**Australian Submission to the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity’s thematic report to the 74th General Assembly: *marginalisation and exclusion from socio-cultural environments on the basis of sexual orientation and/or gender identity***

**Introduction:**

Australia welcomes the opportunity to contribute to the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity’s thematic report on “marginalisation and exclusion from socio-cultural environments on the basis of sexual orientation and/or gender identity”.

Australia has a long history of advocating strongly for equal human rights, and an end to violence and discrimination on the basis of sexual orientation and/or gender identity. We do this out the firm belief that all individuals are entitled to equal enjoyment of universal human rights. In practice, this means that whatever our sexual orientation, gender identity, nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status, we are all equally entitled to our human rights without discrimination. These rights are interrelated, interdependent, and universal, and shared by each one of us.

For these reasons, the Australian Government acknowledges the importance of this study, and is pleased to provide input that may help to identify, disseminate and promote good practice in regard to preventing and addressing marginalisation and exclusion on the basis of sexual orientation and/or gender identity.

As background, it is helpful to note that Australia is a federation of six states which, together with two self-governing territories, all of which have their own parliaments, governments and laws. The Australian Constitution establishes the Commonwealth Government, referred to here as the Australian Government, defines its structure, powers and procedures, and defines the rights and obligations of the states in relation to the Commonwealth.

**Responses to Questions:**

**Question 1) Key areas in which people suffer socio-cultural and economic exclusion as a result of violence and discrimination on the basis of sexual orientation and gender identity, in particular:**

1. **What knowledge, including data, exists in the State planning bases in relation to socio-cultural and economic exclusion based on sexual orientation and gender identity, including levels of poverty, homelessness, education, employment, health, political participation and any other relevant social indicators?**

*Drug use and wellbeing:* The National Drug Strategy Household Survey (NDSHS) is Australia's largest and most comprehensive survey on drug use. The NDSHS introduced a question on sexual orientation in 2007, making it one of Australia's largest data sources to include this information.

According to the NDSHS, homosexual or bisexual people were more likely to smoke cigarettes (35%), consume an average of more than 2 standard alcohol drinks per day (28%) and engage in illicit drug use (51%) than heterosexual people (29%, 22%, and 27%, respectively). The NDSHS has consistently found that illicit drug use in the last 12 months was more common among people who identified as homosexual or bisexual than among heterosexual people. For example in 2016, 42% of people identifying as homosexual or bisexual had used an illicit drug compared with 15% of heterosexual people.

The NDSHS showed that homosexual or bisexual people were more likely to report being diagnosed or treated for a mental health condition than heterosexual people (32% compared with 15%).

This finding was reinforced by the findings of the National Survey of Mental Health and Wellbeing (2007), which reported that, compared to the general population, LGBTI people are more likely to experience and be diagnosed with a mental health disorder. Specifically, from the findings, 41.1% of homosexual/bisexual people aged 16 years were found to have a mental disorder and had experienced symptoms in the past 12 months.

Furthermore, compared to the general population, lesbian, gay, bisexual, transgender, and intersex (LGBTI) people are more likely to attempt suicide in their lifetime; and LGBTI young people aged 16 to 27 years are five times more likely[[1]](#footnote-1) to attempt suicide than their heterosexual peers.

*Homelessness*: The Australian Government recognises homelessness is an important issue that affects many Australians, including lesbian, gay, bisexual, trans, intersex and gender diverse persons. Effectively addressing homelessness requires long-term and systematic effort across governments and the community.

The Australian Bureau of Statistics conducts a General Social Survey every four years, to collect personal and household characteristics for people aged 15 years and over resident in private dwellings across Australia. The 2014 General Social Survey recorded that 13.4% people who identified as heterosexual had ever been homeless compared with 20.8% of people identifying as bisexual and 33.7% of people identifying as lesbian/gay.

In 2014, the Australian Human Rights Commission found that a large number (34%) of LGBTI people hide their sexuality or gender identity when accessing homelessness services. This could result in people not getting appropriate information, referrals and service provision in regard to homelessness, but also across other sectors.

The Australian Government has also funded the *Journeys Home* longitudinal research into factors affecting housing stability. This research has been used to support further studies into contributors and pathways into and out of homelessness for LGBTI people.

