



## CHAPTER 17:

# *Additional Issues: Homophobia and Gender Identity*

### CHAPTER CONTENTS

---

<b>17.1</b>	<b>What is this chapter about?</b>	<b>362</b>
<b>17.2</b>	<b>What did the Inquiry hear about homophobia in the community?</b>	<b>362</b>
17.2.1	Experiences of homophobia	362
17.2.2	Discriminatory laws are an endorsement of homophobia	363
<b>17.3</b>	<b>What did the Inquiry hear about discrimination on the basis of gender identity?</b>	<b>364</b>
17.3.1	People who are 'transgender', 'transsexual' and 'intersex'	365
17.3.2	Health care services do not adequately cater for people with diverse gender identity	365
17.3.3	Aged care services do not adequately cater for people with diverse gender identity	366
17.3.4	Gender diverse people who are married face difficulty having their affirmed gender recognised	366
17.3.5	Gender diverse people face difficulties obtaining an appropriate passport	367
17.3.6	Case study: being gender diverse	367
	<b>Endnotes</b>	<b>369</b>

## 17.1 What is this chapter about?

Organisations and individuals raised a range of issues with the Inquiry that did not fall strictly within its Terms of Reference. Where these issues relate to one of the main chapters of this report, they are discussed within that chapter.

This chapter addresses two issues which did not fit squarely into any other chapter: general homophobia and gender identity.

The Inquiry has not made findings or recommendations about these issues as they are outside the Inquiry's Terms of Reference. However, they are important issues which should be examined in the future.

## 17.2 What did the Inquiry hear about homophobia in the community?

Homophobia was mentioned in many of the Inquiry's forums and written submissions. Homophobia in the context of employment, health care and aged care is discussed in Chapters 6, 11 and 14 respectively. The following are comments about homophobia more generally.

### 17.2.1 Experiences of homophobia

Gay and lesbian people told the Inquiry about ongoing experiences of homophobia. Some experience homophobia in the form of verbal abuse. For others the homophobia includes physical abuse and harassment.<sup>1</sup>

One person commented in the Sydney forum:

I received hate mail the first day I walked into the [parliament] house. It came in the form of a letter, anonymous of course. It said: 'I hope people like you die, your children don't deserve to be born.'<sup>2</sup>

Tony Whelan talked about the personal strength required to resist homophobic attacks:

I know what it is like to being the target of half a dozen thugs with baseball bats screaming anti-gay abuse. If I weren't both lucky and prepared to stand up for myself, I would not be writing this letter. Some of my friends have been less fortunate.<sup>3</sup>

At the Lismore forum a woman spoke about her experiences in the home, community and workplace.

[I] was demonised and bossed by my family and friends; taunted and sexually harassed by male co-workers. I got the sack, but noticed that cosseted gays and lesbians weren't shown the door...[I] came up against many brick walls in tackling this discrimination: mainstream patriarchal attitudes and structures; sexism; and homophobia from many straight women... But I was expected to remain invisible and silent.<sup>4</sup>

A number of young gay and lesbian people identified school as an area where they were most likely to experience violence. For example, the Coalition of Activist Lesbians (COAL) describes the experiences of a young lesbian at a regional high school:

...when she confided to a friend that she might be a lesbian, the story circulated in the school quickly. After school, in the car park, hostile school students held her still as they drove a car over her feet, all the while yelling verbal harassment. She told me she was too frightened to tell a school authority, to seek medical advice or speak with the police for fear of further violence and of having to tell her parents.<sup>5</sup>

According to the Gay and Lesbian Rights Lobby (NSW) the possibility of violence impacts on the lives of many gay and lesbian members of the community:

A survey of 600 GLBT people conducted by the NSW Attorney-General's Department in 2003 found that 85% of respondents had experienced abuse, harassment or violence. A nationwide survey of 5476 GLBT Australians undertaken in 2005 reported that 67% of respondents modified their daily activities as a result of fear of prejudice and discrimination. While removing legislative discrimination will not result in the elimination of homophobia in Australian society, it will be influential in challenging the stigmatization that exists against GLBT people and same-sex relationships.<sup>6</sup>

Henry Collier said that:

There is evidence that hate crimes against gay men and lesbians results from the systematic discrimination entrenched in the law. When gays and lesbians are determined to be unequal at law, then homophobes assume the privilege of vigilante justice by bashing and attacking gays and their organisations.<sup>7</sup>

## 17.2.2 Discriminatory laws are an endorsement of homophobia

Many people argued that discrimination against same-sex couples in federal legislation perpetuates homophobia. For example, The Hon Ian Hunter MLC stated that the federal government's resistance to recognising same-sex couples:

...reinforces the belief that it is alright to feel that there is something wrong with homosexuals and it is alright to think less of them. Worse still, to a small minority it says that it is OK to attack homosexuals, both verbally and physically.<sup>8</sup>

