

National LGBTI Health Alliance

lesbian, gay, bisexual, transgender, and intersex people and other
sexuality and gender diverse (LGBTI) people and communities
PO Box 51 Newtown NSW 2042
(02) 8568 1120
Executive Director: Rebecca Reynolds



30 April 2014

The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney, NSW 2001

Dear Director

RE: Australian Law Reform Commission Discussion Paper on *Equality, Capacity and Disability in Commonwealth Laws*

The National LGBTI Health Alliance is pleased to make a submission to the Australian Law Reform Commission regarding the Discussion Paper on *Equality, Capacity and Disability in Commonwealth Laws*. We will focus on three key areas: Safeguards, family, and LGBTI-inclusive implementation.

About the National LGBTI Health Alliance

The Alliance is the national peak health organisation for a range of 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 people (LGBTI). We support measures which contribute to improved health and wellbeing for LGBTI Australians. This includes LGBTI people who are living with or perceived to be living with impairment and/or disability labels.

Formed in 2007, the Alliance includes the major providers of services for LGBTI people in Australia, with Members drawn from each State and Territory. 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 sexuality, sex, and gender identity.

Safeguards in the Commonwealth Decision-Making Model

Question 4-4 asks, "What safeguards in relation to supporters should be incorporated into the Commonwealth decision-making model?" Multiple safeguards are needed to ensure that the Commonwealth decision-making model does not deny or diminish the equal recognition under the law of the sexual orientation (including relationship status), gender identity (including gender-associated behavior and/or characteristics), and intersex status of people who are living with or perceived to be living with impairment and/or disability labels. Safeguards are also needed to protect their ability to exercise legal capacity. These safeguards are needed to ensure that the Commonwealth decision-making model complies with the 2013 amendments to the *Sex Discrimination Act 1984*. These amendments added federal anti-discrimination protection from both direct and indirect discrimination on the basis of sexual orientation, gender identity, and intersex status to the *Act*.

Safeguards needed to ensure this compliance with the Act include **but are not limited to:**

- Protection from reparative therapy to change LGBTI people's genders, sexuality, attractions, behaviour, and/or intimate relationships
- Protection for intersex people from birth across the lifespan from unwanted normalising gender/sex assignments and medical interventions-- including hormones
- Protection for young people with both binary and non-binary genders against discriminatory denials or delays in accessing social, legal, and medical gender affirmation
- Protection from suppression of non-binary and culturally specific (e.g., sistergirl, brotherboy, genderqueer, etc.) gender expression
- Protection from the prenatal use of Dexamethasone to prevent intersex birth
- Protection for intersex and trans women and people with non-binary genders who seek or use Androcur, as part of endocrine health management and/or gender affirmation, from being stigmatised through the use of an MBS item code associated with criminal sexual activity
- Protection from discrimination against people who have characteristics or expression that are not stereotypically associated with their gender identity in legal proceedings and the justice system (e.g., unfounded and discriminatory stereotypes that people who wear clothing not associated with their assigned gender are predisposed to criminality)
- Protection from discrimination and inappropriately gendered placement in assisted living facilities and group homes
- Protection from discrimination and unwanted separation of LGBTI people from their partner(s) and/or loved ones, including their LGBTI peers, non-biological and chosen family, and people with whom they wish to pursue or continue intimate relationships
- Ongoing consultation with LGBTI people and communities who are living with or perceived to be living with impairment and/or disability labels, including people who are not designated leaders or members of LGBTI-focused organisations due to limitations in access, availability, and/or choice

Definitions and Determinations of “Family” in Commonwealth Decision-Making

Many LGBTI people who have or who are perceived to have impairment and/or disability labels report that biological relatives are assumed by default to be appropriate decision-making authorities or to be given more involvement and influence in decision-making than people who are designated or chosen non-biological family.

Biological relatives should not be assumed by default to have greater decision-making authority or involvement than non-biological relatives. The Commonwealth decision-making framework needs to include clear measures to protect people from unwanted involvement by biological relatives, whose wishes often differ from those of LGBTI people about whom decisions are being made. Non-biological relationships should not be assumed by default to have lesser status.

The Alliance has developed the *Genders, Body, & Relationships Passport*, a flexible and practical tool to inform decision-making and to ensure that decisions that have the capacity to impact on people's genders, bodies, and relationships are made in accordance with their wishes. The *Passport* is an example of how the Commonwealth might address these concerns within decision-making frameworks.

To reduce the potential for discriminatory application of “family” in the Commonwealth decision-making framework, the framework should also include clear and LGBTI-inclusive definitions of “family” and clear methods for determining which individuals should be included/involved in decision-making.

LGBTI-Inclusive Implementation of the Commonwealth Decision-Making Framework

Given the specialised technical expertise and grassroots experiences of LGBTI people, communities, and organisations, these safeguards, definitions, and processes should be developed through ongoing collaboration with LGBTI people, communities, and organisations such as the National LGBTI Health Alliance and our organisational and individual members across Australia.

We also refer you to the submission on intersex inclusion in the Commonwealth decision-making framework by our Member Organisation, Organisation Intersex International (OII) Australia. This submission provides in-depth information about some key biomedical, ethical, and legal concerns regarding intersex people in Commonwealth decision-making processes. We support the recommendation by OII Australia that the framework should address current exclusions of intersex people from existing protections and safeguards, particularly in the area of medical decision-making.

Conclusion

Safeguarding the inclusion of LGBTI people in the implementation of the Commonwealth decision-making framework can provide many benefits to society, including improved health and wellbeing outcomes and the increased ability of LGBTI people to lead contributing lives in our families, schools, workplaces, communities and services.

As the peak LGBTI health organisation in Australia, we thank you for taking the time to consider this submission. We encourage you to contact the Alliance’s Manager – Policy & Research, Dr Gávi Ansara, to discuss the issues identified in this submission and the *Genders, Body, & Relationships Passport*. His contact details are: gavi.ansara@lgbtihealth.org.au, or telephone (02) 8568 1110.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Reynolds".

Rebecca Reynolds
EXECUTIVE DIRECTOR