

# Lesbian, Gay, Bisexual, Transgender and Intersex National Network

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Assistant Secretary  
Human Rights Policy Branch  
Attorney-General's Department  
Robert Garran Offices  
3-5 National Circuit  
Barton ACT 2600

**By email: [antidiscrimination@ag.gov.au](mailto:antidiscrimination@ag.gov.au)**

1 February 2012

Dear Assistant Secretary

## **EQUALITY LAW REFORM 2012**

The Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) National Network is a nationwide network of professionals working in the community legal sector. We meet every few months to update, inform and work together to achieve better outcomes for the LGBTI communities across Australia.

The LGBTI national network **endorses** the *National Association of Community Legal Centres' (NACLC) Response to the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper*. In our view, NACLC's position on exemptions and exceptions ought to be seen as the minimum standard. The LGBTI National Network advocates for robust equality law reform for our communities and we submit all organisations in receipt of federal government funds should comply with all anti-discrimination laws, without exemption or exception.

### **How should sexual orientation and gender identity be defined?**

We strongly advocate for a broad definition of sex, sexual orientation, and/or gender identity. It is important that each category is defined in a way that adequately captures the intended communities. In particular, these definitions should be inclusive of intersex. It may also be appropriate to look to international models for defining sexual orientation and gender identity.

We further suggest that gender non-conformity is given specific consideration. In the Lesbian, Gay and Bisexual communities, examples of gender nonconformity may include 'butch' women, 'femme' boys or 'gender queer' expressions. Gender non-conformity is often a 'tell' or trigger for discrimination. Unless given specific consideration gender non-conformity may not be captured by definitions of LGBTI.

**How should discrimination against a person based on the attribute of an associate be protected?**

We submit that protections for a person facing discrimination based on the attribute of an associate are an important inclusion in the Equality Law Reform. In order to achieve such protections, any reforms should commit to meeting the highest bar of anti-discrimination principles. This includes consistency in deciding who falls within the scope of legal protection. We support the proposal to extend the coverage of associates to all protected attributes under one provision.

**Are the current protections against discrimination on the basis of these attributes appropriate?**

The current protections against discrimination on the basis of LGBTI attributes are inadequate and inappropriate. Federal law does not currently provide protection to LGBTI communities from unlawful discrimination or vilification.

The *Fair Work Act* should include protections for gender diverse and intersex people, as there are currently no protections for persons facing discrimination on these grounds. We strongly advocate for the inclusion of LGBTI in all Federal legislation.

We further submit that Malicious Outing, Procedural Outing and Social Outing, when associated with detriment, constitute harassment to the LGBTI communities, and the consolidation bill should provide protections and allow complaints on that basis.

**Should the right to equality before the law be extended to sex and or other attributes?**

The LGBTI communities ought to be treated equally before the law and be afforded equal protection before the law. The current lack of federal protection from discrimination on the basis of sex, sexual orientation and/or gender identity is evidence that the LGBTI communities are yet to enjoy such equality. Further, the LGBTI communities are yet to enjoy access to all the legislative rights enjoyed by the broader community, including same-sex marriage and accessible identity documents with the correct gender for the transgender and gender diverse communities.

The current lack of federal protections and lack of access to some legislative rights is in breach of the fundamental right to equality before the law. In line with the Yogyakarta Principles we submit that the Equality Law Reform should include the right to non-discriminatory treatment for the LGBTI communities in all areas of life.

**How might religions exemptions apply in relation to discrimination on the grounds of sexual orientation or gender identity?**

We strongly advocate for the removal of all religious exemptions in relation to discrimination on the grounds of sex, sexual orientation and/ or gender identity.

Many religious orthodoxies dictate that differing sex, sexual orientation and/or gender identities are morally wrong. Accordingly, faith based exemptions and exceptions put the LGBTI communities in danger of continuing discrimination and vilification.

### **Case Study**

*Angela is employed as a teacher in a private school in NSW. She has been in a relationship with Catherine for six months, and they are planning on moving in together into Angela's house. Angela has not discussed her sexuality at work, because she knows that the school does not accept same sex relationships.*

*Angela is concerned about what may happen if the school discovers that she is a lesbian. She is worried that she may lose her job. She also knows that there is no remedy under NSW law if she is discriminated against because of her sexuality, as private educational authorities have an exemption from discrimination law.*

Religious organisations account for a significant percentage of all not-for-profit organisations, providing valuable public services. If we consider both potential employees and service users, providing faith-based exceptions for a significant percentage of the not-for-profit sector will leave a percentage of the most vulnerable members of the LGBTI communities without legal protection from discrimination. A Federal Anti Discrimination framework that does not allow for, or acutely limits such exceptions would resolve these issues.

We note that it has been suggested that narrowing the exceptions is more likely given the lack of community consensus. In the process of consolidating federal discrimination laws, we request that you consider at least requiring all organisations in receipt of federal government funds to comply with all anti-discrimination laws.

If you have any questions regarding the issues we raise in this letter, please do not hesitate to contact the convenor of the LGBTI National Network, Amy McGowan on (02) 9332 1966.

Yours sincerely

Amy McGowan  
Convenor  
National Lesbian, Gay, Bisexual, Transgender and Intersex Network