



Australian Lesbian Health Coalition (ALHeC)

'Why Should We be Forced to Commit Suicide?' –

AUSTRALIAN LESBIAN HEALTH COALITION'S SUBMISSION ON THE ATTORNEY-GENERAL DEPARTMENT'S CONSOLIDATION OF COMMONWEALTH ANTI-DISCRIMINATION LAWS - DISCUSSION PAPER

29th January, 2012

Attorney-General,
Attorney General's Department,
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

Via email: antidiscrimination@ag.gov.au

Dear Attorney-General,

Please find attached a submission on the Consolidation of Commonwealth Anti-Discrimination Laws Discussion Paper (Sept 2011). The Australian Lesbian Health Coalition (ALHeC) thanks the Attorney-General for the opportunity to make this submission. We commend the Attorney-General's Department for understanding the need to clarify and strengthen Commonwealth anti-discrimination laws in order to afford effective human rights protection to Australian lesbians on the basis of their *sex and sexual orientation*.

In acknowledgement of the specific - and complex - challenges and needs of indigenous Australians (and the fact that indigenous communities include lesbian women, whether this is recognised or not), the Australian Lesbian Health Coalition respectfully requests that special consideration be given by the Attorney-General's Department to comprehensive and equitable protection of the human rights of all First Australian people.

ALHeC supports submissions by the Equality Rights Alliance, the Human Rights Law Centre, the Law Institute of Victoria, and the Discrimination Law Experts' Group to the extent that they support lesbian-specific human rights. Our support for the National LGBTI Health Alliance submission (and, indeed, the AHRC's Report on *Sexual Orientation and Gender Identity*) is somewhat more equivocal, as both the Alliance and the AHRC tend to assume that, if the rights of gay men, bisexuals, transgendered and intersex people are protected, this will automatically mean that the rights of lesbians are protected. On the basis of our assertion that lesbians face both heterosexist discrimination *and sexism* - both from outside and *within* the GLBTI community - this is an unsafe assumption.

About the Australian Lesbian Health Coalition (ALHeC)

The Australian Lesbian Health Coalition (ALHeC) was founded by, and for the benefit of, lesbians, in recognition that discrimination against lesbians can often be different from discrimination against gay men, bisexual and transgendered and intersex people, by virtue of their sex. Hence, lesbians often experience the intersecting forces of *both heterosexism and sexism*. Lesbians face these discriminations not only from the broader community, but also within the GLBTI community/ies.

We are committed to:

- networking extensively with national and international women's, and lesbian-specific, organisations and individuals;
- the need for sex-disaggregated research data collection *and reporting*, both within the LGBTI community/ies and the broader community, in order that lesbian-specific discrimination, experience, and needs - across the entire lifespan - can be properly understood and addressed;
- the need for research on lesbians to be properly funded, and undertaken by lesbian researchers;
- researching and publicising the violence against lesbians which is endemic in the broader community, and within the GLBTI community;
- challenging lesbophobia both within, and outside, the LGBTI community/ies;
- combatting ageism, racism, ableism and poverty within the lesbian, and broader, community/ies;
- advocating for marginalised and vulnerable lesbians at all levels of government, with other NGOs, and in the broader community;
- advocating for lesbians' safe access to all providers of goods and services, including aged care;
- training organisations in culturally-competent, lesbian-sensitive service provision;
- advocating for spaces where lesbians can feel safe to discuss the issues which affect them, as a group, thereby combatting lesbians' social isolation;
- working towards all Australian lesbians being healthy, with a state of complete physical, mental, social and spiritual well-being.

In this submission, the Australian Lesbian Health Coalition (ALHeC):

a) provides insights into the institutional, societal, and personal discrimination and violence that places unremitting stressors upon lesbians, daily, in every sphere; and

b) suggests some ways in which the above issues might be addressed in the process of consolidating Commonwealth anti-discrimination laws.

ALHeC is in a unique position to offer reliable lesbian perspectives on discrimination against lesbian Australians across the entire lifespan including, particularly, older lesbians, who are an especially vulnerable population.

We are aware that views and submissions from lesbian-specific organisations may be less commonly encountered than those from generic gay/lesbian/bisexual/trans groups. However, we ask that you give our submission serious consideration as to the necessity for awareness, and action, based on understanding the issue of intersectional discriminations against lesbians which we raise in this submission.

