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## Next steps for equality

Submission on *The Way Forward: LGBTIQ Report* to the  
Department of Communities and Social Inclusion

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## Human Rights Law Centre

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# 1. Introduction

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The Human Rights Law Centre (HRLC) welcomes the opportunity to provide feedback on *The Way Forward: LGBTIQ Report*<sup>1</sup> (the **Report**). We congratulate the South Australian Government on a range of progressive reforms which have improved the everyday lives of thousands of lesbian, gay, bisexual, trans, intersex and queer (**LGBTIQ**)<sup>2</sup> South Australians.

LGBTIQ people deserve full protection of our human rights. We should all be able to decide what happens to our own bodies, and to be free from medical interventions performed without our knowledge or consent. We should all be free to live and be recognised as our true gender. We should all be able to access high quality healthcare, education free from bullying, and employment free from discrimination.

Over the past 18 months, the South Australian Government has passed a range of legislative reforms and introduced government policies to ensure fairness and equality for LGBTIQ South Australians. South Australian Premier Jay Weatherill delivered a historic and heartfelt apology to LGBTIQ people for the discrimination that was written into South Australian laws. These reforms received cross-party support and were warmly welcomed by South Australians. No other state or territory has passed the sheer number and range of laws within such a short period of time.

These progressive reforms removed practical barriers which prevented LGBTIQ people in South Australia from being recognised equally under law. For decades, these laws entrenched discrimination and stigmatised LGBTIQ people. The removal of this direct discrimination written into statute was a watershed moment in the history of equality in South Australia.

However, more remains to be done to tackle the systemic discrimination and disadvantage experienced by LGBTIQ people. This should involve co-ordinated institutional and programmatic reform that supports LGBTIQ communities and addresses their unique needs. Addressing the alarmingly high rates of social isolation and poor physical and mental health that LGBTIQ South Australians experience is not a 'quick-fix' and requires long-term, sustainable commitment to changing our communities for the better. The issues which remain to be addressed are generally more complex, spanning from further legal reforms to community development and public education, to establishing consultative mechanisms and infrastructure within government.

The HRLC has been working in partnership with LGBTIQ communities and advocates in South Australia in advocacy over the past year, including running a series of Make Change Happen events and workshops to discuss LGBTIQ priorities.<sup>3</sup> We have collated the following information and

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<sup>1</sup> Government of South Australia: Department for Communities and Social Inclusion, *The Way Forward: LGBTIQ Report* (2017) [http://www.dcsi.sa.gov.au/\\_\\_data/assets/pdf\\_file/0007/59776/DCSI-1031-LGBTIQ-The-Way-Forward-Bklet\\_FA3-WEB.pdf](http://www.dcsi.sa.gov.au/__data/assets/pdf_file/0007/59776/DCSI-1031-LGBTIQ-The-Way-Forward-Bklet_FA3-WEB.pdf).

<sup>2</sup> We use the term 'LGBTIQ' to refer to other diverse categories of sexual orientation and gender identity (e.g. gender diverse, asexual, pansexual).

<sup>3</sup> Make Change Happen SA workshops held in November 2016, February 2017, May 2017, August 2017 and January 2018. See also, Make the online hub 'Make Change Happen SA' established by the HRLC: [www.makechangehappensa.org](http://www.makechangehappensa.org).

recommendations from publicly available information (e.g. the SALRI review, 2015-2016 Rainbow Survey, 2017 EOCSA survey) together with meetings convened in May 2017, August 2017 and January 2018 which identified and discussed priority issues with South Australian LGBTIQ stakeholders.

We welcome the South Australian Government's willingness to consult and seek feedback on future priorities. We look forward to reading the outcome of these consultations to build on the momentum already in place for a stronger, more inclusive future for all South Australians.

## 2. Summary of recommendations

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We recommend that the South Australian Government:

1. Implement the recommendations of the 2015 - 2016 Rainbow Survey across government departments to improve access to services for LGBTIQ people, with reference to the How2 program's six GLBTI-inclusive standards.
2. Improve data collection of LGBTIQ people across government.
3. Commit to funding a 2018 – 2020 Social Inclusion Strategy within the Department for Communities and Social Inclusion.
4. Introduce a whole-of-government LGBTIQ taskforce, and specialised consultative bodies that include LGBTIQ community members to advise key departments and agencies on issues affecting LGBTIQ people.
5. Appoint a Minister and Commissioner responsible for LGBTIQ people and establish a specialist branch within the Department for Communities and Social Inclusion or Department of Premier and Cabinet with specific responsibility for LGBTIQ policy, programs and legislative reform.
6. Conduct a review of current health services provided to LGBTIQ people and collaborate with LGBTIQ people to improve access to high quality health that respects human rights, including the development of Standards of Care, specialist training, dedicated care streams and ongoing mental health supports.
7. Prohibit medically unnecessary and deferrable medical interventions on infants and children with variations of sex characteristics.
8. Amend the term 'intersex status' to 'sex characteristics in the *Equal Opportunity Act 1984* (SA).
9. Continue to support LGBTIQ young people in schools and education, through government guidelines and sustained funding for targeted anti-bullying programs.
10. Require all service providers to commit to LGBTIQ inclusive service delivery in practice, particularly in family violence and housing.
11. Provide more funding for LGBTIQ organisations.

