VICTORIAN AIDS COUNCIL

Submission to the National Children's Commissioner on LGBTI Children's Rights

22 May 2018

The Victorian AIDS Council

The Victorian AIDS Council (VAC) is one of Australia's largest lesbian, gay, bisexual, transgender, and intersex (LGBTI) health services, serving the populations of Victoria and South Australia. In partnership with other organisations, VAC works to support all members of LGBTI communities, and is committed to improving the health and wellbeing of all LGBTI people.

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Introduction

The Victorian AIDS Council (VAC) welcomes the opportunity to present this submission on the status of LGBTI children's rights to the National Commissioner for Children. VAC trusts this submission will help inform the Australian Human Rights Commission's submission to the Committee on the Rights of the Child (the Committee), as part of the Committee's review of Australia in fulfilling its international obligations to protect and promote the human rights of children.

This submission focuses specifically on rights enshrined in the Convention on the Rights of the Child (CRC), and does not consider the Optional Protocol to the CRC on the Sale of Children Child Prostitution, and Child Pornography, nor the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.

This submission covers four main areas in which Australia could improve its efforts to protect and promote the rights of LGBTI children and meet its obligations under the CRC:

1) Ban medically unnecessary interventions on intersex children unless they are *Gillick* competent and provide their own informed consent;
2) Ban sexual orientation change efforts;
3) Promote LGBTI-inclusive school environments by removing religious exemptions under anti-discrimination laws, including LGBTI issues in sexual health, sexuality and relationships education, and through targeted education and anti-bullying campaigns; and
4) Fund targeted, community-led housing and homelessness support services to tackle the disproportionately higher rates of housing insecurity and homelessness among LGBT youth.

Summary of recommendations

1. Medical interventions on intersex children

- Intersex organisations should be funded to provide education and support services to parents of intersex children;
- All health professionals that work with intersex children should be trained on the health needs and human rights of intersex children;
- The Council of Australian Government's Health Council should put the issue of protecting and promoting the health and wellbeing of intersex children on its agenda;
- Human rights-based standards for the care of intersex children should be developed, and these standards need to establish the definition of 'medical necessity' to provide a framework for determining whether a particular medical procedure for a particular intersex variation is in fact medically necessary; and
- Following the development of these standards, health departments should impose moratoriums on medically unnecessary procedures on intersex people in the absence of the informed consent of the individual who is to be subject to those procedures, and governments should legislate to make the standards legally enforceable.

2. Sexual orientation change efforts

- The Australian Government should undertake social and educational measures to protect children from sexual orientation change efforts; and
- There should be a ban on sexual orientation change efforts in Australia.

3. Inclusive education

- Religious exemptions under Australian anti-discrimination laws that permit religious schools to refuse admission or expel students on the basis of their LGBTI status, or the LGBTI status of their parents or carers, should be repealed;
- Australian governments should provide policy certainty in relation to the teaching of sexual health, sexuality and relationships education, and work toward consistent curriculum standards between states and territories that are LGBTI-inclusive; and
- The Australian Government should reinstate funding for the Safe Schools Coalition Program, or fund the establishment of a similar program that specifically addresses homophobia, transphobia and biphobia, to assist schools to provide a safe and inclusive environment for LGBTI children and children with LGBTI parents or carers.

4. Housing and homelessness

- Funding should be allocated for community-led housing and homelessness services to specifically target the issue of LGBT homelessness and housing insecurity (i.e. the creation of an LGBT Safe Housing Network) with specialist services to assist LGBT children and young people out of the homelessness system;
- Funding is needed for new public housing earmarked to tackle LGBT homelessness with nomination rights for community-led services; and
- Guidelines should be developed, and training on LGBT-inclusive care provided to mainstream housing and homelessness services.

1. Medical interventions on intersex children

Non-consensual, medically unnecessary interventions on intersex children continue to take place in Australia, despite the intersex community and its allies having clearly voiced their concerns about these harmful procedures for decades.

1.1 What intersex is

Intersex people have physical sex characteristics that do not fit typical notions of male or female bodies.[1] There are dozens of different intersex traits, and while some are apparent before or shortly after birth, others do not become apparent until puberty or adulthood. Estimates of intersex people vary, but it is likely they comprise 1-2% of the population.[2]

1.2 What intersex is not

Intersex is about biology, not gender identity or sexual orientation. Simply put, sex is biological sex characteristics, gender is how one self-identifies, and sexual orientation relates to whom one is attracted. Intersex is not a third sex; it is a range of different variations of sex characteristics.