We trust our submission will be useful and we would welcome the opportunity to provide the Attorney-General's Department with further information and to form a partnership with the government - and other service providers - to ensure that Australian lesbians' human rights are respected and protected.

Yours sincerely,

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Introduction

In one way, Commonwealth anti-discrimination law may have become too complex, with different definitions of discrimination and different ways of protecting people's human rights in the different pieces of legislation.

However, in some ways it is not complex enough, since it does not elaborate upon all of the groups of people whose human rights are infringed upon, nor is it nuanced enough to balance the human rights of two competing sub-groups within one broader protected group.

For instance, the *Sex Discrimination Act 1984*, omits protection of lesbians' rights on the basis of their sexual orientation. There also appears to be an imbalance between the rights of lesbians and transgendered people. This will be discussed later in this submission.

Moreover, we wish to stress that there is an urgent need to take consideration of intersectional forms of discrimination into account since, in real life, lesbians often experience between three and eight forms of discrimination all at one time.

Economic discrimination has important - and far-reaching - effects on the lives of almost all lesbians in Australia, whether they are fully aware of indirect, institutional discrimination, or not. The simple fact that the Labor government changed 85 pieces of legislation that financially discriminated against lesbians in no way obviates the cumulative historical impacts of that legislation. To our knowledge, no attempts have been made to compensate (particularly older) lesbians so that they may have *substantive equality* with their heterosexual sisters and other members of Australian society. In fact, the failure to adopt a 'grandfather clause' with the new Centrelink legislation, recognising lesbian relationships for the first time, actually compounded the disadvantage of older lesbians, as we will show, later in this submission.

In combination with economic discrimination which, as women, generally affects lesbians more than gay *men*, a lesbian can often face sex discrimination, sexual orientation discrimination, gender expression discrimination, age discrimination, race discrimination, geographic discrimination, and maybe even disability discrimination, all at once. Therefore, keeping discrimination legislation in 'silos' of different types does not serve the human rights of Australian lesbians. On the other hand, importing any weaknesses in existing anti-discrimination legislation into the consolidated *Act*, without very careful consideration of possible synergistic, or unintended, consequences would be equally undesirable.

We will be grateful if those who are writing the Exposure Draft of the Consolidation of Commonwealth Anti-Discrimination Laws can bear this in mind.

Questions Asked in the Discussion Paper and Recommendations of the Australian Lesbian Health Coalition:

This submission does not address every question asked in the Discussion Paper. Where possible, we will provide examples from lesbians' lives to illustrate the way in which discrimination operates, as well as its effects.

NOTE: The figure in brackets, after the question, applies to the page number in the Discussion Paper.

Question 1. What is the best way to define discrimination? (P14)

Recommendation 1: The definition of discrimination should be changed and simplified, in line with the Discrimination Law Experts' Group's submission, to incorporate both direct and indirect discrimination.

Question 2. How should the burden of proving discrimination be allocated? (P16)

Recommendation 2: The burden of proof should be shifted onto the respondent, once a complainant establishes a *prima facie* case of discrimination.

Question 3. Should the consolidation bill include a single special measures provision covering all protected attributes? (P16)

Recommendation 3: The *Consolidated Act* should include a single, positively-framed special measures provision, consistent with that contained in *CEDAW*, which states that affirmative action to redress past discriminations against women is not discriminatory.

Question 5. Should public sector organisations have a positive duty to eliminate discrimination and harassment? (P18)

Recommendation 4: The *Consolidated Act* should incorporate a *'positive duty'* to eliminate discrimination and promote *substantive equality* on the part of all organisations in both the public and private sectors

Recommendation 5: The *Consolidated Act* should protect against harassment and vilification, including in social media, on the basis of all protected attributes.

One example provided in relation discrimination against an aged care resident's right to enjoy her lesbian culture was the report that the Director of Nursing in her nursing home approached her, saying that *'The Muslim girls who worked there objected to the lesbian porn videos that (she) had'* (*'Janet', 58 years, lesbian*) (Matrix Guild Vic Inc, 2008:39). Puzzled by this statement, since she did not have any pornographic videos, 'Janet' could only conclude that they had seen her watching the TV series *Queer as Folk* (Matrix Guild Vic Inc, 2008:39). This vignette illustrates the need for aged care service providers to ensure that their staff are fully trained concerning their ethical and legal responsibilities towards residents in their care.