*Specialist Homelessness Services:* As of 1 July 2019, the Specialist Homelessness Services (SHS) Collection will include an option of “Other’ for a person’s sex. The addition of the ‘Other’ sex response category enables the recording of homeless people who do not have biological characteristics typically associated with either the male or female sex. This option can be used to record persons identifying as ‘indeterminate’, ‘intersex’, ‘non-binary’ and ‘unspecified’.

The SHS data collection includes the reasons that a homeless person or a person at risk of homelessness, sought assistance from homelessness service agencies. One such reason is “Discrimination, including racial or sexual discrimination’. The category captures reasons where a person sought assistance because of discrimination based on their sex, sexual identify, sexual orientation, race, religion, or other personal attributes.

*Aged Care:*The Australian Aged Care Sector is addressing the unique issues experienced by older Australians. Experience has caused some older LGBTI people to fear and distrust mainstream health and social services, including aged care. Reliving past experiences of discrimination when encountering new forms of discrimination in the aged care environment can lead to feelings of anxiety and/or depression.

Examples of potential discrimination in an aged care environment:

* Sexual and intimate needs of older LGBTI person in aged care not met.
* Family and/or aged care staff refuse to affirm gender identity of older trans/gender diverse person and force them to live as their birth-assigned gender.
* Stigma and prejudice directed towards an older LGBTI person by other residents or staff leads them to feel unsafe and/or conceal their identity.
* An older LGBTI person’s ‘family of choice’ is not recognised or included in decisions about their care.

In regard to barriers to ensuring equal access to education, health care, employment and occupation, housing and other relevant sectors, research in Australia indicates that discrimination is a major obstacle to safe and appropriate service provision for LGBTIQ people.[[2]](#footnote-2) Family conflict and rejection on the basis of an individual’s sexual orientation or gender identity has been identified as a major cause of homelessness for this group.

**Question 2) Root causes and structural factors responsible for marginalisation and social-cultural and economic exclusion, such as laws, public policies, institutional practices, organisational behaviours, and prevailing ideologies, values and beliefs:**

*Aged care:* Previously in Australia, individuals experienced discrimination on the basis of their sexual orientation or gender identity because they were pathologised or criminalised, conversion therapies where utilised, and non-consensual surgeries to “normalise” individuals sex characteristics were routinely performed. Older LGBTI people entering aged care may face, or fear facing, continued prejudice from other non-LGBTI residents who retain some of these beliefs and attitudes.

*Aboriginal and Torres Strait Islander Peoples:* Historically in Australia, Aboriginal and Torres Strait Islander peoples have been under represented in LGTBI related research. The Australian Human Rights Commission’s report *Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights* (2018), found that ‘Brotherboys’, ‘sistergirls’ and other LGBTI Aboriginal and Torres Strait Islander peoples experience a number of significant and intersecting points of discrimination and marginalisation in Australia. The report considered the intersecting issues of racism, homophobia and transphobia faced by these communities.

**Question 3, 4 and 6) State efforts to address socio-cultural and economic exclusion through legislation, policies, data gathering, and other means; complaint mechanisms available and accessible to LGBT people facing discrimination; and actions:**

*Australia’s anti-discrimination legislation:* The Australian Government believes that people are entitled to respect, dignity and the opportunity to participate in society and receive the protection of the law regardless of their sex, sexual orientation, gender identity or intersex status. The *Sex Discrimination Act 1984* (Cth) prohibits discrimination on these grounds in a range of areas of public life, including employment, education, accommodation and in the provision of goods and services.

For example, Sections 5A and 5B of the *Sex Discrimination Act 1984* explicitly cover discrimination on the basis of sexual orientation and gender identity in the workplace.

The *Sex Discrimination Act 1984* does provide a number of exemptions from the prohibition on discrimination for specific acts or measures. For example, specific protections apply to educational institutions established for religious purposes, including in relation to decisions about the employment of staff and contract workers, as well as decisions about the provision of education and training to students and potential students.

However, the Australian Government believes that schools should not be permitted to discriminate against students on the basis of their sexual orientation or gender identity. The Australian Government has announced that it will introduce amendments to the Sex Discrimination Act 1984 to make it clear that no student of a non‑state school should be expelled on the basis of their sexuality.

The Australian Government has stated that these changes to the Sex Discrimination Act 1984 will make clear that discrimination against students is unacceptable, while at the same time ensuring religious educational institutions can teach and maintain rules consistent with their faith. This position recognises the important contribution of faith-based schools to Australia’s education system.

Australia’s anti-discrimination legislation promotes and protects an inclusive society by addressing entrenched disadvantage and ensuring that individuals are not excluded from public life because of their inherent attributes.