ACON wrote that:

...the lack of legal recognition of same-sex couples and same-sex families sends a strong government-sanctioned message that these relationships and family structures are not valued, which further enforces the homophobia and heterosexism that pervades Australian society. GLBT Australians are subject to high levels of discrimination in the workplace,<sup>9</sup> at school,<sup>10</sup> and on the street.<sup>11</sup> Many also face discrimination and exclusion from their biological family because of their sexual orientation. Alarming, there is evidence to suggest that GLBT people are also subject to discrimination when accessing medical services.<sup>12</sup>

ACON also told the Inquiry:

Current policies that do not recognise the entitlements of same sex couples reinforce social exclusion and legitimise the discrimination and homophobia that gay and lesbian people are subject to.

While we recognise that removing legislative inequality against same-sex relationships will not end homophobia and homophobic abuse in Australian society, it is an important step in challenging the stigmatization, discrimination and social exclusion experienced by GLBT Australians.<sup>13</sup>

Grant Goodwin argued that:

Coming out is hard enough given that one has to deal with the negative attitudes within society. The situation is only exacerbated by the intrinsic approval of homophobia through the government's legislation.

When our own government participates in and endorses discrimination against its citizens, they construct a society that follows their lead. This is very dangerous as it reinforces homophobia from the top down.<sup>14</sup>

Jim Woulfe addressed this issue at the Sydney Hearing:

Andreas and I strongly believe that by retaining the inequalities, and refusing to recognise same-sex relationships, our Federal Government maintains an environment in which hate and homophobia can thrive. It validates the views of the very few in our society who would attack us because of our sexuality. The government treats gays and lesbians differently, they say, so why shouldn't we?

A great power to end the discrimination and neutralise the homophobes resides with our Federal Government. Granting equality for same-sex relationships would rob the people who attack us of their phoney justification – it's the single biggest step our government could take against homophobic harassment and violence.<sup>15</sup>

Further, the Gay and Lesbian Rights Lobby (NSW) note that:

...legislative discrimination is a major contributor to the high levels of social discrimination and stigmatisation that still exists towards GLBT Australians. By refusing to recognise same-sex relationships at a federal level, the Federal Government is sending a message that same-sex couples and GLBT people in general, should not be valued or treated equally with others. By failing to acknowledge the existence of same-sex families under NSW law, the NSW Government is stating that these families do not deserve the protection of the law that is afforded to other families. This discrimination manifests through higher levels of homophobic violence, harassment and exclusion in all aspects of society for GLBT people.<sup>16</sup>

Some people also talked about the positive role that law reform can play in improving community attitudes. For example, the Commissioner for Equal Opportunity in Western Australia told the Inquiry about positive changes in attitude following the introduction of law reform recognising same-sex couples in Western Australia.<sup>17</sup>

### **17.3 What did the Inquiry hear about discrimination on the basis of gender identity?**

Several submissions to the Inquiry raised issues of discrimination faced by people with diverse gender identities. For example, Sex and Gender Education Australia told the Inquiry there is:

...still a great amount of public homophobia and transphobia in Australia that leads to discrimination. That discrimination can be either overt or covert and the law is still deficient in protecting gay, transsexual, transgender, androgynous and intersex people, often not understanding the difference between the different groups.<sup>18</sup>

The WA Gender Project told the Inquiry:

Recent Australian research confirms that transgender people experience significantly higher rates of discrimination, harassment and vilification than both their heterosexual and same-sex attracted non-transgender peers.<sup>19</sup>

One person who identifies as neither male nor female told the Inquiry:

I am human being, and deserve human rights on that basis, and not have them denied because I cannot establish that I am a man or a woman. Likewise, my rights to have my domestic relationship recognised should be upheld, without regard to whether I have a normative gender or an androgynous reality. To do less leaves me and my partner legally vulnerable, and endangers any dependent children our family might have, legally, socially and in the workplace.<sup>20</sup>

### 17.3.1 People who are ‘transgender’, ‘transsexual’ and ‘intersex’

The term ‘transgender’ is generally used to refer to someone who does not desire surgical intervention to ‘change sex’ and/or who believes that they fall ‘between’ genders. A person who is transgender does not usually identify fully, or strictly, as either male or female. This term has also been used to describe anyone who does not strictly adhere to the gender norms of their peers.

Sex and Gender Education Australia describe a transgender person as ‘a person who may be one sex but may live as a different gender. This term is also used as an umbrella term to denote sex and gender diverse people.’<sup>21</sup>

A person who is transsexual is someone who has transitioned from one sex to another.<sup>22</sup> The process of physical transition for transsexual people usually includes hormone replacement therapy and may also include sexual or gender reassignment surgery. The process can take several years.