Question 7. How should sexual orientation and gender identity be defined? (P22)

Recommendation 6 In the right to be free from discrimination on the grounds of sexual orientation, sexual orientation should be defined as 'each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different sex or the same sex or more than one sex'. Lesbians should be mentioned, explicitly, in any listing of marginalised GLBTI groups in policy documents and the like.

This issue is a fraught one because protection of sexual orientation and 'gender identity', as it is currently defined in Australian law, are mutually exclusive. This was evidenced in the South Australian Equal Opportunity Tribunal by the case of O'Keefe Vs Sappho's Party. (See Appendix I). At present, transgendered people are protected in gender identity legislation, but lesbians are not. Nor are lesbians protected under the *Sex Discrimination Act*, so there appears to be no balancing of the competing human rights of these two groups within 'sexual orientation and gender identity'.

Brennan and Hungerford (2011) explain the contradiction well when they argue that "'gender identity" legislation incorporates stereotypical ideas of "what is female" into law'.

They argue that some members of the GLBTI community have 'used the "gender identity" framework to undermine the justification for female-only space that falls outside of government regulation (i.e., private events on private property.) As lesbians, we are concerned about the impact of this legislation on our community, and our community's ability to meet free from male influence and involvement. More importantly, as females, we are concerned that in the attempt to provide protections for a few, we will compromise the protection of the many' (Brennan and Hungerford, 2011; see also Gottschalk, 2009)

Question 10. Should the consolidation bill protect against intersectional discrimination? (P24)

Recommendation 7: The *Consolidated Act* should take intersectional discrimination into account, including those complex discriminations leading to the well-documented phenomenon of 'minority stress' among lesbians.

Groundbreaking exploratory research by Szymanski (2008, 2006, 2005) looked at the interlocking effects of sexism and heterosexism in lesbians. Szymanski concluded that 'internalized sexism may not operate in the same way for lesbians as it does for heterosexual women' (2005:359). Her research showed that 'heterosexism, sexism, and internalized heterosexism are uniquely related to psychological distress in lesbians. Furthermore, the results suggest that the interaction of heterosexist and sexist events accounts for variance in psychological distress above and beyond main effects. This suggests that the experience of multiple forms of oppression can have a profound effect on mental health' (Szymanski, 2005:359). If this is so, some lesbians' mental health may not be as good as that of some gay men. In addition, a certain percentage of the excess psychological morbidity experienced by some lesbians over some heterosexual women (Cochran et al, 2003) may result from lesbians being uncertain 'when a particular act of prejudice or discrimination is based on their sexual orientation, their gender, or both' (2005:359) and having to defend themselves against both.

i) Sex, Sexual Orientation and Age

Addressing intersecting discrimination against women who are lesbians and are old is particularly important, since this is a particularly vulnerable population.

One older lesbian's experience:

'Having 'shock therapy' was supposed to teach me how to be straight. All it taught me was to keep my mouth shut' (Matrix Guild Vic Inc, 2009:14)

When she was presented with evidence on discrimination against lesbians in Victorian aged care, 'Marg', the acting manager of an aged care assessment service said:

'It was interesting reading but I don't really know if we would do anything. We don't really have enough numbers of (GLBTI) clients...We see about 5000 clients a year. With everything else going on this would not be a priority unless we had the clients'

(Matrix Guild, 2009)

As with the GRAI research in Western Australia, unwitting institutional discrimination against lesbians is often the result of unawareness of their existence, due partly to their unwillingness to come out (2010).

This situation persists:

'As a current staff member at an aged care facility, I can vouch for gay and lesbian invisibility. (There is) No acknowledgement of the possibility that any of our residents might be GLBTI' (Clarke and Colleagues, 2012).

'Elizabeth' is 72 years old now. The fact that she grew up knowing that her sexuality was 'anathema' to the Christian church in which she was raised reverberates in her interactions with other people to this day:

'The problem is that part of you believes that you are an anathema. It affects your self-esteem and things like that. The effects are insidious. The thing that I have worked out is that if you know something and can work it out intellectually it has less power. But the problem is that a lot of this is so insidious you can't work it out and so there it still retains its power and that's the problem' (Elizabeth, 72 years, lesbian) (Matrix Guild Vic Inc, 2008:37).