12. Implement the recommendations of the Australian Senate Community Affairs Committee, the South Australian Law Reform Institute, the Australian Human Rights Commission and previous recommendations from LGBTIQ organisations.
13. Enact a Human Rights Act that protects fundamental human rights and freedoms under law, to better protect LGBTIQ people from potential violations of their human rights.

## 3. Positive reform for a fairer South Australia

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### 3.1 Historic state apology

In December 2016, South Australian Premier Jay Weatherill delivered the world's first formal state apology not only gay men who were charged with criminal offences before homosexuality was decriminalised, but to every LGBTIQ person in South Australia who faced discrimination and mistreated under unjust historical laws passed in the state. As Premier Weatherill stated:

To LGBTIQ community members discriminated against in legislation, we offer you our unreserved and sincere regret and are sorry for those injustices ... When our laws discriminate against a particular group of people, it sends a message that this prejudice written into law justifies treating people differently in our day-to-day lives. Such laws do not affect only the LGBTIQ community, they diminish our society as a whole. They diminish us by saying effectively that there are certain people who deserve to be treated differently, whose relationships are worth less, whose families should not exist, who are not entitled to the same fundamental rights as their neighbour...<sup>4</sup>

This momentous occasion was witnessed by a full public gallery of LGBTIQ people, many of whom were moved to tears by the importance symbolism of the apology. The apology also included a commitment to build a safer, fairer future for the next generation of children in South Australia.

### 3.2 Legislative reforms

In 2016 and 2017, the South Australian Government also passed a number of legislative reforms to remove direct discrimination against LGBTIQ South Australians. These reforms built on many months of community consultations and detailed research conducted by the South Australian Law Reform Institute (**SALRI**) which found that over 140 pieces of legislation contained discrimination.<sup>5</sup>

The South Australian Parliament passed laws which:

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<sup>4</sup> Premier Jay Weatherill, Parliamentary Apology to LGBTIQ people discriminated against by State laws (1 December 2016) <https://static1.squarespace.com/static/581921d3e58c62432bd712cc/t/584f5c3f725e254d6b047db0/1481595982816/Apology+poster.pdf>.

<sup>5</sup> South Australian Law Reform Institute (**SALRI**), *Audit Paper - Discrimination on the grounds of sexual orientation, gender, gender identity and intersex statute in South Australian legislation* (September 2015) ; SALRI, *Final Report – Laws regulating sexual reassignment and registration of sex and gender* (February 2016); SALRI, *Final Report – Rainbow families: Equal recognition of relationships and access to existing laws relating to parentage, assisted reproductive treatment and surrogacy* (June 2016); SALRI, *Final Report – 'Lawful Discrimination': Exceptions under the Equal Opportunity Act 1984 (SA) to unlawful discrimination on the grounds of gender identity, sexual orientation and intersex status* (June 2016); SALRI, *Report: Stage 1 – 'The Provoking Operation of Provocation* (April 2017). All report available online at: <https://law.adelaide.edu.au/research/law-reform-institute/>.

- Removed almost all gendered language from South Australian statutes, bringing them into compliance with 2013 amendments to the federal *Sex Discrimination Act 1984* (Cth).<sup>6</sup>
- Introduced a relationships register for couples to register their committed relationships under state law.<sup>7</sup>
- Repealed the *Sexual Reassignment Act 1988* (SA) and amended existing birth certificate laws to improve access to medical treatment for transgender people and remove existing barriers to change the sex marker on birth certificates for trans, gender diverse and intersex people.<sup>8</sup>
- Introduced parenting reforms to allow same-sex couples to start a family through adoption,<sup>9</sup> assisted reproductive treatment and altruistic surrogacy.<sup>10</sup>
- Introduced legislative protections from discrimination for intersex people.<sup>11</sup>

These legislative reforms removed unacceptable government sanctioned discrimination against LGBTIQ people. They are a positive step forward to ensuring LGBTIQ South Australians can be treated fairly and equally under law.

For example, transgender South Australians can now access identification reflecting the gender they live as. This reform removed practical barriers from them being able to access education, housing, healthcare, Centrelink and other essential services when their identification didn't match how they presented in real life, or when there was a data mismatch between their federal and state identification documents.