Being intersex is not the same as being transgender. Transgender people identify with genders that do not match the gender assigned to them at birth; although some intersex people are transgender, many are not, and in the cases intersex people seek gender affirmation, it is often not that they are transgender so much as it is they are reversing earlier inappropriate medical interventions. Like non-intersex people, intersex people have different sexual orientations and gender identities.

1.3 Human rights breaches and ethical concerns

Non-consensual, medically unnecessary alterations of children's sex characteristics violate several human rights, including the right to security of person, the right to freedom from all forms of violence, the right to the highest attainable standard of health and the right to freedom from torture or ill treatment.[3]

In 2016, the UN Special Rapporteur on Torture called upon states to repeal laws that allow "intrusive and irreversible treatments [including] genital normalising surgeries" on intersex people,[4] as these practices constitute torture and ill-treatment in a health-care setting.[5]

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[1] Free & Equal. United Nations for LGBT Equality. Fact sheet: Intersex. <https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf> (last accessed 21/05/18).

[2] Blackless, M., Charuvastra, C., Derryck, A. et al. (2000). How sexually dimorphic are we? Review and synthesis. *American Journal of Human Biology*, 12(2):151-166.

[3] Meddings, J.I. and Wisdom, T.L.C. (2017). Genital autonomy. Rationalist Society of Australia. <https://www.academia.edu/32477639/RSA_White_Paper_Genital_Autonomy> (last accessed 19/05/18).

[4] Méndez, J.E. (2016) Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 31st sess, Agenda Item 3, UN Doc A/HRC/31/57, para 72(i).

[5] Ibid. para 48.

These practices clearly cannot be in the best interests of intersex children,[6] as they represent violence against intersex children: They breach the right not to be subject to torture or other cruel, inhuman or degrading treatment or punishment,[7] and they represent physical abuse that can result in psychological trauma.[8]

It is notable that intersex children are subject to these medically unnecessary procedures when they are too young to understand, consent to, or protest against them. Moreover, even when intersex children are old enough to have some form of understanding and to protest, so long as there is parental consent, the child undergoes the medically unnecessary procedures against their views. This clearly does not give regard to the views of the child.[9] It also represents a double standard that breaches the right to non-discrimination[10]: Parents do not have a right to consent to similar medically unnecessary alterations of sex characteristics for non-intersex girls, so in the absence of medical necessity, they likewise should not be able to consent to such procedures for intersex children.

The High Court of Australia clarified in *Marion's Case* which types of procedures fall outside the scope of parental responsibility and therefore require court authorisation:

> "…[S]terilisation requires invasive, irreversible and major surgery. But so do, for example, an appendectomy and some cosmetic surgery, both of which, in our opinion, come within the ordinary scope of a parent to consent to. However, other factors exist which have the combined effect of marking out the decision to authorise sterilisation as a special case. Court authorisation is required, first, because of the significant risk of making the wrong decision, either as to a child's present or future capacity to consent or about what are the best interests of a child who cannot consent, and secondly, because the consequences of a wrong decision are particularly grave."[11]

The requirement of court oversight acts as a "procedural safeguard" for children's rights, particularly their rights to personal inviolability and bodily integrity.[12] *Marion's Case* lays the foundation to the Family Court of Australia's 'special medical procedures' case law in which the Family Court determines on a case-by-case basis if proposed medical procedures require court approval. In *Marion's Case*, the High Court referred to views expressed in the Family Court decision of *In Re Jane* (1988), in which Nicholson C.J. noted:

> "The consequences of a finding that the court's consent is unnecessary are far reaching both for parents and for children. For example, such a principle might be used to justify parental consent to the surgical removal of a girl's clitoris for religious or quasi cultural reasons, or the sterilisation of a perfectly healthy girl for misguided,

[6] Convention on the Rights of the Child, Article 3.
[7] Ibid. Article 37(a).
[8] Ibid. Articles 19 and 39.
[9] Ibid. Article 12.
[10] Ibid. Article 2.
[11] *Secretary of the Department of Health and Community Services v JWB and SMB* (1992) 175 CLR 218, 250 (Mason CJ, Dawson, Toohey, and Gaudron JJ).
[12] Ibid.

albeit sincere, reasons. Other possibilities might include parental consent to the donation of healthy organs such as a kidney from one sibling to another."[13]

The Family Court's subsequent case law illustrates that 'special medical procedures' are not limited to sterilisation procedures for minors with intellectual disabilities, and can include procedures that do not have a sterilising effect.[14]

Nicholson's view should be applied to clitoral surgeries on girls with intersex variations where performed for psychosocial reasons and without medical necessity. Arguably, all medically unnecessary modifications of children's sex characteristics fulfil Marion's test for psychosocial reasons, and therefore all such medically unnecessary procedures on intersex children should require court approval.