McNair and Harrison (2002) found that major concerns for older GLBTI people were not about their health per se, but rather about institutionalised discrimination pertaining to sexual and gender identity. Concerns were also raised about how homophobic attitudes of institutionalised aged care facilities would impact on the quality of care delivered and the fear that this could result in elder abuse (in Leonard, 2002).

Nor is it only aged care service providers who need to be educated:

'One of the things that worries me with support is that we need to educate not just staff but other residents who are homophobic as well' (Focus group 3: community support and advocacy groups) (Matrix Guild Vic Inc, 2009:42)

In her report on the Aged Care Complaints system Walton wrote that:

'A number of submissions also raised the invisibility of gay, lesbian, bisexual and transgender older people who are care recipients. In this context the issue for them is the reluctance to complain because they may be required to disclose their non- heterosexual identity or the same sex relationship for fear of victimisation' (Walton, 2009:32).

and

'Some submissions to this review however, supported the availability of anonymous complaints, particularly as a safety mechanism to support complainants where there is genuine fear of retribution. This was specifically raised in relation to gay lesbian bisexual transgender and intersex care recipients or carers because of the fear of homophobic/ transphobic retribution. Some care recipients have been threatened with 'outing' by providers if they raise a complaint about service standards' (Walton, 2009:40).

Some older lesbians prefer to commit suicide rather than be admitted to residential aged care (Harrison, 2004). This attitude has recently been reiterated by three of the participatory action research participants in Clarke and Colleagues' (2012) project:

'I don't intend to go into age care. I kill myself when it comes to the point when I cannot stay at home any longer'

and

'I'd rather self-terminate than go into residential aged care UNLESS that facility was women-only with women carers. (The carers don't have to be lesbians, but DO have to be lesbian-friendly). I would find it very hard to have a man in my space – either as a nurse or a patient. All my life I've only had women doctors and lived with women. I don't want a man doing my intimate toileting or bathing because that's something that's absolutely foreign and offensive to me'

and

'Having heard about the discrimination there, I would prefer NOT to go into a nursing home, unless it was run by, and for, lesbians. Because they smell money in it, many religiously-run aged care facilities are trying to re-invent themselves as being lesbian-friendly but, as long as the religious exemptions exist, aged care run by churches will be seen as unsafe for lesbians. Why should we be forced to commit suicide because we can't find appropriate aged care for lesbians?'

ii) Sex, Sexual Orientation and Poverty

Poverty can affect health: 'My teeth are falling apart, but I can't afford it (dentistry)' (Clarke and Colleagues, 2012)

Possibly unintended consequences, which cause some lesbian couples to live in fear, have resulted in the sudden changes to the Centrelink legislation, with no grandfather clause:

'I'm now closetted for the first time in my life because I have a mortgage that I am solely responsible for and, if my benefits were decreased, because of my relationship, I would lose my housing 'cause I wouldn't be able to pay the mortgage. I'm "tenants in common" with a partner who WILL NOT pay my half of the mortgage. Had we known that the legal changes (to Centrelink) would've happened, we wouldn't've purchased the house, and we would both be on the list for Ministry housing. We actually have to think about how we answer the phone' (Clarke and Colleagues, 2012).

iii) Sex, Sexual Orientation and Direct Discrimination

'It happens every day, it's the way people look at you when they find out; it's the way people ignore you, shun you; make you feel little, different and inferior. It's the way work administers the roster and the way the school fails to curb bullying' (Hillier et al, 2005, online).

Interview with a young lesbian concerning school and university experiences:

I would say I went to a Catholic...Catholic schools right the way through, but, I'd say, the violence didn't stop...I went to...(it) was about Year Nine and people suspected I was gay. I didn't know I was gay, at that stage, or a lesbian and...So I was called a um...'bricky's labourer'...that was one of the things... and 'dyke' and...

Look, I had a lesbian teacher, at that stage, and once everyone found out she was gay, she was kicked out of school and ...People targeted me even more so... and I think it got to the stage it was generally just taunts in school and... I got 'outed' when I was in Year Twelve and the whole school knew I was gay 'cause it went right the way through and um...and...and that was like, in classes people would make comments, throw stuff at me. The teachers wouldn't do anything. I had one teacher actually join in.