### 3.3 Government action

We also commend the South Australian Government on a range of measures introduced since the LGBTIQ 2014-2016 Social Inclusion Strategy commenced which have also supported LGBTIQ people in South Australia.

The South Australian Government has taken the following positive steps:

- (a) Committed to supporting and funding the Safe Schools anti-bullying teacher education program following the withdrawal of federal funding.<sup>12</sup>
- (b) The Department of Education introduced the mandatory 'Transgender and intersex student support' procedure to ensure schools support transgender and intersex children and young people in education.<sup>13</sup>

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<sup>6</sup> *Statutes Amendment (Gender Identity and Equity) Act 2016* (SA).

<sup>7</sup> *Relationships Register Bill 2016* (SA).

<sup>8</sup> *Births, Deaths and Marriages Registration (Gender Identity) Amendment Act 2017* (SA).

<sup>9</sup> *Adoption (Review) Amendment Act 2016* (SA).

<sup>10</sup> *Statutes Amendment (Surrogacy Eligibility) Act 2017* (SA).

<sup>11</sup> *Relationships Register Bill 2016* (SA).

<sup>12</sup> See Shine SA, 'Safe Schools' <https://www.shinesa.org.au/community-information/sexual-gender-diversity/shine-sa-safe-schools/>.

<sup>13</sup> Department for Education and Child Development, *Procedure: Transgender and intersex student support* (24 November 2016).

- (c) Supported Minus 18's Same Sex and Gender Diverse Formals for South Australian young people.
- (d) Funded and supported the LGBTIQ people ageing well project and providing funding for other LGBTIQ organisations.
- (e) Provided additional mental health and counselling services for the LGBTIQ community due to increased demand during the Australian Marriage Law Postal Survey.<sup>14</sup>
- (f) Improved direct service delivery through inclusive forms, internal government policy updates, continuing SAPOL's GLLOs, introducing the *Inclusive Communities Benefit Everyone* training tool and *Inclusive language in Australian Service Excellence Standards*.

The LGBTIQ 2014 – 2016 Social Inclusion Strategy and the community engagement conducted by the Department for Communities and Social Inclusion (**DCSI**) played a crucial role in ensuring that the South Australian Government engaged with the LGBTIQ community.

## 4. Connecting government agencies with LGBTIQ communities

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### 4.1 Positive steps to engage with LGBTIQ community members

The Report shows that since the LGBTIQ 2014 – 2016 Social Inclusion Strategy, there have been a number of positive steps taken by South Australian Government, particularly the Department of Premier and Cabinet, the DCSI, the Attorney-General's Department (particularly through the work of the Equal Opportunity Commission of South Australia) and the Department of Education and Child Development.

#### **Case study: Rainbow Survey 2015-2016**

The 2015-2016 Rainbow Survey was collected by the DCSI to address gaps in public knowledge and data about the experiences of LGBTIQ South Australians. DCSI staff engaged positively with LGBTIQ stakeholders online, and condensed the information for use by government, policy and legal staff and decision makers. The role that the DCSI has taken in sharing information across LGBTIQ networks has also facilitated stronger social cohesion and community building. Strong relationships between government and community allows for high response rates which provides a more accurate snapshot of the real lived experiences of LGBTIQ South Australians.

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<sup>14</sup> News releases – Ian Hunter, *More mental health support for LGBTIQ community during marriage equality survey* (16 September 2017) <https://www.premier.sa.gov.au/index.php/ian-hunters-news-releases/8041-more-mental-health-support-for-lgbtq-community-during-marriage-equality-survey>.

## 4.2 State-wide approach to government inclusion

Despite this positive progress, more remains to be done to build consistent and constructive engagement between the LGBTIQ community and the South Australian Government.

***Case study: Need for LGBTIQ training for police officers, better information on GLLOs and more LGBTIQ community engagement with SA Police***

The 2015-2016 Rainbow Survey confirmed that LGBTIQ people, compared to other members of the community, have less trust in police. Before the survey, half of LGBTIQ people had not heard about SA Police's GLLOs. While the majority of people surveyed believed that the existence of the GLLO service increased the likelihood of seeking police assistance, LGBTIQ community members expressed concerns about the low profile of GLLOs, including difficulty locating information about them on the SA Police website. In particular, there were perceptions that crimes relating to sexual orientation, gender identity or intersex status were not taken seriously and that the police lacked confidence, credibility and knowledge on LGBTIQ matters (see Key Findings – Section 4 – Police Services).

Importantly, piecemeal implementation of government policies, optional training packages which have low uptake, and the lack of transparency about departmental policies can lead to risks of inconsistent service provision by government departments. A co-ordinated whole-of-government approach involving action by all government departments is required, with a focus on the areas where departments are likely to engage with LGBTIQ people in service delivery.

