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13 November 2018

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**Response to the Australian Law Reform Commission’s Discussion Paper on the Review of the Family Law System**

The National LGBTI Health Alliance welcomes the opportunity to contribute its views on the Australian Law Reform Commission’s Discussion Paper on the Review of the Family Law System. This submission will provide feedback on the discussion paper and reiterate the Alliance’s recommendations in relation to intersex people and the family law system.

**About the National LGBTI Health Alliance**

The National LGBTI Health Alliance (the Alliance) is the national peak health organisation in Australia for organisations and individuals that provide health-related programs, services and research focused on lesbian, gay, bisexual, transgender, and intersex people (LGBTI) and other sexuality, gender, and bodily diverse people and communities. We recognise that people’s genders, bodies, relationships, and sexualities affect their health and wellbeing in every domain of their life.

**The Discussion Paper**

The Alliance congratulates the Australian Law Reform Commission for consistently and appropriately recognising the barriers to access and inclusion in the family law system that LGBTI people continue to face, and the need to enhance the responsiveness of the system for LGBTI people and families. We also welcome the acknowledgment of concerns that any system re-design adequately accommodates the diversity of family and parenting relationships and considers the range of people who may be affected by separation, as well as calls for moving towards a greater use of non-adversarial approaches.

The Alliance supports the following proposals outlined in the Discussion Paper: Proposal 2-2, 2-8, 4-4, 5-9, 5-10, 8-2, 10-3, and 12-8.

**Key Points**

The Family Court system has been the location of decision making regarding medical interventions, receiving criticism for failing to consider the human rights and autonomy of children born with variations in sex characteristics. One example is that due to the lack of clarity on distinctions between therapeutic and non-therapeutic medical interventions, the Family Court does not provide the framework for different parties to provide input on cases involving intersex people.

In response to question 9-1 in the Discussion Paper, the Alliance would like to take this opportunity to reiterate and clarify its position in relation to the provision of independent, effective, human rights-based oversight mechanism/s. The Alliance calls for:

* family law legislation to prohibit deferrable medical interventions, including surgical and hormonal interventions, that alter the sex characteristics of infants, children and adolescents. Such interventions should be deferred until the child has sufficient capacity to consent
* the introduction of a human rights-based oversight mechanism, in the form of an independent decision making body for all cases involving decisions regarding non-deferrable medical interventions to modify the sex characteristics of children who are unable to consent on their own behalf. This mechanism must ensure representation of multiple constituencies, including human rights experts and intersex-led organisations
* the pros and cons of medical treatment to be ventilated in the event that consent is provided by the intersex minor or the decision making-body, which adequately address lifelong health, legal, ethical, sexual and human rights implications. Full disclosure in cases where clinical consensus is absent should also be ensured.
* freely-given and fully informed consent to medical interventions by individuals. It should also become mandatory for individuals and their families and/or caregivers to have access to funded counselling as well as independent and affirmative peer support
* medical interventions to not be approved by the decision-making body on the basis of social, cultural or psychosocial rationales. Decisions should also not be based on technical considerations or cost
* the decision-making body to be advised when informed consent and non-deferrable medical necessity has been established, to ensure transparency to the above provisions

The Alliance would like to thank the Australian Law Reform Commission for the opportunity to provide feedback on its Discussion Paper on the Review of the Family Law System. If you require any further information, please do not hesitate to contact myself on (02) 8568 1123 or via email at nicky.bath@lgbtihealth.org.au, or Daniel Comensoli at daniel.comensoli@lgbtihealth.org.au, to discuss this further.

Yours Sincerely,

Nicky Bath

**EXECUTIVE DIRECTOR**

**NATIONAL LGBTI HEALTH ALLIANCE**