I had my head slammed into locker doors...like that side (sic) of things. I had my school bus...people yelling out comments non-stop, just generally: 'It's disgusting!', 'You fucking lesbian!', 'Fucking dyke!' And..yeah, generally it'd be in big groups. 'Cause I was known for beating up school bullies at my school, so no one would take me on one-on-one. So...it was all big groups, and physically.

I knew the guy a year level above me, he went to a party and gave a guy a blow job and then someone found out, and the guy said that he raped him and...um..yeah, pressed charges because someone found out that yeah, he had oral sex with a guy. And, rather than admit that he did it voluntarily, he said that he was raped. And the guy um...had to do a police report and that night...ah...killed himself.

Oh, I was put on medication, which I later had (been) told that there was no need for me to be put on medication. And, um...told that, yeah, part of my post-traumatic stress was that I was a lesbian and that I had phobia of men, and all this kind of stuff, um...which was completely unfounded.

I'd like say it got better at uni, but it didn't. I went to uni in (name of country town in Victoria). So...and um...I thought (it) would be a lot better. I know a lot friends that were bashed on campus, um...yeah, lesbians, lesbians that were bashed on campus.

I found it everywhere and I've been reluctant, where I live now, to hold hands even though I can hold hands with my partner.

Going out in public, like, I used to go to bars with partners and get guys wanting to join in and get very, very in my face, um...like they would literally try and kiss me while I was kissing my partner.

iv) Sex, Sexual Orientation and Geographic Location

Older rural lesbians whose partners die can often face exclusion because they are invisible: *'In rural Victoria a lot of lesbians are not out. Some of them have been living together for many years but haven't come out to work or to their family. So, when their partner dies they are devastated because they can't tell anyone'* (Vanessa: manager, community care). (Matrix Guild, 2009:33)

Here is one comment reported by a rural lesbian: *"Fucking dyke, keep away from me" etc. I come from a small town community and these are people I've grown up with'* (VGLRL, 2000:33).

v) Sex, Sexual Orientation and Employment

'I had an employer tell me that all gays and lesbians should be shot in the kneecaps. When this remark was passed, I told him to start with me if he felt so strongly' (Kelly 2005:147).

vi) Sex, Sexual Orientation and Access to Healthcare

'My path to pregnancy was difficult. I was refused artificial insemination in Melbourne and had to travel to Canberra to get access. In some of the hospitals I went to, the doctors just presumed I was an infertile heterosexual and they wanted to do invasive surgery' (Victorian Gay and Lesbian Rights Lobby, 2000:22)

'I was denied family cover for myself, partner and our two children. I was instructed to take out family plus single to ensure everyone was covered. On approaching another health insurer, our individual case had to be considered by a board before we were granted the family cover. We did get the cover, but how many other "alternative" families have to have their individual particulars examined' by the board to get this? (Victorian Gay and Lesbian Rights Lobby, 2000:41).

'Nightmare gynaecological exam (pap smear). It was very rough and painful whereas the previous one (before she knew I was gay) was very gentle. The result is that I've never told any doctors anything about my sexuality since then' (Victorian Gay and Lesbian Rights Lobby, 2000:40)

'I was told by my doctor that my lesbianism was a phase and that it wouldn't last. I was likened to a man, then told to look elsewhere for treatment' (Victorian Gay and Lesbian Rights Lobby, 2000:40)

Question 11. Should the right to equality before the law be extended to sex and/or other attributes? (P26)

Recommendation 8: The aim of the *Consolidated Act* should be to achieve *substantive equality*, in line with the *Universal Declaration of Human Rights* and the separation of Church and State i.e. *equality before the law without distinction*

Questions 12-14. What is the most appropriate way to articulate the areas of public life to which anti-discrimination law applies? (P27-29)

Recommendation 9: The *Consolidated Act* should include 'political opinion'; 'social status' defined as homeless, on government benefits recipient, or, for example, in residential aged care; victim of intimate partner violence, explicitly including same-sex intimate partner violence; having family or carer responsibilities, explicitly including same-sex family or carer responsibilities.