The 2015 – 2016 Rainbow Survey recommended a number of measures to improve LGBTIQ people accessing government services. These recommendations remain current and could be further progressed:

- (a) LGBTIQ competency training and education for all staff involved in service provision
- (b) Displaying visible signs of LGBTIQ awareness<sup>15</sup>
- (c) Inclusive forms that cater for non-binary gender
- (d) Specific LGBTIQ services in family violence
- (e) Mainstream services engaging with the LGBTIQ communities
- (f) More advertising of LGBTIQ friendly services
- (g) Acknowledging the access issues for LGBTIQ people with a disability

These recommendations should be read in conjunction with the six GLBTI-inclusive standards covered in the How<sup>2</sup> program of:

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<sup>15</sup> See Gay & Lesbian Health Victoria, *Beyond a rainbow sticker: A report on How<sup>2</sup> create a gay, lesbian, bisexual, transgender and intersex (GLBTI) inclusive service* (April 2013) [https://www.glhv.org.au/sites/default/files/BeyondaRainbowSticker\\_small\\_0.pdf](https://www.glhv.org.au/sites/default/files/BeyondaRainbowSticker_small_0.pdf).

1. Access and intake processes
2. Consumer consultation
3. Cultural safety
4. Disclosure and documentation
5. Professional development
6. Organisational capacity<sup>16</sup>

***Recommendation 1: Consistent & inclusive government service delivery***

We recommend that the South Australian Government implement the recommendations of the 2015 – 2016 Rainbow Survey across government departments to improve access to services for LGBTIQ people, with reference to the How<sup>2</sup> program’s six GLBTI-inclusive standards.

In addition, improved data collection across government should also be considered to gain a better understanding of LGBTIQ statistics. This includes collecting sex/gender information only when necessary and in a way that is sensitive to gender diverse people (i.e. including categories other than male and female).

***Recommendation 2: Improving data collection***

We recommend that the South Australian Government improve data collection of LGBTIQ people across government.

Unfortunately, the further implementation of LGBTIQ inclusive government policies is unlikely to occur without appropriate funding for the DCSI to facilitate this work, and for each government department to ensure compliance with LGBTIQ relevant policies. Without a unifying strategy and funded staff to ensure that LGBTIQ social inclusion stays on the government’s agenda, there is a real risk that progress will stall.

Ensuring there are effective mechanisms for government to monitor and respond to current issues, and evaluate the effectiveness of government programs and actions, are crucial to keeping the LGBTIQ community safe from harm in the future.

***Recommendation 3: 2018 – 2020 LGBTIQ Social Inclusion Strategy***

We recommend that the South Australian Government commit to funding a 2018 – 2020 Social Inclusion Strategy within the Department for Communities and Social Inclusion.

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<sup>16</sup> See Gay & Lesbian Health Victoria, *Beyond a rainbow sticker: A report on How2 create a gay, lesbian, bisexual, transgender and intersex (GLBTI) inclusive service* (April 2013) [https://www.glhv.org.au/sites/default/files/BeyondaRainbowSticker\\_small\\_0.pdf](https://www.glhv.org.au/sites/default/files/BeyondaRainbowSticker_small_0.pdf).

Ongoing consultations with LGBTIQ community members also ensures that government departments have a strong understanding of current issues affecting the community and can respond in a timely and effective way to community concerns. The South Australian Government should re-introduce a whole of government consultative body, with subcommittees appointed where appropriate to deal with specialist areas of knowledge (e.g. health and human services and justice).

There are many examples of such groups in other states and territories. The most well developed community engagement infrastructure can be found in Victoria, where the Minister for Equality oversees a whole-of-government LGBTI Taskforce with community members and senior representatives from key departments. Expert advisory groups on intersex and trans issues, and working groups on justice, health and human services, and education. Community members are paid for their time spent at meetings and members of parliament are involved in co-chairing the working groups with LGBTIQ community leaders. There are regular communiques published that report publicly on the progress of the Taskforce and its working groups.

***Recommendation 4: LGBTIQ advisory panel for government***

We recommend that the South Australian Government introduce a whole-of-government LGBTIQ taskforce, and specialised consultative bodies that include LGBTIQ community members to advise key departments and agencies on issues affecting LGBTIQ people. These consultative bodies are particularly needed in areas where ongoing consultation is necessary (i.e. communities and social inclusion, correctional services, courts administration authority, education, health and ageing, SA Police).

