).

## **Intersex**

Someone who possesses from birth genitalia or reproductive anatomy that is difficult to label as either female or male.

# Introduction

ACSA welcomes the proposed amendments to the Sex Discrimination Act to include protections surrounding sexual orientation, gender identity and intersex status. We hope that the Senate Committee supports these amendments as they are not only a demonstration of a fairer and more equitable society but they also contribute to Australia's commitment and obligations to domestic and international human rights.

With the adoption of resolution 17/19 - Human rights, sexual orientation and gender identity – the United Nations reiterated the obligations of signatories (including Australia) to the Universal Declaration of Human Rights. The Universal Declaration of Human Rights calls for signatories to safeguard the human rights of all people, including GLBTI people. More specifically, in the recent publication, 'Born Free and Equal' (United Nations, 2012), the legal obligations of states under the Universal Declaration of Human Rights and other human rights treaties are set out clearly. These obligations refer to all citizens irrespective of race, sexual orientation, gender or gender identity, and ensure that GLBTI populations enjoy the same protections enjoyed by the rest of society.

Recognition of same sex sexual orientation, gender identity and intersex status within this legislation is an important first step in Australia complying with its obligations to international human rights declarations and treaties and more importantly shows a commitment to equity amongst all Australia's citizens. In light of this, we strongly oppose the planned continuation of exemptions for some groups - including religious groups – to the legislation as these provisions continue to perpetuate discrimination and inequality which is the antithesis of the legislation and our commitment to international human rights.

ACSA urges the Senate Committee to support these amendments and the rights of GLBTI individuals without caveat which will pave the way to a fairer and more equitable Australia.

## Key points

The following presents the key areas of this submission that;

- Support by the Senate Committee of the proposed amendments and adoption of the amendments into law will contribute to Australia's obligations as a signatory to the United Nations Universal Declaration of Human Rights.
- GLBTI populations do not currently receive equitable treatment under the law and are not afforded the same rights to anti-discrimination laws as heterosexual populations and non-gender diverse, non-intersex status individuals.
- GLBTI populations experience lower levels of health and wellbeing (compared to opposite-sex attracted populations) that is directly attributable to the marginalisation, institutionalised homophobia, heteronormativity and the outright discrimination that still exists in Australia.
- Due to the historical context of the role of religious organisations in the vilification, exclusion, discrimination and public opposition to the GLBTI population – combined with an underpinning of fairness and a commitment to all citizens being equal under the law - ACSA does not support the continuation of exemptions for religious organisations.
- Notwithstanding this, ACSA supports the proposed amendments to the legislation and urges the Senate Committee to support these amendments and vote to pass this Bill.

# About the AIDS Council of South Australia

The AIDS Council of South Australia (hereafter called ACSA) welcomes this opportunity to provide commentary, information and community knowledge pertaining to the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013. The following submission will set out the position of ACSA in regards to this proposed amendment, with the ultimate goal of increasing GLBTI visibility, legal protections, recognition, decreasing discrimination and ensuring better social and health outcomes for all regardless of sexuality, gender identity or intersex status.

ACSA has maintained a leading role in the community response to HIV in South Australia for over twenty five years. We have a strong commitment to reducing health inequities amongst our communities and preventing the transmission of HIV and STI's. The principal activities of ACSA are the provision of education, health promotion, advocacy, care and support to members of the GLBT communities, people who inject drugs, sex workers and to all people living with HIV. Our vision is "Equity, Health and Human Rights" and we involve key client groups including gay men, people who inject drugs and sex workers in our prevention and education programs that aim to improve the health and well-being of these communities. Advocacy, education programs, personal development and skills building, information and referrals are all part of the range of programs and services provided by ACSA.

## GLBTI populations

### GLBTI people as a vulnerable group

Western attitudes to homosexuality have historically moved in ebbs and flows. While in some time periods homosexuality and diverse gender identity has been tolerated and accepted, other time periods, including recent history, being same-sex attracted or gender diverse has often met with intolerance, discrimination, persecution and in some cases criminalisation (Gottschalk, 2007). It is within this often destructive environment that GLBTI people develop their sense of self, their sexual identity, their gender identity or their intersex status.

### Historical and institutional experience of discrimination

In more recent times, religion and medicine sought to provide explanations as to why some people were same-sex attracted or 'confused' about their gender. Notions of physical and cognitive deficiencies, deviancy, criminology, expressions of evil and sin were popularly touted as the basis for anyone identifying as same-sex attracted or gender diverse. Psychiatry labelled homosexuality a mental disorder in 1953 – in fact it was listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM) – which instigated forced psychiatric treatments for same-sex attracted individuals and unfortunately spawned the 'gay conversion' treatments that many gay, lesbian, bisexual and gender diverse individuals were subjected to (and continue to be subjected to in some parts of the world)(Herek, 2009).