Although Fredriksen includes some useful information on gay and lesbian caregiving, it is impossible to separate out the lesbian-specific content. For instance, Fredriksen has collected separate information on lesbian and gay carers, but often only reports aggregate figures for the two, for instance, 'The majority of gay men and lesbians (82 percent) with adult caregiving responsibilities had experienced harassment because of their sexual orientation. The type of harassment experienced included verbal (93 percent), emotional (46 percent), physical (14 percent), and sexual (8 percent)' (Fredriksen, 1999).

Almost one-third of gays and lesbians in Fredriksen's (1999) study were providing caregiving:

'Although gay men and lesbians caring for partners with an illness or disability have been found to have heavier caregiving demands (than heterosexuals), they often have less access to community and employment resources.... Caregivers in lesbian...relationships, compared to those in opposite-sex relationships, were providing significantly more hours of care and higher levels of assistance and were experiencing increased levels of role strain and likelihood of job termination as a result of their family care responsibilities'
(Fredriksen, 1999).

Recommendation 10: All publicly-funded research should include lesbians as a marginalised group whenever attributes are listed, whether the research is on the GLBTI, or broader, community/ies. Data must not only be collected, but also *reported* in a sex-disaggregated manner, even if this requires reporting of raw numbers, rather than statistically-significant findings. Only in this way can the unique experiences of discrimination against lesbians start to be understood.

As mentioned on page 2 of our submission sex-disaggregated research data collection *and reporting* is vital in the process of building 'evidence' of discrimination against lesbians. Publicly-funded organisations, such as the Australian Longitudinal Study on Women's Health, should not get away with such assumption-riddled and lesbophobic reasons as this for refusing to collect evidence on lesbian health:

'...As our first priority has to be to the maintenance of the cohorts over time, we are careful to avoid asking questions that are associated with risk of offending, or which are not obviously related to health which is the stated purpose of the study and the reason why women participate...' (Lee, personal email, 14-10-'04)

Recommendation 11: Policy documents at all levels of government and public life should, when enumerating groups of women, explicitly include lesbians along with other listed groups and include lesbian-related policy actions and targets within those policy documents

Documented evidence of violence against Australian lesbians has existed since at least 1994 i.e. 18 years (see, for example, GLAD, 1994). In addition, evidence has been provided to government-run CEDAW consultations from 2008 onwards (Draper, Hawthorne and Clarke, 2008) concerning the endemic level of *violence against lesbians*: 70-75% have faced violence and abuse in the three eastern states (see *Berman and Robinson, 2010; Leonard et al, 2008; Mc Nair and Thomacos, 2005*).

Yet the National Council's Plan for Australia to Reduce Violence Against Women and Their Children, 2009-2021 makes *no mention of violence against lesbians*, although it reiterates, five times over, that lesbians are *perpetrators of domestic violence* (National Council to Reduce Violence Against Women and their Children, March 2009). It might be possible to interpret this omission as institutional discrimination against lesbians.

This situation is repeated in the Commonwealth government's March 2010 progress report to the UN regarding CEDAW, the covenant aimed at eradicating violence and discrimination against women.

Question 15. What is the best approach to coverage of clubs and member-based associations? (P31)

Recommendation 12: The *Consolidated Act* should contain exemptions for clubs and member-based associations so that economic, social, cultural and political rights may be protected.

Question 22. How might religious exemptions apply in relation to discrimination on the grounds of sexual orientation or gender identity? (P40) and

Question 23. Should temporary exemptions continue to be available? If so, what matters should the Commission take into account when considering whether to grant a temporary exemption? (P41)

Australian taxpayers give funding to church organisations in two ways: firstly, through granting church organisations immunity from taxation; secondly, the public purse sponsors church-run and -affiliated organisations to undertake activities such as healthcare (clinics, hospitals, community and residential aged care, palliative care), education and childcare, welfare and employment agencies. Governments which might, originally, have undertaken these activities as part of the public good - or 'common wealth' - have outsourced some of these activities to church-run or -affiliated organisations.

The *Equal Opportunity Acts* in most Australian States have religious exceptions and exemptions which give these organisations explicit permission to discriminate against lesbians due to their sexual orientation. It is inequitable for lesbian taxes to be given to organisations which can (and, evidence exists, do) discriminate against them. Any church-run, or -affiliated, organisation which provides goods or services in public life and 'in loco government' should be forbidden to act in a discriminatory manner on the basis of sexual orientation. If they are shown to be discriminatory, their public funding should be withdrawn. Failure to do so is contrary to a basic tenet, in a democracy, that there should be a separation between Church and State.