In order to ensure that the South Australian Government continues to protect the rights of LGBTIQ people in the state and develop policies and programs that address the unique needs of LGBTIQ people, a branch within government should be a source of specialist advice and guidance and to co-ordinate and drive the Government's LGBTIQ policy agenda. Currently, this responsibility rests within the DCSI. We recommend the establishment of a specialist branch within the DCSI or the Department of Premier and Cabinet with specific responsibility for LGBTIQ policy and programmes.

A Minister should be appointed with responsibility for LGBTIQ people – including legislative, programmatic and policy reform. This will ensure that LGBTIQ people have a voice in decision making by government in cabinet meetings and ensure that the department or branch with responsibility for LGBTIQ policy has ministerial oversight and leadership. The Federal Labor Opposition has appointed Terri Butler as the spokesperson on LGBTIQ ('equality') issues and the Victorian Government established the Equality portfolio upon its election in 2014. Minister Foley has been highly successful as responsible minister in this area – generating significant momentum and positive change for the LGBTIQ community.

A Commissioner for Gender and Sexuality would give LGBTIQ people a greater voice both within Government and in the community more broadly. A Commissioner would be responsible for raising awareness of issues LGBTIQ people face and championing the rights of LGBTIQ South Australians within the Government. Ideally, the Commissioner should be positioned within a government

department which provides whole of government oversight to ensure any actions can be implemented effectively across departments (e.g. Department of Premier and Cabinet).

***Recommendation 5: Commissioner, Minister & specialist branch for LGBTIQ policy***

We recommend that the South Australian Government appoint a Minister and Commissioner responsible for LGBTIQ people and establish a specialist branch within the Department for Communities and Social Inclusion or Department of Premier and Cabinet with specific responsibility for LGBTIQ policy, programs and legislative reform.

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## 5. Future directions

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Despite recent positive progress, more needs to be done to ensure that LGBTIQ Australians are treated fairly and equally and that can live full lives in the South Australian community without facing discrimination, mistreatment, shame or stigma. Indeed, the richness and diversity of the LGBTIQ community should be celebrated and nurtured.

### 5.1 Access to specialist high quality healthcare

During our consultations, the primary concern raised by LGBTIQ people was the lack of appropriate, high quality and non-discriminatory health care in the state. We briefly raise the concerns which arose from the consultations we conducted and refer the South Australian Government to dedicated health services (e.g. National LGBTI Health Alliance, Shine SA, SAMESH) and intersex and trans advocacy bodies (e.g. OII Australia, Trans Health South Australia, Trans Health Australia) for further detail.

#### *Trans and gender diverse people*

The former *Sexual Reassignment Act 1988* (SA) contained strict penalties for a person who carried out a 'sexual reassignment procedure' without approval by the South Australian Health Commission.<sup>17</sup> In practice, prior to this Act being repealed, trans advocates informed us that there was only one psychiatrist who had official approval to provide very limited medical treatment for transgender people in South Australia.

The legacy of this overly restrictive and punitive law was that healthcare for trans and gender diverse South Australians now lags behind other jurisdictions. In practice, this means that trans and gender diverse people – and their parents – struggle to access high quality healthcare and are face significant barriers travelling interstate for basic medical treatment.

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<sup>17</sup> *Sexual Reassignment Act 1988* (SA) (repealed) s 6.

SALRI and the Australian Human Rights Commission (**AHRC**) have both recommended that the South Australian Government conduct a review of the health services currently available to trans people in South Australia,<sup>18</sup> with a particular focus on:

- (a) access to hormone treatment;
- (b) access to services provided by the SA Gender Dysphoria Unit; and
- (c) the availability of public information and supports services for trans and intersex people and their families.<sup>19</sup>

The AHRC has also recommended the establishment of a trans-specific policy stream across the health system to ensure that trans people do not face bureaucratic barriers to accessing healthcare.

Trans and gender diverse advocates have called for LGBTIQ health specific training with a particular focus on specific populations within the LGBTIQ umbrella having different health needs requiring tailored approaches, expertise and training. For example, trans advocate have raised doctors attributing unrelated health conditions to a person being trans – what is known colloquially as ‘trans broken arm syndrome’, where a doctor with low knowledge or familiarity with trans-related hormones or surgery will feel unqualified to treat a trans person or will incorrectly assume a correlation between a person’s trans identity and their medical condition. Gender diverse advocates have discussed that they need to provide incorrect information to their doctors pretending to have a binary gender identity (i.e. male or female) to access medical treatment they need (e.g. hormone treatment or surgery) because doctors do not recognise their non-binary gender identity.

#### *Intersex people*

Intersex advocates raised the issue of medically unnecessary surgeries being performed on them as children without their knowledge and consent (see further discussion below). Intersex advocates have also drawn attention to current medical practices being carried out in South Australian hospitals which do not protect the bodily integrity of infants and children born with intersex variations. Information about the numbers of intersex children or the medical interventions currently being performed are not made available by hospitals, and medical records are difficult to obtain.