If an individual is too young to provide informed consent to a medically unnecessary procedure, then by virtue of that procedure being medically unnecessary it is deferrable, and ought to be deferred until the individual concerned is old enough to provide informed consent, either by reaching adulthood or being determined to be *Gillick* competent.[15]

Children are not the property of their parents; they are individual bearers of rights, and they enjoy these rights independently of their parents.[16]

1.4 Australian developments and ways forward

In 2017, intersex organisations in Australia and New Zealand released the Darlington Statement, which acknowledged the right of intersex people to bodily autonomy and called for the prohibition of all deferrable medical interventions on intersex infants and children.[17] In 2018, intersex allies were invited to become signatories to the Darlington Statement, and the number of signatories continues to grow.[18]

Preceding the release of the Darlington were a few key events.

In 2013, the Australian Parliament's Senate Community Affairs References Committee (the Senate Committee) conducted an inquiry into the involuntary or coerced sterilisation of intersex people.[19] The Senate Committee made recommendations aimed at reducing non-consensual modifications of intersex people's sex characteristics. It also recommended that the management of all intersex medical procedures be within a human rights framework by multidisciplinary teams, and require authorisation by a civil and administrative tribunal or the

[13] *In Re Jane* (1988) 12 Fam LR 662, 685 (Nicholson CJ).
[14] *In the Marriage of GWW and CMW* (1997) 21 Fam LR 612.
[15] *Gillick v West Norfolk and Wisbech AHA.* (1986) AC 112 ((HL)).
[16] Swatek-Evenstein, M. (2013). Limits of enlightenment and the law – on the legality of ritual male circumcision in Europe today. *Utrecht Journal of International and European Law*, 29(77):42-50.
[17] Darlington Statement: Joint consensus statement from the intersex community retreat in Darlington, March 2017. <https://ihra.org.au/wp-content/uploads/key/Darlington-Statement.pdf> (last accessed 18/12/17).
[18] The Darlington Statement <https://darlington.org.au/signatories/> (last accessed 16/05/18).
[19] Community Affairs References Committee. (October 2013). Inquiry into involuntary or coerced sterilisation of intersex people. The Senate, Commonwealth of Australia. <http://webcache.googleusercontent.com/search?q=cache:GqsJyFwkwJYJ:www.aph.gov.au/~/media/Committees/Senate/committee/clac_ctte/involuntary_sterilisation/second_report/report.ashx+&cd=2&hl=en&ct=clnk&gl=au> (last accessed 09/03/18).

Family Court. It has now been five years since the Committee made its recommendations, and to date, there has been no action taken to implement them.

Also in 2013, the Victorian Department of Health and Human Services published a document titled *Decision-making principles for the care of infants, children and adolescents with intersex conditions*.[20] This document highlighted medical management, human rights, ethical, and legal principles, as well as principles for supporting patients and parents, and detailed how these principles should be applied. Importantly, the decision-making principles stated that:

> "All decisions about the healthcare of infants, children and adolescents with intersex conditions in Victoria should be made in the best interests of the patient, according to current best practice principles for supporting patients and parents, and in consideration of the medical management, human rights, ethical and legal decision-making principles..."

However, the decision-making principles only act as resource to guide decisions, and are not legally enforceable. Moreover, the medical management principles outlined do not refer to the need to adhere to an informed consent model in which an individual to be subject to medically unnecessary procedures first provides their own informed consent.

In 2016, the Australian Human Rights Commissioner Edward Santow called for an end to medically unnecessary intersex procedures, and committed to developing "a nationally consistent, human rights based approach to decision making regarding medical interventions" to safeguard intersex children's human rights.[21] VAC is unaware of any progress made in line with this commitment, and while it would be a welcome development, to successfully prevent medically unnecessary procedures it is not enough that the decision making approach only embed human rights.

In addition to embedding human rights, key to the success of standards for the care of intersex children will be that they clearly specify the criteria for which procedures are medically necessary. The development of such standards therefore requires more than the input of human rights experts for their understanding of human rights, legal experts for their understanding of the law, and medical doctors for their knowledge of medical procedures. It also requires the input of medical ethicists for their expert understanding of models of consent, and their ability to define 'medical necessity' in a way that provides a framework for medical doctors to work within.