It wasn't until 1972 that South Australia decriminalised some homosexual acts between males with further reforms taking place in 1975 and 1976. South Australia led the other states in reforms surrounding homosexuality with all other states following suit with Tasmania being the last of the Australian states to decriminalise homosexuality in 1997 (Bull, et al, 1991; Croome, 2006).

In 1973, homosexuality was finally removed from the DSM but by that time countless lives were negatively affected by a prevailing societal view that to be same-sex attracted or gender diverse identified you were mentally ill and in need of psychiatric care (Herek, 2009). In December 2012, the DSM committee voted to supplant the term "Gender Identity Disorder" for the less medicalised term "Gender Dysphoria". The reason given for why 'Gender Dysphoria' remains in the DSM is to assist those individuals who would like to access psychological or psychiatric help to deal with their feelings regarding their gender identity while other who are not experiencing any difficulties are not viewed as being ill (Lowder, 2013).

Of great concern for GLBTI advocates and the GLBTI community is that the erroneous beliefs that once propelled the opinions and actions of much of society in regards to GLBTI populations still exists today and underpins much of the argument from the opponents to legal recognition and protections for GLBTI populations.

It is important to recognise the negative impact that criminalisation, discrimination and societal views on sexuality and gender identity have had on the lives of GLBTI populations. The continued lack of legal protections and equity with the rest of society continues to oppress and marginalise these populations.

### Experiences of discrimination, harassment & violence

Despite recent Australian reforms recognising the rights and responsibilities of GLBT people and same sex couples (mainly Centrelink and tax reforms such as recognising same-sex couples for use in calculating welfare entitlements and calculating tax), the levels of violence and harassment experienced by GLBTI people has not changed significantly over the past decade.

The Private Lives 2 survey (Leonard, et al 2012) found that the most common type of abuse reported by GLBTI respondents was non-physical; verbal abuse (25.5 per cent), harassment (15.5 per cent), threats of physical violence (8.7 per cent), and written abuse (6.6 per cent). While being less common, physical abuse such as sexual abuse was reported by 2.9 per cent of respondents because of their sexuality or gender identity, and 1.8 per cent of respondents reported a physical attack or assault with a weapon (Table 1, below).

Table 1: Experience of heterosexist violence and harassment in the last year by gender identity.

Types of heterosexist abuse	%	Male	Female	Trans (M)	Trans (F)	Other preferred
Verbal abuse (including hateful or obscene phone calls)	25.5	26.0	22.5	46.7	36.9	45.1
Harassment such as being spat at & offensive gestures	15.5	15.4	14.8	22.2	17.8	33.6
Threats of physical violence, physical attack or assault without a weapon (punched, kicked, beaten)	8.7	10.5	5.9	11.1	15.1	20.5
Received written threats of abuse including emails and graffiti	6.6	6.8	4.9	15.6	16.5	17.7
Deliberate damage to property or vandalism - Car	3.3	3.5	2.9	2.2	6.7	5.3
Sexual assault	2.9	2.3	3.1	0.0	6.8	4.5
Deliberate damage to property or vandalism – House	2.4	2.9	1.7	4.4	2.5	7.1
Theft - Money	2.2	2.4	1.9	2.2	4.3	1.8
Theft - Property	2.0	2.2	1.7	4.4	3.4	2.7
Physical attack or assault with a weapon (knife, bottle, stones)	1.8	2.2	1.3	0.0	2.3	6.2
Deliberate damage to property or vandalism - Work	1.2	1.4	1.0	0.0	1.7	3.5
House – break in	1.1	1.3	1.0	0.0	0.8	0.9
Theft - Car	0.5	0.7	0.3	0.0	0.0	0.9
Other (please specify)	6.4	3.8	7.1	23.1	16.3	18.2

Source: Leonard, et al 2012.

Rates of reported discrimination by GLBTI populations has not appeared to have abated either in recent years. This discrimination is often related to access to health care (exclusion of same-sex partner in decision making and visiting rights), access to health care services if you are gender diverse (training and sensitivity of staff), Medicare cards that won't list gender identity unless surgery has been performed and same sex partners being either excluded or having to answer erroneous questions to prove their relationship status and worthiness to visit or stay with their partner (Human Rights & Equal Opportunity Commission, 2007).