#### *Lesbian, gay and bisexual people*

In the 2015-2016 Rainbow Survey, lesbians reported higher levels of dissatisfaction and happiness than other members of the community, and bisexual people generally report higher rates of depression and anxiety than the general population. Gay men in South Australia continue to report the ongoing impact of schoolyard and workplace bullying and slurs on their mental health.

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<sup>18</sup> See e.g., Trans Health Australia website ([www.transhealthaustralia.org](http://www.transhealthaustralia.org)); Trans Health South Australia website ([www.transhealthsa.com](http://www.transhealthsa.com)).

<sup>19</sup> SALRI Audit Paper, above n 5, 14.

**Recommendation 6:** We recommend that the South Australian Government conduct a review of current health services provided to LGBTIQ+ people and collaborate with LGBTIQ people to improve access to high quality health that respects human rights, including the development of Standards of Care, specialist training, dedicated care streams and ongoing mental health supports.

## 5.2 Protecting intersex people's rights

Children born with sex characteristics that do not fit within medical norms of male and female should be free to make decisions about their own bodies and their own medical treatment, except in cases where the medical intervention is necessary for medical reasons and cannot be deferred.

Medical interventions on intersex people should not occur in situations without informed consent or without appropriate information provided to intersex people and oversight of medical treatment, particularly surgery. We have heard from intersex people in South Australia that doctors perform surgeries on and prescribe hormone treatment to infants and children who are born with sex characteristics that do not fit within medical norms of male and female.

In 2013, the Senate recommended an end to the involuntary or coerced sterilisation of intersex people in Australia. This is consistent with international best practice in the Yogyakarta Principles plus 10<sup>20</sup> and expert UN bodies such as the UN Human Rights Committee.<sup>21</sup>

**Recommendation 7:** We recommend that the South Australian Government prohibit medically unnecessary and deferrable medical interventions on infants and children with variations of sex characteristics.

OII Australia has advocated for the term 'intersex status' to be amended to 'sex characteristics' to better reflect the grounds on which intersex people experience discrimination. While the term 'intersex status' was originally welcomed by intersex advocates when the federal *Sex Discrimination Act 1984* (Cth) was amended in 2013, the Yogyakarta Principles plus 10 confirm that the term 'sex characteristics' better describes the category of people with variations of sex characteristics who should be protected from discrimination.<sup>22</sup>

**Recommendation 8:** We recommend that the South Australian Government amend the term 'intersex status' to 'sex characteristics in the *Equal Opportunity Act 1984* (SA).

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<sup>20</sup> Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics, to Complement the Yogyakarta Principles (2017) <http://www.yogyakartaprinciples.org/principles-en/yp10/>.

<sup>21</sup> United Nations Human Rights Committee, *Concluding Observations: Australia* (2017) CCPR/C/AUS/CO/6. See also, Committee on Economic, Social and Cultural Rights, *Concluding Observations: Australia* (2017) E/C.12/AUS/CO/5; Committee against Torture, *List of issues prior to submission of the sixth period report of Australia* (2017) CAT/C/AUS/QPR/6 [24].

<sup>22</sup> Above n 20.

We refer to the Darlington Statement for further information on issues affecting intersex people in South Australia requiring consideration.<sup>23</sup>

### 5.3 Young people and education

LGBTIQ people in South Australia and many parents of trans and gender diverse children have raised their serious concerns about ensuring that LGBTIQ people in schools have access to equal opportunities in education, and are protected from discrimination or violence because of who they are. The Department of Education guidelines released recently, the commitment to support Safe Schools and support for Minus18 social events have been welcomed by the LGBTIQ community. However, concerns remain about the sustainability of this funding and support and the need for long-term educational reforms in which young people can be informed about LGBTIQ people to create more inclusive schools and a more inclusive community into the future.

**Recommendation 9:** We recommend that the South Australian Government continue to support LGBTIQ+ young people in schools and education, through government guidelines and sustained funding for targeted anti-bullying programs.

### 5.4 Inclusive service delivery

LGBTIQ South Australians experience barriers accessing services, informed partly by barriers within service providers' control and partly external factors outside of their control (e.g. previous experiences of discrimination, experiencing mental health issues). In our consultations, LGBTIQ people living in South Australia have expressed particular concern about the impact of discrimination against vulnerable community members in accessing essential services. Emergency housing and homelessness is a key area of concern (e.g. housing discrimination facing LGBTIQ people over 25). The continued use of male and female crisis accommodation does not provide safe housing for all trans and gender diverse people experiencing homelessness.

