

Universal Periodic Review of Australia – Joint NGO Coalition

Fact Sheet 6

Sexual and gender identity

A wide range of social research has found that Gay, Lesbian, Bisexual, Transgender and Intersex (GLBTI) Australians experience high levels of prejudice, stigma, exclusion, discrimination, abuse and hate-motivated assault. As a result, GLBTI Australians also experience higher-than-average levels of a range of mental and physical risk factors including suicide ideation, depression, and drug and alcohol abuse.

Discrimination laws

Suggested Question

How does Australia ensure that all citizens live free from discrimination regardless of their sexual orientation or gender identity?

Background

There is no Australian national law which comprehensively prohibits discrimination, harassment and vilification on the grounds of sexual orientation and gender identity. Some national laws governing workplace conditions provide some limited protection. The Australian Human Rights Commission can investigate and report on discrimination in employment but cannot enforce remedies if discrimination is proven.

Australian states and territories provide varying degrees of protection. However, these laws do not protect people employed by or receiving goods and services from the Federal Government. Also, most state and territory laws allow private clubs or religious organisations to discriminate.

Proposed Recommendation

Australia should implement a national law that prohibits discrimination, harassment and vilification on the grounds of sexual orientation and gender identity.

Parenting laws

Suggested Question

How does Australia ensure all its citizens have an equal right to family life regardless of sexual orientation?

Background

Most Australian states and territories fail to extend the equal rights, responsibilities and recognition to same-sex partners seeking to have, or currently raising, children. For example, the Northern Territory, Queensland, Victoria and South Australia do not allow same-sex partners to be assessed as potential adoptive parents. South Australia does not allow the same-sex partner of a woman who has given birth through artificial reproductive technologies to be presumed to be a co-parent. New South Wales, Tasmania, South Australia, Western Australia, the Northern Territory and the Federal Government do not recognise the surrogacy arrangements entered into by same-sex partners.

Proposed Recommendation

Australia should ensure that equal legal rights exist for same-sex partners seeking to become parents, or currently parenting.

Marriage equality

Suggested Question

How does Australia ensure equality before the law for all its citizens regardless of sexual orientation?

Background

Same-sex partners cannot marry in Australia. Same-sex marriages entered into overseas are not recognised as marriages in most Australian jurisdictions. Australian citizens seeking to enter into a same-sex marriage in another country are denied the documentation required by some foreign governments before they can marry (for example, a Certificate of Non-Impediment to marriage).

Proposed Recommendation

Australia should amend the Marriage Act to allow same-sex partners to marry and to recognise same-sex marriages from overseas.

Gender Identity**Suggested Question**

How does Australia ensure that all its citizens have equal legal rights and recognition regardless of gender identity?

Background

It is impossible for transgender people who have not undergone gender re-assignment surgery to have cardinal documents such as birth certificates or passports amended to reflect their gender identity. There are no laws prohibiting sex-assignment surgery on intersex children prior to them having the capacity to give consent.

Proposed Recommendation

Australia should ensure that all cardinal documents be amendable to accurately represent gender identity and choice of gender identity to be protected for all citizens.