[20] Department of Health and Human Services. (2013). Decision-making principles for the care of infants, children and adolescents with intersex variations. Victorian Government. <https://www2.health.vic.gov.au/about/publications/policiesandguidelines/Decisionmaking-principles-for-the-care-of-infants-children-and-adolescents-with-intersex-conditions> (last accessed 19/05/18).

[21] Author unknown. (26/10/16). *Intersex rights are human rights*. Australian Human Rights Commission <https://www.humanrights.gov.au/news/stories/intersex-rights-are-human-rights> (last accessed 18/12/17).

1.5 Recommendations

- Intersex organisations should be funded to provide education and support services to parents of intersex children;
- All health professionals that work with intersex children should be trained on the health needs and human rights of intersex children;
- The Council of Australian Government's Health Council should put the issue of protecting and promoting the health and wellbeing of intersex children on its agenda;
- Human rights-based standards for the care of intersex children should be developed, and these standards need to establish the definition of 'medical necessity' to provide a framework for determining whether a particular medical procedure for a particular intersex variation is in fact medically necessary; and
- Following the development of these standards, health departments should impose moratoriums on medically unnecessary procedures on intersex people in the absence of the informed consent of the individual who is to be subject to those procedures, and governments should legislate to make the standards legally enforceable.

2. Sexual orientation change efforts

Sexual orientation change efforts (SOCE) continue to occur in Australia as a way of 'curing' homosexuality, which some believe to be a curable disease.[22] This belief persists despite the removal of homosexuality from the International Classification of Diseases in 1990[23] and from the Diagnostics and Statistical Manual of Mental Disorders in 1973.[24]

The American Psychological Association defines SOCE as "methods… that aim to change a person's same-sex sexual orientation to other-sex, regardless of whether mental health professionals or lay individuals (including religious professionals, religious leaders, social groups, and other lay networks such as self-help groups) are involved."[25]

Other terms used to describe the practice are 'conversion therapy' and 'reparative therapy', which some have defined as narrower terms that relate specifically to "counselling and psychotherapy aimed at eliminating or supressing homosexuality."[26] Defined this way, both terms remain within the wider definition of SOCE. However, we see no reason for 'conversion' or 'reparative therapy' to be defined in such a way that limits them to acts of counselling or psychotherapy, as indeed these are not the only techniques used.

2.1 Evidence of harm

Scientific findings suggest that detrimental effects of SOCE could include stress, depression and suicidal ideation.[27] The Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists have both condemned conversion therapy, with RACP President Dr Catherine Yelland having said, "Gay conversion therapy is unethical, harmful, and not supported by medical evidence."[28] Despite peak medical bodies rejecting the practice as unfounded, unethical and dangerous, there has been little action taken against SOCE in Australia save for a crackdown in the State of Victoria.[29]

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[22] Tomazin, F. (09/03/18). 'I am profoundly unsettled': inside the hidden world of gay conversin therapy. *The Age*. <https://www.theage.com.au/national/i-am-profoundly-unsettled-inside-the-hidden-world-of-gay-conversion-therapy-20180227-p4z1xn.html> (last accessed 17/05/18).

[23] World Health Organization. (1992). The ICD-10 Classification of Mental and Behavioural Disorders: Clinical Descriptions and Diagnostic Guidelines, p.11. <http://www.who.int/classifications/icd/en/bluebook.pdf> (last accessed 17/05/18).

[24] American Psychiatric Association. (1974). Position Statement on Homosexuality and Civil Rights. *American Journal of Psychiatry*, 131(4):497.

[25] American Psychological Association. (2009). Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation. <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf> (last accessed 17/05/18).

[26] Just the Facts Coalition. (2008). *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel*. Washington DC, American Psychological Association. p.5. <http://www.apa.org/pi/lgbt/resources/just-the-facts.pdf> (last accessed 17/05/18).

[27] American Psychological Association. (2009). Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation, p.42. <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf> (last accessed 17/05/18).

[28] <https://www.racp.edu.au/news-and-events/media-releases/doctors-criticise-gay-conversion-therapy-remarks-in-marriage-equality-debate>

[29] Tomazin, F. (16/05/18). Religious leaders and health practitioners could face prosecution for gay "conversion". *The Age*. <https://www.theage.com.au/national/religious-leaders-and-health-practitioners-could-face-prosecution-for-gay-conversion-20180516-p4zfpz.html> (last accessed 17/05/18).