Discrimination against LGBTIQ in service delivery is enabled by broad religious exemptions for housing providers from anti-discrimination laws and a significant portion of government contracts for housing and housing coops going to religious organisations which are perceived within the LGBTIQ community as being discriminatory (see recommendation 11(b) below). A LGBTIQ person needing a bed in a homeless shelter, counselling support after fleeing family violence, or medical assistance in hospital should not be deterred or afraid to access these basic services because they fear facing discrimination and mistreatment.

LGBTIQ people have also raised that gendered understandings of family violence services and within family violence strategies lead to a lack of understanding and services available to LGBTIQ people

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<sup>23</sup> Joint statement by Australia and Aotearoa/New Zealand intersex community organisations and independent advocates, *Darlington Statement: Joint consensus statement from the intersex community retreat in Darlington* (March 2017) <https://oii.org.au/wp-content/uploads/key/Darlington-Statement.pdf>.

who experience family violence. Further work remains to be done to ensure that mainstream family violence services can recognise and provide support for LGBTIQ victims / survivors of family violence.

**Recommendation 10:** We recommend that the South Australian Government require all service providers to commit to inclusive service delivery in practice, particularly in family violence and housing.

## 5.5 Funding for LGBTIQ organisations

LGBTIQ organisations provide much needed advocacy, support, health care and prevention, community education and arts and culture to their local communities. The South Australian Government has provided key funding for health, mental health, advocacy, training and arts / culture, the majority of LGBTIQ community organisations in South Australia are under-funded.

However, the recent National LGBTIQ+ Community Impact Project showed that the LGBTIQ sector is 'characterised by a high percentage of very small, "kitchen table" organisations with significant capacity challenges and little or no external funding.'<sup>24</sup> Many of these organisations struggle with long-term sustainability, governance, sustained effort and ongoing support. LGBTIQ organisations identified more funding as the best way to enable more effective advocacy for LGBTIQ+ communities.

For example, the lack of referrals to appropriate support services for intersex people and their families prevents intersex people and their families accessing high quality and timely information in order to make properly informed medical decisions. As another example, LGBTIQ drop-in support groups often rely on the availability of volunteers, and turnover of volunteer peer support leaders and mentors can lead to inconsistent support, particularly for at-risk LGBTIQ young people.

Adequate funding for LGBTIQ organisation is essential to ensure that appropriate information, supports and reforms can occur which benefit the community.

**Recommendation 11:** We recommend that the South Australian Government provide more funding for LGBTIQ organisations.

## 5.6 Implementation of outstanding recommendations

Implementation of current SA LGBTIQ reforms to ensure they are implemented appropriately and in consultation with the LGBTIQ community, i.e. birth certificate reforms, relationship recognition scheme, anti-discrimination protections for intersex people, repealing the 'gay panic defence', upgrading a spent conviction scheme to an expungement scheme and religious exemptions from anti-discrimination laws.

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<sup>24</sup> Collective Impact and Three for All Foundation, *National LGBTIQ+ Community Impact Project* (2018) <https://drive.google.com/file/d/0B7MJrAcEkJPdclJWRmRKbUtGcUxvaTcwcnczX2JFYkFNUmpn/view>.

During its audit, SALRI made recommendations which have not yet been implemented in practice. SALRI recommended that the South Australian Government:

- (a) Conduct a broader, comprehensive and independent review of the *Equal Opportunity Act 1984* (SA) (**EOA**).
- (b) Ensure that religious exceptions to the EOA do not extend to the provision of public services (including health and education) and limiting the exception for religious bodies.
- (c) Replace the exception for religious educational authorities in the EOA with one based on religious belief.<sup>25</sup>
- (d) Introduce practice guidelines for sport and clarifying the scope of sporting activity within the EOA.

In addition, the Australian Human Rights Committee<sup>26</sup> and the Australian Senate Community Affairs Committee<sup>27</sup> have also made relevant recommendations which should be introduced in South Australia. In addition, there remain outstanding recommendations in relation to upgrading the existing spent convictions scheme to an expungement scheme<sup>28</sup> and broadening categories of sex and gender identity available to gender diverse and intersex people in South Australia.<sup>29</sup> We recommend that all outstanding recommendations made by SALRI be actioned by the South Australian Government.

**Recommendation 12:** We recommend that the South Australian Government:

- (a) Implement the recommendations of the Australian Senate Community Affairs Committee's 2013 Report on the *Involuntary or Coerced Sterilisation of Intersex People in Australia*.
- (b) Implement the recommendations of the South Australian Law Reform Institute in relation to reforms to the EOA and further recommendations which will arise from the second stage of reviewing the operation of the defence of provocation under South Australian law (which has not yet been published).
- (c) Implement the recommendations from the Australian Human Rights Commission's *Resilient Individuals* report.
- (d) Implement the recommendations made in the joint submission from LGBTIQ+ organisations during consultations on the regulations to implement recent birth certificate reforms.
- (e) Implement the recommendations made in the Human Rights Law Centre's *An accessible expungement scheme in South Australia* submission.