Another more contemporaneous way in which SSA and gender diverse populations are discriminated against surrounds who is able to legally marry in this country. While the marriage equality debate is occurring in many jurisdictions across the world (including in Australia), Prime Minister Gillard has made it quite clear that the current government will not move to change legislation (that the previous Liberal government amended to prevent same-sex couples from legally marrying). This retreat from the foundation that all citizens are equal under the law is one of the more visible ways in which SSA and gender diverse population are discriminated against on a daily basis (Gray, 2012; McCormick 2013).

Of great concern to the GLBTI population and their advocates is that this policy direction by the current government directly contravenes the provisions of the Universal Declaration of Human Rights and our legal obligations as a signatory to that declaration.

### **Social exclusion and invisibility**

Linked to the experience of discrimination, abuse and more broadly heteronormativity is the experience of social exclusion and invisibility for GLBTI individuals. Exclusion occurs for GLBTI populations when they are not able to identify with the heterosexual 'ideal'. The exclusion felt by GLBTI populations may be implicit, through the family, the political and policy environment, culture, institutions, media depictions, customs and expectations – or may be more explicit where 'out' GLBTI individuals are actively excluded from their families, religions, institutions, cultures and wider communities (Chamberlain and Robinson, 2002; Barrett, 2008).

From this isolation, a sense of 'otherness' can be felt and experienced through the discrimination felt by those around them. This rejection can be particularly damaging for young people who are developing their sense of self within an often negative environment including their school life, home life and their connections to groups and faiths. According to studies, same-sex attracted (SSA) youth can experience lower levels of emotional wellbeing, are more vulnerable to verbal, emotional and physical violence, have an increased likelihood of being involved in physical altercations, as well as a greater likelihood of poor academic results (Wilkinson & Pearson, 2009).

### **Mental health issues and mental illness**

Research suggests that the prevailing heteronormativity and heterosexism that we all live within interacts negatively with the GLBT community resulting in a marked disparity in the experience of a variety of mental illnesses. For example the Private Lives 2 study (Leonard, et al, 2012) found that trans males and trans females reported the highest levels of psychological distress followed by bisexual women and men and same sex attracted women and men. Further, trans males and trans females reported poorer mental health than bisexual, and same sex attracted, men and women. Nearly 80 per cent of respondents had experienced at least one episode of intense anxiety in the past 12 months, with over a quarter being diagnosed (and or treated for) an anxiety disorder in the 12 months prior to the survey.

McLaren, et al (2007), found that heteronormativity, homophobia, social disconnection and social isolation has a direct correlation with experiences of depression, anxiety and suicidality. Similarly, Williamson (2000) suggests that the constant reinforcement of the heterosexual ideal - while simultaneously creating the perception that to be gay, lesbian, bisexual, gender diverse or intersex is deviant and wrong – leads individuals to develop a sense of disconnection and self-loathing born from this pervasive dominant paradigm.

## Suicide ideation and suicidality

For the last two decades, researchers have studied the correlation between identifying as GLBTI and suicide ideation and suicidality. There has been a marked disparity in rates of attempted and successful suicide in GLBTI populations (particularly in our youth) compared to the rest of the population. A plethora of studies looking into this phenomenon have found significant linkages between heteronormativity, heterosexism, personal and institutionalised homophobia, rejection, school and post school bullying, violence, isolation, negative self-image, and discrimination to increased suicidality amongst GLBTI populations (Bagley & Tremblay, 1998, Hoogland & Pieterse, 2000, Remafedi, et al, 1998, Rivers, 2000, Nicholas and Howard, 1998, Henderson, 2006, Macdonald and Cooper, 1998 and Brown, 2002, cited in Cannon, 2006). In fact in a meta-analysis undertaken in 2008 it was found that GLBTI individuals were four times more likely to attempt suicide than their heterosexual counterparts and 1.5 times more likely to experience depression, anxiety, alcohol and substance misuse than the rest of the population (King, et al, 2008).

All of these factors that are significant determinants influencing our health and wellbeing are as a direct result of the lack of recognition and acceptance that GLBTI populations experience in their communities and wider society. Legal protections that recognise GLBTI populations, while ensuring that discrimination against these populations by ANY individual or group cannot occur is vital in improving the health and wellbeing of GLBTI individuals.

## Proposed exemptions

ACSA has significant concerns regarding the planned continuation of exemptions for religious groups, which in effect allow them to discriminate against GLBTI individuals based solely on their sexuality or gender identity. Under current law and the proposed legislation, religious organisations, including affiliated schools and hospitals, can refuse to hire individuals that they believe hold views or represent groups that they can charge are inconsistent with their beliefs or religious doctrine (Swan, 2013).