2.2 Ban required under the CRC

Several States and provinces in the United States of America and Canada have banned SOCE for minors, including California, Washington D.C. and Manitoba. These bans are consistent with Principle 18 of the Yogyakarta Principles, which states: "no person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity."[30] Arguably, a ban of SOCE for minors is also required under the CRC.[31]

SOCE is objectively not compatible with the best interests of the child: The CRC contains rights including the right to health, the right to be heard, and the right to protection from all forms of physical or mental violence, SOCE breaches these rights, and logically the implementation of these rights is in the best interests of the child.[32]

The Committee on the Rights of the Child has ruled that "in all actions" under Article 3(1) of the CRC includes "inaction or failure to take action and omissions."[33] Applied alone this article would exclude parents, legal guardians and extended family, as Article 3(1) is limited in scope to public or private social welfare institutions and administrative, legislative or judicial bodies. However, read in conjunction with other articles of the CRC, there is arguably an obligation to ban SOCE for minors:[34]

- Article 3(2) enshrines the obligation that "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being… and, to this end, shall take all appropriate legislative and administrative measures";
- Article 3(3) enshrines the obligation "to ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision"; and
- Article 19 enshrines that "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

In short, SOCE is objectively not compatible with the principle of the best interests of the child, and subsequently, through the application of Articles 3 and 19 of the CRC, States Parties are required to ban SOCE for minors.[35]

> "SOCE are often administered on minors, and this is contrary to the best interests of the child under the jurisprudence of the CRC. Such determination is essential, since

[30] International Commission of Jurists (ICJ). (March 2007). *Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity*.
[31] Nugraha, I.Y. (2017). The compatibility of sexual orientation change efforts with international human rights law. *Netherlands Quarterly of Human Rights*, 35(3):176-192.
[32] Ibid. pp.186-187.
[33] Committee on the Rights of the Child 'General Comment No 14 on the Right of the Child to have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1)' (29 May 2013) CRC/C/GC/14, para 18.
[34] Nugraha, 2017 (n 31) p.188.
[35] Ibid. p.178.

> the best interests of the child principle is a cornerstone principle of the CRC and functions as an interpretative legal principle and a rule of procedure. It also bestows a substantive right to children and this implies that the best interest of LGB children to be protected from SOCE as a primary consideration shall be 'appropriately integrated and consistently applied' in all governmental measures. However, although this primary consideration applies to private welfare institutions, parents and legal guardians are excluded from the scope. Therefore, this article needs to be read together with Article 3(2), Article 3(3), and particularly Article 19 of the CRC, which establish positive obligations to curb all practices that are harmful to children. Based on such reading, it could be concluded that the CRC establishes a *lex specialis* that requires States to prohibit SOCE for minors as a whole."[36]

SOCE breach the right of LGB children to have their identities respected under Article 8 of the CRC. (In its submission to the Family Court of Australia on *Re Alex*,[37] the Australian Human Rights Commission cited the argument that gender identity and sexual orientation are within the scope of Article 8(1),[38] and the Court accepted this as a matter of general principle.)[39] Furthermore, in cases LGB children are forced to undergo SOCE by their parents or legal guardians, it is also a breach of the right of the child to be heard under Article 12 of the CRC.[40]

2.3 Recommendations

- The Australian Government should undertake social and educational measures to protect children from sexual orientation change efforts; and
- There should be a ban on sexual orientation change efforts in Australia.

[36] Nugraha, 2017 (n 31) p.192.
[37] The Australian Human Rights Commission. (March 2004). Case submissions: Alex. In The Family Court of Australia. Re Alex: hormonal treatment for gender identity dysphoria. para 3.9 <https://www.humanrights.gov.au/commission-submissions-alex#43> (last accessed 21/05/18).
[38] Hodgson, D. (1993). The international protection of the child's right to legal identity and the problem of statelessness. *International Journal of Law and the Family*, 7:255-270, p.265.
[39] *In Re Alex (Hormonal Treatment for Gender Dysphoria)* (2004) 31 Fam LR 503, 540-1 (Nicholson CJ).
[40] Ibid. p.184.

3. Inclusive education

There is room for improvement in a number of areas in relation to the education of LGBTI children, and children of LGBTI parents, including the need to reform Australian anti-discrimination laws, improve sex education, and promote socially inclusive school environments.

