

National LGBTI Health Alliance

lesbian, gay, bisexual, transgender, and intersex people and other
sexuality and gender diverse (LGBTI) people and communities
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Committee Secretary

Senate Standing Committees on Rural and Regional Affairs and Transport

PO Box 6100

Parliament House

Canberra ACT 2600

Sent via email to rrat.sen@aph.gov.au

Dear Committee Secretary

RE: Inquiry on airport and aviation security

The National LGBTI Health Alliance appreciates this opportunity to express our concerns regarding the climate of pervasive discrimination against LGBTI populations in airport and aviation security contexts across Australia.

About the National LGBTI Health Alliance

The Alliance is the national peak health organisation for organisations and individuals from across Australia that work together to improve the health and wellbeing of lesbian, gay, bisexual, transgender, and intersex people and other sexuality and gender diverse (LGBTI) people. We support measures that contribute to improved health and wellbeing for all LGBTI people in Australia.

Formed in 2007, the Alliance has over 90 Member Organisations that include the major providers of services for LGBTI people in each state and territory across Australia. The Alliance provides a representative national voice to: develop policy and to support LGBTI health issues; seek increased commitment to services for LGBTI people; develop the capacities of LGBTI organisations; and support evidence-based decision-making through improved data collection covering multiple dimensions of sexuality, gender, and intersex characteristics.

The climate of pervasive discrimination in Australian airport and aviation security contexts

The Australian Government has made impressive strides to reduce discrimination faced by LGBTI populations, including [the addition of sexual orientation, relationship status, gender identity \(including gender history, gender expression, and gender-associated characteristics\), and intersex status to the Sex Discrimination Act 1984 \(the SDA\)](#). *The SDA* prohibits both direct and indirect discrimination in the administration of Commonwealth laws and programs, including discretionary decisions by government officials made under laws or programs. *The SDA* defines indirect discrimination as any law or program that applies equally to all people but disproportionately affects federally protected populations.

As Australia's national peak body for LGBTI health and wellbeing, we are concerned by the numerous complaints we have received from our members regarding experiences of discrimination, mistreatment, and violence against LGBTI people in Australian airport and aviation security contexts.



The following incident, which occurred early in 2015, highlights common experiences reported to us by our members, particularly the lack of adequate response and often total non-response of Australian airport and aviation security authorities to such complaints.

This de-identified email by an informant who wishes to be described only as “a trans person” was sent to staff at a major domestic airline in Australia several months ago. The airline has yet to provide any response to this alarming report:

Respondent A

“I have been given your email address by the customer service team as a point of contact for my concerns below regarding security procedures. Please respect my privacy and if you are to discuss this with other members of your organisation please remove my name from the conversation.

Incident took place on [DATE DE-IDENTIFIED], 2015.

While passing through airport security, I was selected to go through one of your new body scanners. As I went through the scanner, it picked up a prosthetic that I wear. This is worn in my underwear. I explained to the officer at the scanner that I am Trans* and that I was wearing a prosthetic, to which he responded that he would need to get his supervisor.

In full view of other travellers, the Supervisor approached me putting rubber gloves on. He seemed more concerned with displaying his authority and making a spectacle out of the situation.

When I asked him what the gloves were for, he told me that he was going to do a 'private search'. Not only did this make me feel incredibly uneasy, and anxious, but it was demeaning and unnecessary. I became defensive and told him that I would show him the prosthetic but that he was not touching me.

I was then taken into a small room with the two men. I pulled out my prosthetic enough for them to see. The supervisor said I needed to sign a form first, and while saying this, he put on a second glove. I asked him again what the gloves were for and he replied, 'you want me to touch that thing with my bare hands?'

I was then asked to sign the document. I was not given the directive or opportunity to read the document, and given that I was in a high stress situation, I think an overview of what I was signing may have been helpful. I have no idea what I actually signed as I was too overwhelmed and pressured to sign the form and get out of the room.

After I had signed the document I removed my prosthetic and placed it in the tray. The supervisor then patted down the front of me -- I don't quite see why this was necessary; if he was still unsure, he could have simply asked me to go through the body scanner again with the prosthetic removed. It seemed that this was once again a way of exerting his authority and fulfilling his own curiosity about my body.

Once he was satisfied, he turned around and opened the door for me to leave -- my prosthetic still sitting in the tray. I asked him to close the door so that I could have some privacy as I placed my prosthetic back in place. He closed the door and both men stood watching me as I put it back in place.