Recommendation 13: There should exist no blanket exceptions or exemptions for religious bodies. If the *Consolidated Act* retains any such exceptions or exemptions, these must have a sunset clause attached to them, a time set for their review, and they should require the religious body seeking the exception or exemption to publicly disclose and publish a public notice in every case in which it seeks to be excused from the operation of anti-discrimination legislation.

Question 25. Are any changes needed to the conciliation process to make it more effective in resolving disputes? (P48)

Recommendation 14: The conciliation process should not allow one party to the conciliation to bully the other party, with no intervention on the part of the 'mediators'.

Question 26. Are any improvements needed to the court process for anti-discrimination complaints? (P50)

Recommendation 15: There should be 'simple, cost-effective mechanisms for resolving complaints of discrimination', which do not penalise complainants, financially, for bringing a complaint.

Recommendation 16: Laws that cannot be enforced are not worth the paper they are written on. Therefore there should be a right to legal remedies (as per the *ICCPR*), when one can prove that one has been illegally discriminated against, that are commensurate with the seriousness of the harm caused by illegal discrimination.

Recommendation 17: The Australian Human Rights Commission, Community Legal Centres and Legal Aid should be adequately resourced and funded to allow effective operation of the *Consolidated Act*. Poverty should not prevent people, including lesbians, seeking redress if their human rights have been infringed.

Question 27. Is it necessary to change the role and functions of the Commission to provide a more effective compliance regime? (P53)

Recommendation 18: The Australian Human Rights Commission should have the power, functions, and adequate financial and human resources to initiate inquiries into any human rights issues in Australia, including dealing with systemic, institutional discrimination as recommended by the Gardner Review, which was not put into action.

Recommendation 19: The Australian Human Rights Commission should have the power and adequate financial and human resources to enforce its inquiry findings on public authorities and corporations, with adequate financial or other penalties as to prevent repetition of the discrimination

Question 28. Should the consolidation bill make any improvements to the existing mechanisms in Commonwealth anti-discrimination laws for managing the

interactions with the Fair Work Act? (P56)

Yes. The religious exemptions work in direct contravention to the Fair Work Act, since it is legal to fire - or not hire in the first place – lesbians, simply due to their sexual orientation

Question 30. Should the consolidation bill apply to State and Territory Governments and instrumentalities? (P59)

Yes, rather than having to undertake separate court cases in each State to assert lesbians' rights to their freedom of association, it would be preferable for one uniform Commonwealth law covering all States, Territories, and instrumentalities throughout the whole of Australia

Conclusion

In conclusion, the Australian Lesbian Health Coalition thanks the Attorney-General's Department for the opportunity to make this submission regarding consolidation of all pieces of Commonwealth anti-discrimination law into one comprehensive piece of legislation.

We recognise that it will not be easy - although it is *essential* - to ensure that the *Consolidated Act* addresses complex, *intersectional discrimination*.

The Australian Lesbian Health Coalition is keen to form educational and policy development partnerships with government and other NGOs to ensure that discrimination against lesbians, wherever it is found in Australia, is effectively addressed.

References

Berman and Robinson (2010) *Speaking Out: Stopping Homophobic and Transphobic Abuse in Queensland*, Australian Academic Press: Queensland.

Brennan, B., and Hungerford, E., (Aug 1, 2011) Open letter to the CSW Communications Procedure, Human Rights Section, UN Women, New York

Clarke, B., and Colleagues (2012) Unpublished Action Research Project on *Australian Older Lesbians' Superannuation, Home Ownership, Social Support, Attitudes Towards Centrelink Legislation and Residential/Community Aged Care, Employment Status, and Cost of Chronic Illness* Melbourne

Cochran, S. D., Sullivan, J. G., and Mays, V. M. (2003). Prevalence of mental disorders, psychological distress, and mental health services use among lesbian, gay, and bisexual adults in the United States, *Journal of Consulting and Clinical Psychology*, 71(1): 53-61.