ACSA is not satisfied with the argument that simply because discriminatory practices (allowing religious groups to discriminate based upon sexuality) have been in place for many years that they shouldn't be challenged and ameliorated by amendments to the legislation (Swan, 2013). In other jurisdictions – such as Tasmania - religious groups do not receive exemptions within anti-discrimination legislation and are therefore not permitted to discriminate based upon sexual orientation or gender identity. ACSA contends that this promotes greater fairness and conforms to the ideal that all citizens are equal under the law.

## The role of religious groups in institutionalised homophobia

Institutionalised homophobia refers to the ways in which government, businesses, churches and other institutions discriminate against people due to their sexual orientation. Institutions are able to do this based upon a political and policy environment in which there are no protections for SSA individuals or there are legislated exemptions which institutions can take advantage of to legally discriminate against someone based upon their sexuality (University of Houston, 2010).

This is particularly evident in religious organisations or religious schools which are still able to dictate that staff and students be of the organisation's/school's religion, dictate that staff and students demonstrate a heterosexual identity, and that sexual orientation other than heterosexuality not be discussed as part of the curriculum. This is sometimes made clear in policy; otherwise it can be an unspoken requirement (Evans & Gaze, 2010).

In a report by Evans and Gaze (2010), some religious based schools go one step further to make it clear that a staff member would be terminated if it was found that they were SSA and/or in a same-sex relationship and others expressed the position that a staff members perceived or articulated sexual orientation would play a part in their suitability for employment whether this was communicated in policy or not.

In an opinion piece by Brian Greig of the Sydney Morning Herald (2013), he points out that some of the largest employers in Australia, particularly the non-government sector, are religious based organisations. These organisations run hospitals, nursing homes, charitable organisations and services to vulnerable populations, employment services and schools. The Commonwealth – charged with taxpayer dollars – funds many of these organisations either partly or wholly. This occurs within a context where the organisations or parent organisations have argued for exemptions to discrimination legislation to allow them discriminate based upon the sexual orientation or gender identity of individuals. This is a concerning and indefensible situation where some of our largest employers are afforded legal provisions to discriminate against current or potential employees or clients.

This does not occur in all jurisdictions however. British social services and schools that apply for or are in receipt of tax payer funds are required to run their organisations under secular law. This is similarly the case for Tasmania that enacted laws abolishing exemptions from anti-discrimination Acts that previously allowed religious groups to discriminate on the grounds of sexuality or gender identity (Greig, 2013). Under this system, religious groups and organisations don't find that their religious freedoms are impinged upon, instead only their freedom to discriminate based upon sexuality or gender identity under the law has been nullified.

Greig (2013) argues and ACSA agrees that the impact of the current and proposed laws – including continued support for the exemptions - will have the continued impact of GLBTI populations fearing for their careers, their jobs, their standing in their communities and access to religious based services. GLBTI populations will still be forced to be closeted, insecure and vulnerable within the context of the proposed exemptions and institutionalised homophobia will continue sanctioned by the Commonwealth government through this Bill as it stands.

## In sum

ACSA strongly supports the amendments to the Sex Discrimination Act 1984 that will now protect GLBTI populations from discrimination based upon sexual orientation, gender identity and intersex status. These amendments have been a long time in coming and will finally address some of the obligations that Australia has in regards to the United Nations Declaration of Human Rights.

However, ACSA does not support the continued use of exemptions for any group to discriminate against anyone based upon any arbitrary or subjective indicator, including those motivated by religious doctrine. These exemptions will continue to exacerbate the marginalisation and discrimination (particularly by religious groups) felt by the GLBTI community. By allowing these exemptions to continue, the Government is sanctioning and reinforcing the belief of religious organisations that it is their right to discriminate against sections of the population based upon religious ideology or interpretation. ACSA asks the committee to consider, if we were talking about the rights of women, or the rights of culturally diverse people, would the government be so willing to allow exemptions for exclusions of African people or women? The human rights of our citizens must prevail over the religious beliefs of some. We live in a secular country and the law should reflect this.

As such, ACSA strongly urges the Senate Committee to withdraw the exemption provisions within the legislation in order to limit the far reaching impacts of discrimination based upon sexual orientation and gender identity.

Finally, due to the aforementioned historical and current experience of discrimination, stigma, social isolation and negative health impacts felt by these populations, legislative protections are vital to ensure GLBTI people cannot be discriminated against based upon sexual orientation, gender identity or intersex status.

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