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### **3.5 Gay, lesbian, bisexual, and sex and/or gender diverse people**

#### **3.5.1 Same sex relationships**

In 2009 the Australian Government removed discrimination against same-sex couples from 85 Commonwealth laws in the areas of taxation, social security, health, aged care, superannuation, immigration, child support and family law. The Fair Work Act, also enacted in 2009, ensures that same-sex de facto relationships are recognised in the provision of unpaid parental leave entitlements. It also prohibits employers taking adverse action against employees or prospective employees because of their sexuality or marital status. These reforms extend to same-sex people and couples the entitlements and obligations that apply to opposite-sex people and couples.

The question of same-sex marriage continues to attract extensive attention. Recommendations made during the Universal Periodic Review process called on Australia to take measures to ensure equality in same-sex relationship recognition. The Australian Government's position is that the definition of marriage in the Marriage Act 1961—that is, marriage is between a man and a woman—is appropriate. The Government does support a nationally consistent framework for the recognition of relationships. Relationship recognition schemes exist in Tasmania, the ACT, Victoria and New South Wales, and relationships recognised under these schemes are also recognised under Commonwealth laws. The Australian Government continues to encourage other jurisdictions to implement similar schemes.

#### **3.5.2 Freedom from discrimination**

Submissions to the Baseline Study expressed concern about multiple forms of discrimination faced by gay, lesbian, bisexual, and sex and/or gender diverse older people, people living with disability, and people with HIV. Gay, lesbian, bisexual, and sex and/or gender diverse people continue to report experiencing a higher incidence of discrimination, prejudice and violence over their lifetime compared with the rest of the Australian population.

All state and territory anti-discrimination laws provide at least some protection against discrimination on the basis of sexual orientation, gender expression, sex and/or gender identity, or the identity of a partner. Some participants in the National Human Rights Consultation were, however, of the view that the legislative protections are inconsistent. Submissions to the Baseline Study also proposed that effective remedies be included in any such legislation. A further issue for gay, lesbian, bisexual, and/or gender diverse people raised in submissions to the Baseline Study concerned the use of discriminatory language in legislation, policies and other government documents. This was attributed to assumptions made about, for example, parenting, naming and home life.

The Australian Government intends to introduce federal legislation to prohibit discrimination on the basis of a person's sexual orientation or gender identity. The legislation will apply consistently throughout the nation.

### **3.5.3 Freedom from violence**

A number of studies have found that gay, lesbian, bisexual, and sex and/or gender diverse people experience higher levels of violence and harassment. For example, the 2006 report entitled *Private Lives: a report on the health and wellbeing of GLBTI Australians* found that 23 per cent of respondents had been threatened with violence and 14.7 per cent had experienced a physical attack. Similarly, a 2003 study reported that 56 per cent of gay men and lesbian women had experienced one or more types of homophobic abuse, harassment or violence during the preceding 12 months and 85 per cent had had one or more of these experiences during their lifetime. Schools are notable sites for homophobic violence and abuse: *Writing Themselves in Again: 6 years on* stated that 74 per cent of abuse towards young people reportedly occurred in schools. The report also noted, however, that young people feel safer in schools now than they did in 1998. Violence and abuse have an impact on the right of children to education and a considerable impact on the health and wellbeing of young people. The extent of the issue is probably under-recorded and under-reported for a variety of reasons, including a lack of suitable support services and fear of stigma.

A number of submissions to the Baseline Study referred to reports showing that gay, lesbian, bisexual, and sex and/or gender diverse people experience high levels of discrimination, prejudice and violence. Concern was expressed about violence against children generally, including in schools and in the family, but the availability of disaggregated data is limited.

Same-sex domestic violence has historically received little attention in the Australian criminological and social science research community. An online survey involving 5476 Australians who identified as gay, lesbian, bisexual, or sex and/or gender diverse described domestic and family violence as a hidden issue because of the lack of recognition of its existence in same-sex relationships. This is despite 33 per cent of survey respondents reporting having been in a relationship with an abusive partner. As with other instances of domestic violence, many victims of same-sex domestic violence do not report incidents to the police. The Australian Research Centre in Sex, Health and Society has found that only 10 per cent of surveyed victims reported the abuse to the police. There is also a lack of support services and referrals to these services for same-sex domestic violence. Only 6 per cent of gay, lesbian, bisexual, or sex and/or gender diverse respondents who reported same-sex partner abuse to the police were referred to advice or support services. Submissions to the Baseline Study expressed concern about prejudices underlying violence directed at gay, lesbian, bisexual, and sex and/or gender diverse people.

### **3.5.4 Sex and/or gender diverse people**

The concluding paper of the Australian Human Rights Commission's Sex and Gender Diversity Project noted continuing discrimination against the sex and/or gender diverse community in the realm of legal recognition of sex in documents and government records. The following points were raised:

- Under most state and territory legislation a married person cannot apply to have their sex changed on their birth certificate.

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- A person cannot apply to have their birth certificate changed to note their sex identity if they have not undergone sex affirmation surgery.