Whilst anti-discrimination law discourages discrimination, it does not address the root causes of inequality. Anti-discrimination law is part of a comprehensive policy response to inequality, but it must be applied in conjunction with other Commonwealth policies and programs.

*Australian Government Sex and Gender Guidelines:*The Australian Government recognises that people may identify and be recognised within the community as a gender other than the sex they were assigned at birth or during infancy or as a gender which is not exclusively male or female.

These discrimination protections are supplemented by the Australian Government Guidelines on the Recognition of Sex and Gender. Under the Guidelines, Australian Government departments and agencies are expected to give people the option of selecting M (male), F (female) or X (indeterminate/intersex/unspecified) when collecting people’s sex or gender information.

The Guidelines are intended to assist Australian Government departments and agencies to meet their obligations under the *Sex Discrimination Act 1984*, which prohibits unlawful discrimination on the ground of gender identity in many areas of public life.

The Guidelines outline a consistent system for collecting sex and gender information for Australian Government records, and supports the consistent sharing of information across Australian Government departments and agencies. The Guidelines also outline a consistent standard of evidence required for people to change or establish their sex and gender information on personal records.

*Australian Human Rights Commission***:** The Australian Human Rights Commission (the Commission) is Australia’s national human rights institution and operates under the *Australian Human Rights Commission Act 1986* (Cth) (the AHRC Act). The Commission administers federal discrimination laws (such as the *Sex Discrimination Act 1984*), that seek to ensure freedom from discrimination on the grounds of race, age, disability, sex, sexual preference, intersex status and gender identity. The Commission’s National Information Service provides education about human rights and responsibilities and the Investigation and Conciliation Service provides an accessible, fair and impartial complaint handling process.

*Homelessness:* The National Housing and Homelessness Agreement (NHHA) commenced on 1 July 2018, and recognises the Australian Government and the state and territories’ (states) mutual interest in improving outcomes across the housing spectrum, including outcomes for Australians who are homeless or at risk of homelessness, and the need to work together to achieve those outcomes.

Under the NHHA, states are responsible for determining the type and location of homelessness services funded. These can include homelessness services offering specialist services specifically for LGBTI people.

The Australian Government also funds the Reconnect program. Reconnect is a community-based early intervention and prevention program for young people aged 12 to 18 years (or 12 to 21 years for newly arrived youth), who are homeless or at risk of homelessness, and their families. Two Reconnect services provide specialist services for LGBTI young people and their families – Open Doors Youth Service in Queensland, and Twenty10 in New South Wales.

*Education and training sector:* The Australian Government takes the safety and protection of children and young people seriously. Regardless of their sexual orientation or gender identity, all students have the right to be safe at school and bullying and violence of any nature is unacceptable. All schools have a responsibility to ensure that their students are safe, respected and supported each day.

While the Australian Government plays an important role in developing national priorities for education, it is the responsibility of the state and territory education departments to manage schools and ensure that appropriate measures are in place so that students can learn in safe and supportive environments.

In December 2018, the Council of Australian Governments (Australia’s peak intergovernmental forum) endorsed the Education Council’s work program, *Enhancing Community Responses to Student Bullying, including Cyberbullying*. The work program, endorsed by the Education Council on 14 September 2018, was developed by a working group comprising senior officials across Commonwealth, state and territory Education, First Minister and Justice Departments, and includes 14 actions to support national coordination, building evidence and communicating information on the prevention of bullying.

Through the Education Council’s Safe and Supportive School Communities Working Group, the Government collaborates with stakeholders from each state and territory department of education as well as the non-government sector to produce evidence informed quality resources to support schools to address bullying both online and offline. This includes the *Bullying. No Way!* website and the *National Day of Action against Bullying and Violence*, held each year on the third Friday of March.

All registered vocational education and training (VET) organisations are required to meet the Standards for Registered Training Organisations (RTOs) 2015 (the Standards), which set out requirements for them to have strategies in place to adhere to the principles of access and equity.

Under the Standards, registered VET providers must ensure that they provide educational and support services to meet the needs of the learners undertaking the training and assessment. They must also provide facilities, whether physical or virtual, and equipment to accommodate and support the number of learners undertaking the training and assessment.

The Standards also require VET providers to have a transparent complaints and appeals policy that enables learner and clients to be informed of, and to understand the RTO’s responsibilities. The Australian Skills Quality Authority is responsible for regulating RTOs against the Standards, and will take appropriate regulatory action if an RTO is not complying with those Standards.