Transsexuals can be MTF (male to female) or FTM (female to male). They may be heterosexual, gay, lesbian or bisexual following their transition.

A person who is intersex is someone who is ‘born with sex chromosomes, external genitalia, or an internal reproductive system that is not exclusively either male or female.’<sup>23</sup> The person may identify as being ‘neither male or female, or as both.’<sup>24</sup> Some people who are intersex undergo surgery to make them either male or female.

### 17.3.2 Health care services do not adequately cater for people with diverse gender identity

The Inquiry heard that people with diverse gender identity face a range of issues in accessing appropriate health care.

The Australian Medical Association note that:

...anecdotal research indicates that experiences or expectations of discriminatory treatment [for intersex people] may lead to decreased accessing of healthcare facilities. This has flow on effects for untreated mental and physical health problems.<sup>25</sup>

The Inquiry also heard that neither Medicare nor the Pharmaceutical Benefits Scheme (PBS) adequately meet the needs of gender diverse people.

The WA Gender Project told the Inquiry of problems with Medicare:

The Health Insurance Commission will not recognise the affirmed sex of a transgender individual unless surgery has been performed. In many circumstances this denies transgender people appropriate medical treatment. For example, a pre-operative transsexual woman may be denied Medicare rebates for mammograms (McNair & Medland 2002). This is alarming, given that transsexual women, like all women, are at risk of breast cancer.<sup>26</sup>

The ALSO Foundation told the Inquiry that the PBS does not meet the needs of transgender people:

The Federal Government should urgently review the health care rebate system and the Pharmaceutical Benefits Scheme to ensure that it better reflects the needs of transgender people. Currently transgender people that take medications and hormone therapies are often subject to extremely high cost prescriptions that are often not subsidised by the Pharmaceutical Benefits Scheme. These medications and hormones are vital to the health and wellbeing of many transgender people and should be available at affordable prices and accessible across Australia, particularly in regional areas.<sup>27</sup>

### **17.3.3 Aged care services do not adequately cater for people with diverse gender identity**

The Inquiry heard from a specialist in aged care that transgender and intersex people face particular difficulties in accessing appropriate aged care. Dr Jo Harrison argues that:

Transgender and intersex people are also particularly vulnerable to discrimination in aged care settings, to the point where they may avoid seeking assistance altogether. There is anecdotal evidence of denial of services, forcibly preventing cross-dressing and deliberate physical violence when people are revealed to be transgender.

Transgender people may also have medical issues related to their original gender that emerge with ageing, such as osteoporosis or prostate cancer. These may not be addressed because they may be too intimidated to seek medical advice of any kind.<sup>28</sup>

### **17.3.4 Gender diverse people who are married face difficulty having their affirmed gender recognised**

The WA Gender Project explained that '[s]tate and territory laws that facilitate legal recognition of a transgender person's affirmed sex require that the individual be unmarried.' This:

...requirement forces married transgender people to choose between ending a loving relationship by divorce to achieve legal recognition of their affirmed sex; or continuing to be recognised as a sex inappropriate to their appearance and sense of self.<sup>29</sup>

A number of individuals told the Inquiry about their difficulties in having both their relationship and their affirmed gender recognised. For example, the Inquiry heard the story of Grace, a lesbian post-operative transsexual woman who (as a man) married her female partner prior to her sex reassignment surgery. Her birth certificate now cannot be amended

to reflect her 'affirmed gender' because she is married. Grace concludes by speaking about the impact of discrimination on her family:

It is grossly unfair to force people in my position to choose between having a marriage or their gender recognised by the law, where anyone else would simply be granted both. This is especially evident when the rights of children and recognition as a family and the attendant rights granted by the marriage act, are concerned. All of this complex situation disadvantages me, my legal partner and whatever family we may have with regard to workplace benefits that are presently available to the average heterosexual couple.<sup>30</sup>

### 17.3.5 Gender diverse people face difficulties obtaining an appropriate passport

Many people who are gender diverse have trouble obtaining appropriate travel documentation.

The ALSO Foundation explains that a person undergoing gender reassignment surgery overseas:

...may obtain a temporary passport in their new sex and once the surgery has been completed they will be eligible to apply for a full ten year passport in their new sex. However, transgender people that have not undergone reassignment surgery are not able to have their identified gender recorded on their passport. A new passport does not mean that the Federal Government recognises transsexual gender identity in any other capacity and this document cannot be used as proof of gender identity for other purposes such as marriage.<sup>31</sup>

The requirement that gender reassignment surgery be completed before a person can obtain a passport also ignores the gender identity of 'many transgender people that are unable to have gender reassignment surgery for medical or financial reasons and those that have no desire to have such surgery and live comfortably in their identified gender.'<sup>32</sup>

The Inquiry heard of the difficulty experienced by Jack, who does not consider himself to be male or female, although he presents as masculine:

I have never travelled overseas – should I wish to do so, my passport would define me as female, according to my birth certificate. Imagine the fuss at customs! In an ideal world I would like to be able to change my passport to reflect me as male, to represent the masculine way I feel and am in the world. Currently this is impossible without first changing my birth certificate.<sup>33</sup>

### 17.3.6 Case study: being gender diverse

Zoe Ellen Brain is a transsexual woman currently undergoing transition from male to female. She has been happily married for 25 years.

