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Australian Human Rights Commission
Human Rights Commissioner
Level 3, 175 Pitt Street
SYDNEY NSW 2000

Via email: sogii@humanrights.gov.au

12 January 2015

To the Human Rights Commissioner,

**Sexual Orientation, Gender Identity and Intersex ('SOGII') Rights Snapshot Report
consultation**

Thank you for providing the opportunity to provide a submission as part of the SOGII Rights Snapshot Report consultation.

About Darwin Community Legal Service ('DCLS')

DCLS is one of over 200 community legal centres around Australia. We provide free, confidential services, and assist disadvantaged members of the community to protect their legal rights.

DCLS has been instrumental in creating legislative and social change around lesbian, gay, bisexual, transgender, queer and intersex ('LGBTQI') issues in the Northern Territory ('NT'). In 2002/03, DCLS worked with community members and other service providers to develop a campaign promoting equality before the law for gay and lesbian Territorians. This campaign resulted in the passage of the *Law Reform (Gender, Sexuality and De Facto Relationships) Bill 2003*, which removed a number of discriminatory provisions from NT legislation.

In 2005, DCLS received funding from the NT Law Society Public Purposes Trust to produce a booklet entitled 'All Things Equal', which outlined the legal rights of LGBTQI people in the NT. More recently, the DCLS Executive Director spoke on 'LGBTI people and the law in the NT, and its possible health impacts' at the 2013 3rd Asia Pacific Outgames Forum.

Introduction

While the 2003 Bill resulted in increased equality for LGBTQI people living in the NT, there is much scope for further reform. Legislative equality is instrumental in transforming social attitudes towards LGBTQI people, and to ensuring that LGBTQI people in the NT can lead equal, full and open lives, free from discrimination.



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Our submission will specifically address the following focus areas:

What legal barriers exist to SOGII rights?

Adoption of Children Act 1994 (NT)

In the NT, same-sex couples are prevented from adopting children, whereby the *Adoption of Children Act* only allows married couples comprising of a male and a female to adopt.¹ Single people, regardless of their sexual orientation, can only adopt in "exceptional circumstances."² The Act prohibits a step-parent in a same-sex relationship from adopting the biological child of their partner.³

We submit that adoption should be allowed where a couple, regardless of their sexual orientation, have lived in a domestic partnership for a specified period of time. This mirrors the legal position of couples in the Australian Capital Territory ('ACT'). We also submit that the definition of "spouse" be broadened to include same-sex de-facto partners to allow a step-parent in a same-sex relationship to adopt the biological child of their partner.

Anti-Discrimination Act 1992 (NT)

While the *Anti-Discrimination Act* provides protection from discrimination and harassment⁴ on the basis of sexuality,⁵ it does not provide protection from vilification. Further, the Act provides an exemption allowing religious educational authorities to discriminate against people on the basis of sexuality, where the discrimination is done "in good faith to avoid offending the religious sensitivities of people of the particular religion".⁶ The *Anti-Discrimination Act* also excludes artificial fertilisation procedures ('AFP') from falling within the definition of 'service'. This allows AFP services providers to discriminate against people on the basis of sexuality,⁷ for example, by refusing service.

To improve the efficacy of the legislation, we submit that the *Anti-Discrimination Act* be amended to include protection from vilification on the basis of sexuality, and remove the exemption for religious educational authorities and AFP services.

Births, Deaths and Marriages Act 1996 (NT)

A person in the NT who wishes to have their sex altered on their birth certificate is required to have undergone sexual reassignment surgery.⁸ This is consistent with every other state and territory jurisdiction, except the ACT, which only requires "appropriate clinical treatment."⁹ The *Births, Deaths and Marriages Act* should be amended to mirror the legislative position in the ACT, which reflects the notion that gender identity is based on self-identification, not physical characteristics.

Criminal Records (Spent Convictions) Act 1992 (NT)

The NT does not provide a mechanism by which people convicted of consensual homosexual acts can apply to have their conviction expunged. This is unlike New South Wales, South Australia or Victoria. DCLS submits that the *Criminal Records (Spent Convictions) Act* be amended to allow for such applications, and that provision be made to

¹ *Adoption of Children Act 1994 (NT)*, s13.

² *Ibid*, s14.

³ *Ibid*, s15.

⁴ *Anti Discrimination Act 1992 (NT)*, s20.

⁵ *Ibid*, s19.

⁶ *Ibid*, s37A(b).

⁷ *Ibid*, s4(8).

⁸ *Births, Deaths and Marriages Act 1996 (NT)*, s28A-28J.

⁹ *Births, Deaths and Marriages Registration Act 1997 (ACT)*, s24-25.

expunge convictions for people convicted of homosexual acts under generic indecency offences.

What policy barriers exist to SOGII rights?

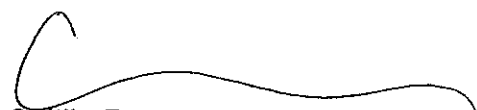
Rights of transgender inmates

Legislation governing the NT Department of Correctional Services is silent with respect to management of transgender inmates. Further, there is no policy addressing this issue. The Department has advised DCLS that current practice is to classify transgender inmates according to sex at birth, rather than gender identity, unless medical evidence is provided indicating that this is not appropriate.

Transgender people are an extremely vulnerable population and “transgender inmates present a unique set of issues that, if not appropriately dealt with, could lead to a greatly increased incidence of assault and self-harm in that population.”¹⁰ Considering this, and given the NT has the highest rates of incarceration of all the states and territories,¹¹ it is particularly pertinent that the Department of Correctional Services develop, implement and make publicly available a policy on the treatment of transgender inmates.

Should you wish to discuss this submission further, please do not hesitate to contact me by phoning (08) 8982 1111 or emailing info@dcls.org.au.

Warm regards,



Caitlin Perry
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¹⁰ Blight, J *Australian Institute of Criminology* 'Trends and issues in crime and criminal justice, September 2000, p6.

¹¹ Australian Bureau of Statistics, 4517.0 - Prisoners in Australia, 2013.