If students feel that an RTO is not meeting its responsibilities under the Standards, they can make a complaint to the National Training and Complaints Hotline (the Hotline), a joint initiative between the Australian Government and state and territory governments. The Hotline, which is managed by the Australian Government Department of Education and Training, assists in streamlining complaints involving poor quality VET providers and organisations in the VET system and referring them to the right authority for consideration.

*Employment:* The *Fair Work Act 2009* is the principal legislation covering workplace relations in Australia. The general protections provisions in the *Fair Work Act 2009* prohibit adverse action (including dismissal) by an employer against its employees for discriminatory reasons, including sex and sexual orientation. These protections also apply to prospective employees.

Individuals that believe they have been unlawfully discriminated against in the course of their employment can request assistance from the Fair Work Ombudsman (FWO), the national workplace relations regulator. The FWO investigates allegations of unlawful workplace discrimination and may initiate litigation against a national system employer for contravening the *Fair Work Act 2009* such as through seeking court orders for injunctions, reinstatement and/or compensation.

Alternatively, individuals may be able to lodge an application with the Fair Work Commission if they believe there has been a contravention of the unlawful discrimination protection provisions of the *Fair Work Act 2009*. The Fair Work Commission is Australia’s independent workplace relations tribunal and has the power to; among other things, help employees and employers resolve disputes at the workplace.

The *Work Health and Safety (WHS)* legislative framework, based on model Work Health and Safety laws, is inclusive of LGBTI people and presents no barriers to ensuring equal access to work health and safety protections in Australia.

The model WHS laws are a statutory framework intended to promote and provide safe workplaces that are free from discrimination of any kind. The model WHS laws were developed by Safe Work Australia following the 2008 National Review into Occupational Health and Safety Laws and pursuant to a commitment by the Commonwealth, state and territory governments to harmonise WHS legislation and regulation across Australia.

These model laws are the central plank of Australia’s harmonised legislative WHS framework and all jurisdictions, except Victoria and Western Australia, have enacted laws based on the model legislation. The Victorian and Western Australian legislation is similar to the model laws and each jurisdiction has its own regulator to monitor and enforce compliance with their laws.

The WHS laws have a broader application than the traditional employer-employee relationship. The model WHS laws cover ‘persons who conduct a business or undertaking’ (PCBUs) and extend to persons who carry out work in any capacity for a PCBU, including contractors, subcontractors, self-employed persons, outworkers, and volunteers. The laws also cover ‘other persons’, such as visitors and customers, and adopt a broad definition of the ‘workplace’ to include any place a worker goes, or is likely to go, while at work.

The model WHS laws impose a ‘primary’ duty on PCBUs to ensure the health and safety of their workers, and other persons, so far as is reasonably practicable.  The laws define ‘health’ to include both physical and psychological health. This duty requires PCBUs to eliminate or otherwise minimise health and safety risks so far as is reasonably practicable.

While the WHS laws provide the legal framework to protect all workers against discriminatory behaviour, including discrimination against LGBT people, the effectiveness of these laws is contingent on employers and others identifying and addressing discrimination and related harm in the workplace.

*Health care:* Medicare is the Australian Government funded universal health insurance scheme. The Medicare program includes free treatment as a public hospital patient and subsidised private medical services through the Medicare Benefits Schedule (MBS).

The MBS covers more than 5,700 services across general practice, specialist services, allied health, pathology and diagnostic imaging. Services on the MBS are gender neutral. All Australians, regardless of LGBTI status are eligible for Medicare. Eligibility for specific medical services is determined by anatomical and physiological requirements rather than gender. This is consistent with the *Australian Government Guidelines on the Recognition of Sex and Gender*.

*Aged Care:* To address the unique issues experienced by older LGBTI Australians, in December 2017 the Australia launched the *Aged Care Diversity Framework* (the Framework), which aims to embody diversity in the design and delivery of aged care services. Under the Framework, an action plan has been developed to target the particular barriers and challenges faced by older LGBTI peoples.

The Framework articulates that aged care should embrace the dignity and human rights of each individual. This requires care that is safe, equitable, of high quality, and tailored to meet each individual’s diverse needs.

The LGBTI action plan encourages the aged care sector to ensure at least 90% of the aged care workforce receives LGBTI awareness education and training.