3.1 Discrimination

Currently 'religious bodies' in Australia have exemptions under federal[41] and state and territory-based[42] anti-discrimination laws that allow them to discriminate, in certain areas, against people on the basis of their sexual orientation, gender identity, or intersex status. For example, schools operated by religious bodies are able to refuse admission or expel students, and terminate the employment of staff based on their LGBTI status.[43]

In accordance with the scope of this submission, our focus will remain on LGBTI students.

Supporters of these religious exemptions remind us that they are seldom applied, and that many religious schools have LGBTI students. However, while infrequent, media reports of the expulsion of LGBTI students from religious schools need only occur occasionally to maintain the culture of fear that leads LGBTI students to remain closeted, which can have negative impacts on their mental health. In the case of LGBTI students who are also religious, this also limits their freedom of religion,[44] because it presents a barrier to their being able to attend a school that is consistent with their religious affiliation.

Proponents of these religious exemptions must answer the following:

How can a child develop to their fullest potential[45] if that child denies or conceals a major part of who they are as a person, because the school culture is one that teaches them they should be ashamed of being who they are, and perhaps even leads them to believe this is true? Children cannot develop to their fullest potential if their school environment is one that negatively affects their mental health.

How likely is it that children attending religious schools will develop a respect for human rights and fundamental freedoms[46] when the schools they attend are able to discriminate against people based on their LGBTI status, thereby breaching the right to non-discrimination and limiting freedom of expression by forcing LGBTI students to remain closeted or potentially face expulsion? Children are less likely to develop a respect for human rights and fundamental freedoms when the example set by their school is one that does not respect human rights and fundamental freedoms.

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[41] *Sex Discrimination Act 1984* (Cth) s 37; *Age Discrimination Act 2004* (Cth) s 35.
[42] *Discrimination Act 1991* (ACT) ss 32-33; *Anti-Discrimination Act 1996* (NT) ss 37A and 51; *Anti-Discrimination Act 1991* (Qld) ss 41, 109; *Anti-Discrimination Act 1998* (Tas) s 52; *Equal Opportunity Act 2010* (Vic), ss 82-84; *Equal Opportunity Act 1984* (WA) s 73; *Equal Opportunity Act 1984* (SA) ss 50, 85ZM; *Anti-Discrimination Act 1977* (NSW) s 56.
[43] Tovey, J. (07/07/13). Schools defend right to expel gays. *The Sydney Morning Herald*. <https://www.smh.com.au/national/nsw/schools-defend-right-to-expel-gays-20130706-2pirh.html> (last accessed 19/05/18).
[44] Convention on the Rights of the Child, Article 14(1).
[45] Ibid. Article 29(1a).
[46] Ibid. Article 29(1b).

How is the education of the child being directed toward the development of respect for the child's parents[47] when students can face expulsion based on their parents' LGBTI status?[48] Expelling students based on their parents' LGBTI status clearly represents a form of discrimination within the meaning of the CRC, and punishment based on the status of the child's parents.[49]

How are devout children of any religion able to reconcile their faith with actions that seek to exclude them on the basis of their LGBTI status or the LGBTI status of their parents? Exclusion by faith-based schools on the basis of the LGBTI status of children or parents represents a significant and harmful dereliction of pastoral care.

3.2 Sexual health, sexuality and relationships education

More than half of teachers in the Australian state of Victoria reported that they do not teach about LGBTI issues in their sexuality education classes due to not knowing where they stand in relation to government policy.[50] Moreover, many relevant tertiary education courses do not include a sexuality component, and there are a lack of professional development opportunities for teachers on the subject.[51] In addition, sexuality education in Australia is a low priority in a crowded curriculum, with a lack of enforced mandatory inclusion.[52]

Leaving LGBTI issues out of sexual health, sexuality and relationships education further reinforces the idea that there is something taboo or wrong with being LGBTI, and fails to address health issues specific to children from these communities. This undermines the enjoyment of LGBTI children's right to the highest attainable standard of health, and to the preservation of their identity, enshrined under Article 24 and Article 8 of the CRC, respectively.