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- Gender identification on official records is largely binary (male/female).

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The paper also noted that the requirement to record an applicant's previous name can reveal information about their previous legal identity if the name is gender specific.

233 Submissions to the Baseline Study noted the need for data on matters specific to gay, lesbian, bisexual, and sex and/or gender diverse people. They also noted with concern the considerable financial cost and health risks associated with sex affirmation surgery and recommended that the surgery not be included in criteria for legally changing sex. The Federal Attorney-General has asked his department to coordinate a review of how and why the Australian Government collects sex and gender data. The department will also work with relevant Australian Government agencies and State and Territory Governments with a view to developing a nationally consistent approach to legally changing sex.

In September 2011 the Australian Government announced changes to its passport policy to make it easier for sex and/or gender diverse people to obtain a passport in their preferred gender, including allowing people to have 'x' listed on their passport.

### **3.5.5 Health care, aged care and disability**

Submissions to the Baseline Study also discussed health care and aged care services for gay, lesbian, bisexual, and sex and/or gender diverse people. There was concern about older people suffering from social isolation and feeling they needed to remain 'closeted' in order to receive services. Examples of incidents of violence, abuse and discrimination by care givers and service providers were also cited, among them the following:

- refusal to allow same-sex couples to be housed together in care environments or to allow for same-sex partners to be received as family members
- harassment by community care providers
- a lack of understanding of the particular health needs of lesbian women when compared with gay men and heterosexual women.

### **3.5.6 Young people**

Matters specific to gay, lesbian, bisexual, and sex and/or gender diverse young people were also raised in submissions—including violence, risk of suicide and self-harm. In particular, the question of surgery on intersex children, to reflect a binary understanding of sex as male or female, was raised. It was noted that this practice often resulted in gender identity issues and increased rates of depression and suicidal tendencies.

### 3.6 People at risk of or experiencing homelessness

On any night in Australia, it is estimated that about 105 000 people are homeless and about 16 000 people are sleeping without shelter.

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The overall

rate of homelessness has been relatively stable during the past 12 years, but increasing numbers of children, families and older people are experiencing homelessness.

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Communities and groups who are more at risk of experiencing multiple disadvantage can also be more vulnerable to homelessness.

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Among these

groups are the following:

- Aboriginal and Torres Strait Islander peoples
- women and children escaping domestic and family violence
- young people leaving state care and protection systems
- people with mental health issues
- recently arrived immigrants and refugees.

Submissions to the Baseline Study also noted a number of groups who are more at risk of experiencing homelessness:

- people with disability
- people with disability from culturally and linguistically diverse backgrounds
- ex-prisoners
- refugees and migrants
- young people who identify as gay, lesbian, bisexual, or sex and/or gender diverse.

One submission to the Baseline Study pointed to the link between homelessness and sexual identity, particularly among young people, with reference to the 2005 New South Wales Law and Justice Foundation report *No Home, No Justice* and the 2007 *Twenty10* report *It May Not Be Fancy*. Another submission highlighted the Australian Institute of Criminology's 2004 report entitled *Ex-Prisoners, SAAP, Housing and Homelessness*. It referred to the social disadvantages that characterise the general homeless population—for example, mental illness, unemployment and family breakdown—as being highly prevalent in prisoner and ex-prisoner populations. These social disadvantages add to the challenge of finding suitable, stable and secure accommodation for people who have been released from prison

The National Human Rights Consultation report identified a number of human rights issues associated with people experiencing homelessness, among them the availability of adequate housing and the impact of homelessness on other basic human rights.

#### 3.6.1 Housing

Access to safe and secure housing is one of the most basic human rights and is protected under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. The UN Human Rights Committee has recommended that Australia take steps to ensure that people experiencing homelessness are

not deprived of rights by virtue of their social and economic conditions.

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Submissions to the Baseline Study raised the question of the right to adequate housing. They focused on waiting times for government housing and the capacity of specialist homelessness services funded under the National Affordable Housing Agreement. They also discussed options for enshrining the right to adequate housing in legislation, new homelessness legislation, national quality standards for homelessness services, and the development of a national housing strategy rather than a response limited to homelessness. Additionally, they expressed concern about the availability of emergency, transitional and public and community housing and relevant support services that recognise the needs of priority groups at risk of homelessness.

In December 2008 the Australian Government released a White Paper on homelessness, *The Road Home*, that outlines the strategic agenda for reducing homelessness by 2020. It sets a 2020 goal of halving the rate of homelessness and offering supported accommodation to all who are 'sleeping rough' and seek such accommodation. A number of mechanisms are involved:

- The National Affordable Housing Agreement is an agreement by the Council of Australian Governments—replacing all previous housing and homelessness support agreements between the Commonwealth and the States and Territories, including the Supported Accommodation Assistance Program—to adopt a whole-of-government approach in tackling the issue of housing affordability.
- The National Partnership Agreement on Homelessness focuses on three broad strategies for reducing homelessness and tackling social inclusion—