My problem is that while we remain married, I will always be legally male according to [s]tate law.

The Health Department currently regards me as [f]emale, but this recognition may be withdrawn at any time. This will deny me access under the PBS to medications I'm currently taking, which are only available to treat female conditions - which I have.

Being male under state law, it is likely that any Australian passport I acquire will also state that I am male, unless I get a temporary passport for the purpose of getting gender reassignment

## ● Same-Sex: Same Entitlements

surgery. Under normal circumstances, I could get my legal sex changed to female then, if I was unmarried, and thus the correct passport. However, in my case, my status would revert to male again.

Travelling overseas with an obviously somatically female body and a male gender on the passport may cause a multitude of problems, from being denied entry due to inconsistent documentation, through to being held in a male immigration holding facility, to being subject to full body and cavity searches by male immigration personnel.<sup>34</sup>



## Endnotes

- 1 See Coalition of Activist Lesbians, Submission 171; Gay and Lesbian Solidarity, Submissions 89 and 89a; Anti-Discrimination Board NSW, Submission 317; Australian Marriage Equality, Submission 238a; Gay and Lesbian Rights Lobby (NSW), Submission 333.
- 2 Speaker, Sydney Forum, 26 July 2006.
- 3 Tony Whelan, Submission 20.
- 4 Speaker, Lismore Forum, 11 November 2006.
- 5 Coalition of Activist Lesbians, Submission 171.
- 6 Gay and Lesbian Rights Lobby (NSW), Submission 333.
- 7 Henry Collier, Submission 121.
- 8 The Hon Ian Hunter MLC, Opening Statement, Adelaide Hearing, 28 August 2006. See also Let's Get Equal, Adelaide Hearing, 28 August 2006; Kaz Heffernan, Brisbane Hearing, 11 October 2006; ACON, Sydney Hearing, 26 July 2006.
- 9 See J Irwin (2002), *The Pink Ceiling is Too Low: Workplace Experiences of Lesbians, Gay Men and Transgender People*, Australian Centre for Lesbian and Gay Research, University of Sydney, Sydney.
- 10 See L Hillier, A Turner, A Mitchell (2005), *Writing Themselves In Again: The 2<sup>nd</sup> National Report on the Sexual Health and Wellbeing of Same-Sex Attracted Young People in Australia*, Australian Research Centre in Sex, Health & Society (ARCSHS) La Trobe University, Melbourne, Australia.
- 11 See Attorney-General's Department of NSW, (2003), *You Shouldn't Have to Hide to Be Safe: A Report on Homophobic Hostilities and Violence Against Gay Men and Lesbians in NSW*.
- 12 ACON, Submission 281. See also Victorian Gay and Lesbian Rights Lobby (2000), *Enough is Enough: A Report on Discrimination and Abuse Experienced by Lesbians, Gay Men, Bisexuals and Transgender People in Victoria*, Melbourne.
- 13 ACON, Opening Statement, Sydney Hearing, 26 July 2006.
- 14 Grant Goodwin, Melbourne Hearing, 27 September 2006.
- 15 Jim Woulfe, Sydney Hearing, 26 July 2006.
- 16 Gay and Lesbian Rights Lobby (NSW), Submission 333.
- 17 Yvonne Henderson, Commissioner for Equal Opportunity, Perth Hearing, 9 August 2006.
- 18 Sex and Gender Education Australia, Submission 17.
- 19 WA Gender Project, Submission 165.
- 20 Sex and Gender Education Australia, Submission 17a.
- 21 Sex and Gender Education Australia, Submission 17a.
- 22 Sex and Gender Education Australia, Submission 17.
- 23 Australian Medical Association, Submission 314.
- 24 Sex and Gender Education Australia, Submission 17.
- 25 Australian Medical Association, Submission 314.
- 26 WA Gender Project, Submission 165.
- 27 ALSO Foundation, Submission 307b.
- 28 J Harrison, 'Discrimination and older gays: surviving aged care', *Equal Time, Anti-Discrimination Board of NSW*, no 61, 2004, pp1, 3.
- 29 WA Gender Project, Submission 165.
- 30 Sex and Gender Education Australia, Submission 17a.
- 31 ALSO Foundation, Submission 307d.
- 32 ALSO Foundation, Submission 307d.
- 33 Sex and Gender Education Australia, Submission 17a.
- 34 Zoe Ellen Brain, Submission 52.