3.3 Bullying and safe schools

Article 29 of the CRC enshrines the right of children to a quality education, and bullying threatens their enjoyment of this right. No child can receive a quality education if their school environment is one in which they do not feel safe, as both in-person and electronic bullying is associated with reduced school attendance due to safety concerns.[53]

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[47] Convention on the Rights of the Child, Article 29(1c).
[48] Hondros, N. (28/10/15). Gay dad not welcome at Mandurah Christian school. *Mandurah Mail*. <https://www.mandurahmail.com.au/story/3454887/gay-dad-not-welcome-at-mandurah-christian-school/> (last accessed 19/05/18); Author unknown. (13/12/11). Gay parents accuse school of enrolment snub. *ABC News*. <http://www.abc.net.au/news/2011-12-13/gay-parents-accuse-school-of-enrolment-snub/3728660> (last accessed 19/05/18).
[49] Convention on the Rights of the Child, Article 2(2).
[50] Leonard, W., Marshall, D., Hillier, L., Mitchell, A. and Ward, R. (2010). *Beyond Homophobia: Meeting the Needs of Same-Sex Attracted and Gender Questioning (SSAGQ) Young People in Victoria. A Policy Blueprint*. Melbourne: Australian Research Centre in Sex, Health and Society.
[51] Ollis, D., Harrison, L. and Maharaj, C. (2013). *Sexuality education matters: preparing pre-service teachers to teach sexuality education*. Melbourne: Deakin University; Carman, M., Mitchell, A., Schilchthorst, M. and Smith, A. (2011). Teacher training in sexuality education in Australia: how well are teachers prepared for the job?" *Sexual Health*, 8(3):269-271.
[52] Shannon, B. and Smith, S.J. (2015). 'A lot more to learn than where babies come from': controversy, language and agenda setting in the framing of school-based sexuality education curricula in Australia. *Sex Education*, 15(6):644.
[53] Steiner, R.J. and Rasberry, C.N. (2015). Brief report: Associations between in-person and electronic bullying victimization and missing school because of safety concerns among U.S. high school students. *Journal of Adolescence*, 43:1-4.

The issue of bullying is relevant to all children, but LGBTI children represent a particularly vulnerable group, as they have disproportionately higher rates of mental health issues compared to non-LGBTI students. For this reason, anti-bullying programs should be LGBTI-inclusive.

Safe Schools began in Victorian schools in 2010[54] before becoming a national program in 2013. The Safe Schools Coalition program was initially developed by La Trobe University then moved to be renamed nationally as Safe Schools Coalition Australia (managed by the Foundation for Young Australians) to assist teachers and schools to provide a safe and inclusive environment for LGBTI students and their families. Some school principals reported that the program resulted in a decrease in bullying against same-sex attracted and gender diverse students.[55]

The Federal Government defunded the program in 2016, following a sustained campaign of misinformation and fear mongering about the program by conservative media commentators and politicians.[56]

The controversy surrounding Safe Schools resulted in most states and territories withdrawing support for the Safe Schools Coalition Australia Program,[57] although some have since funded their own anti-bullying programs, including Victoria, which established Safe Schools Victoria within the Victorian Government Department of Education and Training in March 2017.

3.4 Recommendations

- Religious exemptions under Australian anti-discrimination laws that permit religious schools to refuse admission or expel students on the basis of their LGBTI status, or the LGBTI status of their parents or carers, should be repealed;
- Australian governments should provide policy certainty in relation to the teaching of sexual health, sexuality and relationships education, and work toward consistent curriculum standards between states and territories that are LGBTI-inclusive; and
- The Australian Government should reinstate funding for the Safe Schools Coalition program, or fund the establishment of a similar program that specifically addresses homophobia, transphobia and biphobia, to assist schools to provide a safe and inclusive environment for LGBTI children and children with LGBTI parents or carers.

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[54] Victorian Government. Department of Education and Training. Department program: Safe Schools. (last updated 10/05/18). <http://www.education.vic.gov.au/about/programs/Pages/safeschools.aspx> (last accessed 19/05/18).
[55] Schefman, L. (09/02/16). Schools embrace controversial gender program that the LGBT community says 'saves lives'. *Herald Sun*. <http://www.heraldsun.com.au/leader/south-east/schools-embrace-controversial-gender-program-that-the-lgbt-community-says-saves-lives/news-story/4f64da8a6bc0a90d1727910842e4dcc2> (last accessed 19/05/18).
[56] Devine, M. (16/04/17). An epidemic of transgender children is Safe Schools' legacy. *Daily Telegraph*. <https://www.dailytelegraph.com.au/rendezview/an-epidemic-of-transgender-children-is-safe-schools-legacy/news-story/085d5681f6bc3dae2357302ab2bee227> (last accessed 19/05/18); Anderson, S. (01/03/16). Tony Abbott calls for Safe Schools 'social engineering' program to be axed. *ABC News*. <http://www.abc.net.au/news/2016-03-01/abbott-calls-for-end-to-safe-schools/7209766> (last accessed 19/05/18).
[57] Wiggins, N. (23/06/17). Safe Schools: Queensland Government will not fund teacher training after October. *ABC News*. <http://www.abc.net.au/news/2017-06-23/queensland-safe-schools-funding-will-not-continue-post-october/8642966> (last accessed 19/05/18); Haydar, N. (16/04/17). Safe School program ditched in NSW, to be replaced by wider anti-bullying plan. *ABC News*. <http://www.abc.net.au/news/2017-04-16/safe-schools-program-ditched-in-nsw/8446680> (last accessed 19/05/18).