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<sup>25</sup> SALRI 'Lawful Discrimination' Report, above n 5.

<sup>26</sup> Australian Human Rights Commission, *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights: National Consultation Report* (2015).

<sup>27</sup> The Senate Community Affairs References Committee, *Involuntary or coerced sterilisation of intersex people in Australia* (2013).

<sup>28</sup> Human Rights Law Centre, *An accessible expungement scheme in South Australia* (2016) annexed to this submission.

<sup>29</sup> Joint submission from organisations from trans, gender diverse and intersex communities, *Submission: Births, Deaths, Marriages Registrations (Gender Identity) Amendment Bill 2016* (March 2017).

## 5.7 Other issues of concern

In the 2017 EOC SA survey, LGBTIQ advocates also raised a number of other pressing concerns not discussed in detail in this submission, including:

- Aboriginal / CALD LGBTIQ services
- Advocacy Rights at work - workplace discrimination
- Discrimination in sport
- Domestic violence in the LGBTIQ community
- Housing
- How the EOC can help the LGBTIQ community
- Legal discrimination - estate planning, power of attorney, advanced care directives
- LGBTIQ services - aged care / housing
- LGBTIQ support services - health and wellbeing / mental health
- Outreach to Regional / Rural / outer metropolitan
- Preserving LGBTIQ history and pushing for LGBT history to be taught in schools
- Same-sex parenting
  - Toolkit for dealing with instances of LGBTIQ ignorance/discrimination in workplace/social settings
- Where is the LGBTIQ community in Adelaide - events / safe spaces

In the National LGBTIQ+ Community Impact Project,<sup>30</sup> South Australian LGBTIQ respondents stated that the following advocacy issues need to be addressed in legislation, policy and practice (in order):

- Inclusive and competent health care services
- Treatment of LGBTIQ refugees and asylum seekers
- Family Law Court approval to access cross gender hormones (Stage 2 treatment) – now resolved at a federal level
- Marriage equality (now resolved at a federal level)
- Rights of LGBTIQ parents and families
- Access to gender transition care
- Homelessness
- Medicare classification of treatment for 'elective' surgery and 'social' infertility
- Family violence
- Gay panic defence reforms
- Hate speech protections
- Intersex rights
- Poverty
- Targeted for crime (hate speech & street harassment)
- Religious exemptions to anti-discrimination laws
- Workplace discrimination
- Coercive treatments

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<sup>30</sup> Above n 24.

- Ex-gay conversion therapy

Survey respondents also highlighted the need for more policy attention and advocacy for LGBTIQ people who are also Aboriginal and Torres Strait Islander people, live in rural and regional areas, come from multicultural backgrounds, live with a disability, have lived experience of mental health issues, seniors, children and young people, families, low income earners, people living with HIV and survivors of family violence.

## 6. A Human Rights Act for South Australia

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A barrier to the realisation of human rights in South Australia has been a lack of legal and institutional human rights protections. Victoria and the ACT both have statutory charters of human rights and responsibilities which both require government to consider the potential human rights implications of legislation in detail and which allow human rights to be judicially considered in court.<sup>31</sup> These charters have provided important checks on government power to protect the rights of its citizens.

A South Australian Human Rights Act would embed the shared values of members of the South Australian community into core legal protections to stop the worst human rights violations from occurring in the future. It would be a safeguard against mistreatment, and an important tool to ensure all South Australians are free to live their lives being treated fairly and equally.

The Victorian and ACT Charters have prevented breaches of human rights by taking rights into account at the front end of government operations,<sup>32</sup> created a positive cultural change taking place with government and increased significant parliamentary dialogue<sup>33</sup> and received strong support from community members.<sup>34</sup>

This gap in legal protection leaves South Australians - and in particular vulnerable groups, including LGBTIQ people - vulnerable to having their human rights violated. Protecting human rights in law through a charter or bill of rights will help maintain the health of our democracy and ensure that when governments or corporations overstep and infringe our human rights, we can take practical steps to stop them in their tracks.

### ***Recommendation 13: A Human Rights Act for South Australia***

We recommend that the South Australian Government enact a Human Rights Act that protects fundamental human rights and freedoms under law, to better protect LGBTIQ people from potential violations of their human rights.

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<sup>31</sup> *Charter of Human Rights and Responsibilities 2006 (Vic); Human Rights Act 2004 (ACT)*.

<sup>32</sup> Victorian Equal Opportunity and Human Rights Commission, *Charter of Human Rights and Responsibilities* (2010).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*