Draper, J., Hawthorne, S., and Clarke, B., (2008) *Written Submission to CEDAW Melbourne Consultation – on behalf of the Coalition of Activist Lesbians (COAL), Matrix Guild, and the Victorian Gay and Lesbian Rights Lobby*, Melbourne, Australia

Fredriksen, K.I., (1999) Family Caregiving Among Lesbians and Gay Men, *Social Work*, 44(2):142-155

Gays and Lesbians Against Discrimination (GLAD) (1994) *Not a Day Goes By*, Gays and Lesbians Against Discrimination: Melbourne

GRAI (GLBTI Retirement Association Inc) and Curtin Health Innovation Research Institute, Curtin University (2010) *We Don't Have Any of Those People Here: Retirement accommodation and aged care issues for non-heterosexual populations*. Perth, Western Australia.

- Gottschalk, L., (2009) Transgendering women's space: A feminist analysis of perspectives from Australian women's services, *Women's Studies International Forum* 32:167–178
- Harrison, J., (2004) Towards the Recognition of GLBTI Aged Care in Australian Gerontology, Unpublished Health Sciences PhD thesis, University of South Australia: Adelaide
- Hillier, L., Turner, A., and Mitchell, A., (2005) *Writing Themselves in Again: 6 Years On – The 2nd National Report on the Sexual Health and Well-Being of Same Sex Attracted Young People in Australia*, Melbourne: Australian Research Centre in Sex, Health and Society, (Online)
www.latrobe.edu.au/ssay/pdfs/writing_themselves_in_again.pdf accessed on 12-7-'05
- Kelly, J., (2005). *Zest for Life: Lesbians' Experiences of Menopause*. Spinifex Press: Melbourne
- Leonard, W., (2002) *What's the Difference?: Health Issues of Major Concern to Gay, Lesbian, Bisexual, Transgender and Intersex (GLBTI) Victorians*, Ministerial Advisory Committee on Gay and Lesbian Health, Victorian Government Department of Human Services: Melbourne
- Leonard, W., Mitchell, A., Patel, S., and Fox, C. (Dec, 2008) *Coming Forward: The Underreporting of Heterosexist Violence and Same Sex Partner Abuse in Victoria*, Gay and Lesbian Health Victoria: Melbourne
- McNair, R., and Thomacos, N., (eds.) (2005) *Not Yet Equal: Report of the VGLRL Same Sex Relationships Survey*, Victorian Gay and Lesbian Rights Lobby: Melbourne
- Matrix Guild (Vic) Inc (2009) *Permission to Speak: Determining Strategies Towards the Development of Gay, Lesbian, Bisexual, transgender and Intersex Friendly Aged-Care Services in Victoria*, Matrix Guild (Vic) Inc: Melbourne
- Matrix Guild (Vic) Inc and Vintage Men (2008) *My People: A Project Exploring the Experience of Gay, Lesbian, Bisexual, transgender and Intersex Seniors in Aged-Care Services*, Matrix Guild (Vic) Inc: Melbourne
- Szymanski, D.M., (2008) Do Coping Styles Moderate or Mediate the Relationship Between Internalized Heterosexism and Sexual Minority Women's Psychological Distress? *Psychology of Women Quarterly*, 32(1):95-104
- Szymanski, D.M., (2006) Does Internalized Heterosexism Moderate the Link Between Heterosexist Events and Lesbians' Psychological Distress? *Sex Roles*, 54(3-4):227-234
- Szymanski, D.M., (2005) Heterosexism and Sexism as Correlates of Psychological Distress in Lesbians, *Journal of Counseling and Development*, 83(3)355-360
- Szymanski, D.M., (2003) Feminist Attitudes and Coping Resources as Correlates of Lesbian Internalized Heterosexism, *Feminism and Psychology*, 13(3):369-389
- Szymanski, D. M., and Chung, Y. B., (2003) Internalized Homophobia in Lesbians, *Journal of Lesbian Studies*, 7(1):115-125
- The National Council to Reduce Violence Against Women and their Children (March 2009) *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children, 2009-2021* Commonwealth of Australia: Canberra
- Victorian Gay and Lesbian Rights Lobby (VGLRL) (2000) *Enough is Enough A Report on Discrimination and Abuse Experienced by Lesbians, Gay Men, Bisexuals and Transgender People in Victoria*. Victorian Gay and Lesbian Rights Lobby: Melbourne
- Walton, M., (Oct 2009) *Review of the Aged Care Complaints Scheme*, Department of Health and Ageing: Canberra