4. Housing and homelessness

LGBT Australians experience homelessness at significantly higher rates than the general population, with 33.7% of lesbian/gay and 20.8% of bisexual – compared to just 13.4% of heterosexuals – reporting they have experienced homelessness at some point, many while in their youth.[58] A survey of trans and gender diverse Australians aged 14–25 found that 22% of participants had experienced accommodation problems or homelessness.[59]

LGBT children are an already vulnerable group, and housing insecurity and homelessness only serve to increase their vulnerability. Homeless youth are especially vulnerable to sexual exploitation,[60] which States Parties are required to undertake all appropriate measures to protect children from under Articles 19 and 34 of the CRC.

There is an urgent need to establish community-led housing and homelessness services, and to build crisis accommodation and public housing specifically earmarked to tackle LGBT homelessness. Community-led housing and homelessness services should have priority on the nomination rights for these properties. The importance of community-led services is underscored by the fact many LGBT people report that they do not feel safe using mainstream housing and homelessness services.[61]

4.1 Need for a targeted, community-led response

The urgent need for a targeted, community-led approach is clear from the fact that the number of children accessing homelessness services rose from 82,000 in 2011-12 to 180,000 in 2015-16,[62] and this growing problem of youth homelessness disproportionately affects LGBT children.

To our knowledge, no Australian Government housing and homelessness agreement or program has ever tackled the problem of LGBT housing and homelessness in a targeted way. There has certainly never been funding for a community-led response.

From 1 July 2018, Australia's *National Housing and Homelessness Agreement* (the Agreement) will commence.[63] The Agreement will provide an additional $375 million to homelessness services over the next three years.[64] This additional funding is welcome;

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[58] Australian Bureau of Statistics. (2014). General Social Survey. Canberra. <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4159.0#Anchor5> (last accessed 17/05/18).
[59] Strauss, P., Cook, A., Winter, S., Watson, V., Wright Toussaint, D., Lin, A. (2017). Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results. Telethon Kids Institute, Perth, Australia.
[60] Klatt, T., Cavner, D. and Egan, V. (2014). Rationalising predictors of child sexual exploitation and sex-trading. *Child Abuse & Neglect*, 38(2):252-260.
[61] McNair, R., Andrews, C., Parkinson, S. and Dempsey, D. (2017). *LGBTQ homelessness: risks, resilience and access to services in Victoria*. LGBTQ homelessness research project, Gay and Lesbian Foundation of Australia.
[62] Australian Government. (January 2018). Australia's joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography and second report on the Optional Protocol on the involvement of children in armed conflict. CRC/AUS/5-6, p.36 <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fAUS%2f5-6&Lang=en> (last accessed 21/05/18).
[63] Australian Government. Key fact sheet: National Housing and Homelessness Agreement. <https://static.treasury.gov.au/uploads/sites/1/2018/03/National-Housing-and-Homelessness-Agreement.pdf> (last accessed 17/05/18).
[64] Ibid.

however, there is a need to allocate some of that funding to address LGBT housing and homelessness.

Article 27(1) of the CRC enshrines the “right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development,” and Article 27(3) requires that States Parties “shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.” The best way to do this for LGBT children and young people is through the creation of community-led housing and homelessness services, including specialist homelessness services that provide LGBT children and young people with pathways out of the homelessness system.

4.2 Recommendations

- Funding should be allocated for community-led housing and homelessness services to specifically target the issue of LGBT homelessness and housing insecurity (i.e. the creation of an LGBT Safe Housing Network) with specialist services to assist LGBT children and young people out of the homelessness system;
- Funding is needed for new public housing earmarked to tackle LGBT homelessness with nomination rights for community-led services; and
- Guidelines should be developed, and training on LGBT-inclusive care provided to mainstream housing and homelessness services.