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The LGBTI Legal Service calls for a Human Rights Act for Queensland.

**We note that the specific and comprehensive inclusion of LGBTI issues has been a relatively recent addition to human rights dialogue. Accordingly, we urge that any Human Rights Act reflect the *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity 2007*.**

#### The LGBTI Legal Service

The Lesbian, Gay, Bisexual, Trans, Intersex (LGBTI) Legal service was incorporated in 2009 after a need was identified within the LGBTI community for a specialised community legal service. The service seeks to assist Queensland LGBTI communities to gain access to justice through the provision of legal and social welfare services.

Since former High Court Justice Michael Kirby launched the service, we have provided over 400 instances of legal advice and assistance to members of the LGBTI community. We have 40 volunteers maintaining the service. Our service is an accredited community legal service and member of the Queensland Association of Community Legal Services.

The service provides legal advice and information to clients who have legal problems which arise from their identification as LGBTI. It exists because these clients feel more comfortable dealing with a solicitor with specific skills, interests and an understanding of LGBTI legal issues and the barriers experienced by LGBTI peoples in accessing the legal system.

The most common issues we provide advice about are employment law, family law, workplace harassment, domestic violence, surrogacy and parenting rights, employment law, access to health and government services, discrimination and victims support. Despite repeated requests for assistance, we remain the only unfunded, accredited community legal service in Queensland.





LGBTI Legal Service supports a Human Rights Act that:

- reflects our key human rights obligations, including civil, political, economic, social and cultural rights;
- will respect, protect and fulfil these human rights obligations;
- takes a holistic and unified approach to maximise cultural change and educative function;
- provides a process for parliament to explain how new laws impact on human rights, while retaining parliamentary sovereignty;
- requires compliance with human rights at all levels of government policy and decision-making;
- provides a process for independent investigation and resolution of human rights complaints;
- provides a process for education, training, and information dissemination;
- provides a regular and independent assessment of steps taken by government to meet human rights responsibilities;
- requires courts and tribunals to interpret laws consistently with human rights;
- allows people to bring freestanding human rights matters to the courts and receive enforceable remedies, including damages, for breaches of human rights, and;
- allows private entities the opportunity to comply with human rights obligations.

Some of the issues faced by LGBTI people in Queensland:

- *Disproportionate violence, harassment, bullying and exclusion.* One study found that 73 per cent of LGBTI respondents had experienced homophobic verbal abuse and 23 per cent had experienced physical violence.<sup>1</sup>
- *A lack of visibility.* For example, a national report recommended specific inclusion within family and domestic violence strategies of measures to address violence in same- sex relationships, and toward trans and gender diverse people.<sup>2</sup>
- *A lack of research* into the issues faced by LGBTI people
- *A lack of training* for government and community sector in working with LGBTI people.
- *Conflict* between religious convictions and LGBTI identities.

<sup>1</sup> Shirleene Robinson and Alan Berman, *Speaking out: Stopping homophobic and transphobic abuse in Queensland* (Australian Academic Press, 2010) 17.

<sup>2</sup> AHRC National Consultation Report 2015, [https://www.humanrights.gov.au/sites/default/files/document/publication/SOGII%20Rights%20Report%202015\\_Web\\_Version.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/SOGII%20Rights%20Report%202015_Web_Version.pdf)





- *Discrimination* in finding and retaining employment
- *Discrimination* in access to healthcare
- *Bullying and harassment* in schools
- Historic and contemporary *problems with the criminal justice system*. For example, the expunging of prior criminal convictions for homosexuality, problems faced by trans people in prison, the difference in age of consent and the homosexual advance defense.

Many of these issues are complicated and enhanced for some groups of LGBTI people, such as people from diverse cultural backgrounds, Aboriginal and Torres Strait Islanders and people with a disability.

### Relevant Human Rights for LGBTI people

Earlier human rights instruments contain some protections for LGBTI people, especially through non-discrimination and equality provisions. The *International Covenant on Civil and Political Rights* (ICCPR) enshrines the rights of all people to non-discrimination and equality before the law. Article 2(1) of the ICCPR sets out the principle of non-discrimination. Article 26 of the ICCPR sets out the principle of equality before the law.

Other relevant rights for LGBTI people in the ICCPR include the right to privacy (article 17) and the right to marry and found a family (article 23).

The right to non-discrimination on the basis of sexual orientation specifically is recognized in the following international treaties:

- *International Covenant on Economic, Social and Cultural Rights*
- *Convention on the Rights of the Child*
- *Convention on the Elimination of All Forms of Discrimination against Women*

UN Committees relating to these treaties have also commented that this protection applies to people with diverse gender identities.<sup>3</sup>

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<sup>3</sup> See for example, Committee on Economic, Social and Cultural Rights, *General Comment No. 20 – Non-Discrimination in Economic, Social and Cultural Rights*, UN Doc E/C.12/GC/20 (2009); Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child regarding the United Kingdom*, 9 October 2002, UN Doc CRC/C/15/Add.188, Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the Core Obligations of State Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 19 October 2010, UN Doc CEDAW/C/2010/47/GC.2.



How could a Human Rights Act assist people who are LGBTI?

A Human Rights Act will help to create a fair, just and equal society for everyone. When human rights are protected by law they help to ensure that we are all treated fairly, and with dignity, equality and respect. Protections offered by a Human Rights Act will also have relevance for particular groups of people – such as people who are LGBTI.

*Examples from other jurisdictions:*

*Access to superannuation death benefits*

Amendments to the law in Victoria allowed same sex couples to access superannuation death benefits from one another. Because the amendments operated prospectively, they discriminated against older people in same sex relationships. An older woman and her advocate wrote to the Human Rights Unit at the Department of Justice advocating for an amendment to the law based on the claim that the amendments should be consistent with the Charter of Human Rights and Responsibilities Act. As a result an amendment to the law was made so that same sex couples could access superannuation death benefits both retrospectively and prospectively.<sup>4</sup>

*Non-discrimination*

A gay man with physical disabilities living in the UK approached a disability service provider to ask if a support worker could accompany him to a gay pub. His request was denied even though the service regularly supported heterosexual people to attend pubs and clubs of their choice. The man and his advocate successfully used his right not to be discriminated against and the right to respect for his private life, rights protected in the UK's Human Rights Act, to challenge the service provider's decision.<sup>5</sup>

Thank you for your consideration of these submissions.

Matilda Alexander

*President*

*LGBTI Legal Service Inc*

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<sup>4</sup> Source: Public Interest Law Clearing House: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006

<[http://hrlc.org.au/files/VictorianCharter\\_in\\_Action\\_CASESTUDIES\\_march2012.pdf](http://hrlc.org.au/files/VictorianCharter_in_Action_CASESTUDIES_march2012.pdf)> (Case Study 6).

<sup>5</sup> Source: BIHR, The Human Rights Act – Changing Lives, <<https://www.bihr.org.uk/changing-lives>> (Case Study 7 p 9).