I find a few things very wrong with this:

Firstly, I was made a public spectacle of for his own amusement. Secondly, his actions and words trivialised the importance that this prosthetic has to me by referring to it as "that thing". Thirdly, glaring at me by the doorway while I replaced my prosthetic after the search left me feeling humiliated and degraded.

I felt that the supervisor had no regard for me as a human being and treated me as though I was a criminal right from the beginning, even though I had taken all steps to co-operate with him.

I have had to deal with some very confronting situations in the past so have developed a thick skin, but this experience overshadowed what was meant to be a holiday and it has left me feeling incredibly degraded and has made me anxious about travelling.

I understand that both men had a job to do and if they had done their job professionally, we could have all walked away without any problems.

I am not one to write complaints, but I feel that without you being made aware that there is a significant gap and professionalism in your processes, other people will have to go through what I did. I suggest you look into sensitivity training and put some guidelines in place for your employees. There are people in my community that have been through some very horrible situations and if they were to go through what I did, it could put them into a depressive state.

The below paragraph has been taken from the Privacy Impact Assessment written by the Australian government department of infrastructure and transport. I was not offered a private screening room I was ushered to one. I was also not given the choice as to which gender I was more comfortable with performing the search and I was certainly not treated with respect.

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"If further screening such as a frisk search is required following a scan, passengers will always be offered the use of a private screening room. It may also be appropriate for transgender passengers to choose at the time whether they are more comfortable with a female or male screening officer conducting their frisk search. Training provided to security screening officers is designed to ensure everyone is treated fairly and with respect when going through security screening at the airport"

Source:

http://travelsecure.infrastructure.gov.au/international/files/Privacy_Impact_Assessment.pdf

If you are to respond to this, please do so with your steps for action, as I am not interested in receiving an empty system-generated apology. This will not prevent the situation from happening again. If need be I will refer this to the department of transport and the Ombudsman.

Thank you for taking the time to read this.

Regards,

[NAME DE-IDENTIFIED]"



In addition to the issues raised by Respondent A, our member organisation Organisation Intersex International (OII) Australia has also received reports of negative experiences with body scanning equipment, such as the following example shared by OII Australia member Respondent B:

Respondent B

“One one occasion when scanned using the new body scanners, and the device showed up an issue in the breast/chest region, which it wouldn’t have done if it wasn’t set to treat men differently to women.”

Other members of OII Australia raised concerns about harassment and mistreatment of people whose genders and bodies were viewed as “confusing” or “different” by airport and aviation security personnel:

Respondent C

“A close friend whose appearance is somewhat ambiguous was subjected to unnecessary treatment by staff unsure of her gender, including inappropriate remarks and questioning her gender.”

As Respondent C’s brief account illustrates, problems of discrimination and mistreatment within airport and aviation security contexts can affect people with a range of genders and bodies that have not been adequately considered or integrated into airport and aviation security legislation and policy.

Respondent D, who wishes to be described only as “a trans woman”, provided this account documenting ridicule and harassment on the basis of her gender identity during holiday travel:

Respondent D

“I was called “sir” by one of two security people in a Melbourne domestic terminal. I politely pointed out I was female and they corrected how I was addressed for the rest of my interaction. However, as I walked away I heard them laughing derisively. I find it extremely concerning that people in a position of such responsibility effectively lied to my face.”

Discrimination against people with X passports

In addition to these and other anonymous reports, several of our member organisations from across Australia also highlighted the current lack of consistent recognition and inclusion of people with an “X” sex marker on their passports in airport and aviation security contexts. Some examples of direct and indirect discrimination against people with X passports reported by our member organisations include:

- “An inability to provide appropriate gender details when booking flights to match the sex marker on my passport.”
- “Being unable to book online a flight for travel within Australia with appropriate gender information (or without gender information).”
- “Some airlines seem to have gotten more strict about gender information, rather than less strict: it used to be that titles were the only gendered information required. For example, Virgin Australia now requires completion of a specific question on gender as well as title when booking via their website and so do several other major Australian carriers.”
- “Delays at check in, including lengthy time delays, strange disturbed looks and flustered staff.”
- “Questioning about whether the details on the passport are correct or intentional, where other passengers’ gender details are presumed accurate and intentional.”



- “Inability to use the “Smart Gate” on return to Australia.”
- “Problems with returning to Australia with testosterone prescribed for legitimate personal use, particularly for longer trips abroad, and being told I need an import permit without any need.”