The Dementia and Aged Care Services Fund provides a number of one-off innovative projects to provide better outcomes for older LGBTI people accessing and receiving aged care.

The Australian Government’s National Aged Care Advocacy Program provides independent, confidential advocacy support to individuals, their families or representatives to support access to quality aged care services which meet an individual’s needs.

Additionally, the Aged Care Quality and Safety Commission provides a free and confidential aged care complaints service. Complaints can be lodged online, by phone or in writing.

*Mental Health Initiatives:* Australia recognises the impact of mental health issues and suicide in the LGBTI community and funds a number of programs specific to their needs.

The Australian Government funded National LGBTI Health Alliance provides:

* a peer support telephone and online support service;
* mental health and suicide prevention training programs for mainstream organisations;
* LGBTI Aged Care Awareness Training to improve the wellbeing of older LGBTI people.

*Black Rainbow* is an Australian Government funded program supporting health care settings to become more culturally responsive to the Indigenous LGBTI community.

*Sport and social inclusion: Pride in Sport Index:* In 2016, Australia developed the world-first national LGBTI inclusion sporting index; the Pride in Sport Index (PSI). PSI is specifically designed to assist national and state sporting organisations and clubs with the inclusion of LGBTI employees, players, volunteers and spectators. The PSI provides participating sporting organisations with data by which they can use to strengthen their diversity and inclusion strategies.

*Sport and social inclusion: Play by the Rules:* Play by the Rules provides information, resources, tools and free online training to increase the capacity of administrators, coaches, officials, players, parents and spectators to assist them in preventing and dealing with discrimination, harassment, child safety, inclusion and integrity issues in sport.

*Humanitarian resettlement*: The Australian Government provides orientation services to humanitarian entrants settling in Australia to equip them with the information needed to settle successfully, including an understanding of gender identity and sexual orientation issues in Australia.

The Australian Government Department of Social Services administers the delivery of orientation services through the Australian Cultural Orientation (AUSCO) program and the Humanitarian Settlement Program (HSP).

AUSCO is offered to humanitarian entrants prior to their departure to Australia. AUSCO gives practical advice about the journey to Australia and information about what to expect post-arrival to equip entrants with the necessary tools to deal with the different stages of cultural, social and economic adaption. The AUSCO curriculum incorporates Australian laws and norms including that all people in Australia are equal under the law and have the right to be respected and treated in a fair and equitable manner regardless of their sexual orientation or gender identity. Specific reference is also made to the diverse nature of Australian families, including those with parents of the same gender.

The messages provided to entrants in AUSCO are reinforced following their arrival in Australia through the HSP. The HSP supports humanitarian entrants to begin their new lives in Australia and develop the skills and knowledge needed to become self-reliant and active members of the community. Delivered as part of the HSP orientation service, the ‘Australian Law’ module contains a specific outcome that participants become aware of the basic freedoms that underpin Australian law, including individuals’ right to be treated equally and fairly, regardless of their sexual orientation or gender identity.

Across various sectors, the use of technology, online and digital media is one way to overcome barriers to accessing information, services and commodities. As people’s internet usage and access continues to grow, digital media interventions to support LGBTI people could be increasingly employed as an effective, safe and appropriate means to address some of the identified barriers to exclusion.

**Question 7) Services provided by civil society to excluded and marginalised LGBTI people:**

Australia values the contribution of civil society in promoting and protecting the rights of marginalised and vulnerable groups, including LGBTI people. A large number of non-government organisations in Australia provide LGBTI people, their families and communities with a broad range of psycho-social support, information and services. These organisations may be funded directly by the Australian Government, by state or territory government’s, philanthropic organisations or the private sector; and range from peak bodies providing advocacy services such as the *Pride Foundation* *of Australia* to local community-based organisations providing peer support and counselling.

1. Robinson, K.H., Bansel, P., Denson, N., Ovenden, G. & Davies, C. (2014), Growing Up Queer: Issues Facing Young Australians Who Are Gender Variant and Sexuality Diverse, Young and Well Cooperative Research Centre, Melbourne. [↑](#footnote-ref-1)
2. McNair, Ruth, Andrews, Cal, Parkinson, Sharon and Dempsey, Deborah. “LGBTQ Homelessness: Risks, Resilience, and Access to Services in Victoria.” *GALFA LGBTQ Homelessness Research Project, Final Report*. Available from <http://www.lgbtihomeless.org.au/research-and-policy/reports/> [↑](#footnote-ref-2)