Our member organisation Transgender Victoria (TGV) requested that we include the following statement on airport and aviation safety concerns:

“Transgender Victoria’s aim is dignity and respect for trans and gender diverse people. The information that we receive in relation to the treatment by airport security people of trans and gender diverse people is frequently in contravention of that principle and in legal terms, in contravention of the federal Sex Discrimination Act. We believe improvement is necessary and would gladly assist in achieving that improvement.”

Thus the experiences shared above are not isolated incidents caused by solely the actions of individual staff. Collectively, these accounts document a pervasive pattern of discrimination, exclusion, marginalisation, and abuse against people of trans and non-binary gender experience and people with intersex characteristics in airport and aviation security contexts.

Use of personal identifiers in biometrics integrity processes

The use of gender in identification tests is likely to have a disproportionately adverse impact on LGBTI populations whose genders, bodies, and relationships are not typically expected or recognised. The use of sex classifications and gender to assist in determining whether a person is an unlawful non-citizen or a lawful non-citizen is likely to exacerbate the current climate of widespread discrimination against people whose sex classifications on identity documents and visual appearance do not accurately reflect their gender identity or body. This form of discrimination disproportionately affects (but is not limited to) women and men of trans experience, people with non-binary genders (i.e., people who do not identify as women or men), and people with intersex characteristics. In addition, we have heard from same-gender couples whose valid identities have been treated as suspect due to the use of gender as a personal identifier, where a mixed-gender (woman/man) relationship was expected. We have also heard similar complaints from additional populations of butch women, feminine men, and people who may appear androgynous.

Safeguarding young people and families

Airport and aviation security provisions such as those currently being considered in the Migration Amendment (Strengthening Biometrics Integrity) Bill 2015 [Provisions] would permit young people who are legally classified as minors and those classified as “incapable persons” to be investigated without either their own consent or the consent of a parent or guardian (if one is present). These provisions raise serious human rights concerns. In cases where the young person does have a parent or guardian, this provision has negative implications both for LGBTI young people and for children of LGBTI people, who may be more vulnerable to hostility and discrimination.

We urge the Committee to implement airport and aviation security measures that permit a parent or guardian to be present whenever possible, if their presence is in accord with the young person’s wishes. Where LGBTI young people are either unaccompanied minors or do not wish the presence of their parent or guardian, an independent observer should be appointed by the Commonwealth to serve as *in loco parentis*. This independent observer should be required to attend periodic and ongoing training on LGBTI inclusion and on inclusion of other Commonwealth-recognised populations protected in federal anti-discrimination legislation. This guardian's sole focus should be on safeguarding the young person.



Conclusion

We reiterate our earlier acknowledgement that the Australian Government has made impressive strides to reduce discrimination faced by LGBTI populations, including [the addition of sexual orientation, relationship status, gender identity \(including gender history, gender expression, and gender-associated characteristics\), and intersex status to the Sex Discrimination Act 1984 \(the SDA\)](#). The Act prohibits both direct and indirect discrimination in the administration of Commonwealth laws and programs, including discretionary decisions by government officials made under laws or programs.

Due to the pervasive climate of discrimination, exclusion, marginalisation, and abuse on the basis of sexual orientation, relationship status, gender identity, and intersex status in airport and aviation security contexts, we believe further measures are needed to ensure compliance with federal anti-discrimination legislation, to enhance airport security, and to safeguard the travelling LGBTI public from harassment, violence, and abuse in Australian airport and aviation security contexts.

These further measures should be developed in consultation with the National LGBTI Health Alliance and our members to ensure they adequately address the diverse range of issues raised above. In addition, all further proposed changes to airport and aviation security legislation and policy should consider the potential impact on LGBTI communities, families, and individuals as determined through ongoing community consultation.

We recommend that you require all air carriers and companies with personnel operating in Australian airport and aviation security contexts to adopt specific provisions to safeguard LGBTI populations from discrimination, abuse, harassment, mistreatment, and violence. We further recommend that these provisions should address misuse of gender and relationship status as personal identifiers in ways that may unintentionally facilitate federally prohibited acts of discrimination on the basis of sexual orientation, gender identity, and intersex status. These specific provisions are necessary to ensure consistent safeguarding and non-discriminatory treatment of LGBTI populations.

As Australia's national peak body on LGBTI health, we thank you for this opportunity to express our concerns regarding Australian biometrics legislation and policy. We encourage you to contact the Alliance's Manager of Research and Policy, Dr Gávi Ansara, to discuss these issues further.

Yours sincerely

Rebecca Reynolds
EXECUTIVE DIRECTOR