



LGBTIQIA+ / HIV / Sex workers / people who use drugs - Discrimination in the ACT

Briefing Paper for Gordon Ramsay - Special Strategic Advisor to the Chief Minister

Meridian acknowledges and appreciates the strong leadership of the ACT Chief Minister in advancing the rights, support and inclusion of LGBTIQIA+ people in the ACT through the establishment of the Office for LGBTIQ Affairs, and by committing to develop the first ACT LGBTIQ Strategic Plan. Despite best efforts, health disparities tied to experiences of discrimination and stigmatisation persist for Canberra's LGBTIQIA+ populations.

Meridian welcomes this opportunity to provide current information to the ACT Government on the needs, rights and discrimination that our communities in the ACT continue to face.

LGBTQIA+ People:

- Discriminatory language in legislation:

- The ACT Government should amend legislation to remove discriminatory language that is not inclusive of all members of our LGBTIQIA+ communities. Trans youth have up to a 41% suicidality rate, this drops markedly to 4% when accepted and their pronoun/gender identity is affirmed publicly: replace binary gendered language with gender inclusive terminology, in order to remove potential discrimination against gender diverse people and ensure ACT laws are fully inclusive.
- The ACT Government should amend legislation to change references to 'sex' to 'sex or gender', and move towards using the term 'gender' where appropriate.

- Unjustified exemptions and Special Measures:

- Remove outdated and unjustified exemptions from anti-discrimination laws, particularly in education, employment, service delivery and sport (Please see **Additional Information** section for specific references in the ACT Discrimination Act requiring amendment). Concerns about lack of homelessness and family violence accommodation for trans women and gender-diverse people, based on permanent statutory exemption for services for members of one sex in ACT Discrimination Act.
- The ACT Government should consider whether special measures which apply to other groups of people experiencing disadvantage should also apply to LGBTIQ+ people, in order to address structural and systemic discrimination.

- **Religious Discrimination:**

- Standard contracts for the ACT Government funded services and/or the ACT Government Procurement Act should be amended to specifically restrict government funding being used for religious purposes or membership of a religious codes or doctrines being used a criteria for access to services.
- (Federal): The Religious Discrimination Bill 2019 (Cth) (the Bill), and associated amendments, goes too far and fails to strike a fair balance between freedom of religion and the rights of LGBTIQ+ people. In a range of the circumstances the Bill licenses discrimination against LGBTIQ+ people and includes provisions which are unorthodox and unprecedented in federal and Australian anti-discrimination law. The Bill should not be introduced to Parliament in its current form.
- The ACT Government should amend the Discrimination Act 1991 (ACT) to include unlawful conversion practices as a 'defined act' as a limit to the broad religious exception in subsection 32(1)(d).

- **Trans and Gender Diverse:**

- Transgender and gender diverse people's health and wellbeing is markedly worse than that of the general population and other LGBTIQ sub-populations. This is because of their disproportionate exposure to discrimination, stigma, social exclusion and violence. One study found that almost 90% of transgender people had experienced at least one form of stigma, discrimination, violence or abuse.²⁸
- Transgender and gender diverse people experience additional barriers to inclusive and competent healthcare services. The Trans Pathways study found that 60% of transgender and gender diverse young people feel isolated from medical and mental health services, and 42.1% of respondents had reached out to get help from healthcare professionals only to find that the service provider did not understand, respect, or have previous experience with gender diverse people. A study on gender diversity in the ACT found that 89% of respondents felt access to information and health care is one of the most important issues facing the trans community.
- Currently in Canberra to commence gender affirming treatment, a person requires clinical approval. Access to gender affirming clinical care, based on "Informed Consent" and available at community-based clinics (happens in Victoria) is a preferred model of practice: <https://www.abc.net.au/news/2021-01-06/trans-and-gender-diverse-clinics-in-victoria/12997534>
- Knowledge base capacity amongst GPs in Canberra: only a handful of GPs in Canberra advertise themselves as Trans health specialists – they get booked up very quickly and do not last long in Canberra – they move on. A broad based knowledge amongst GPs in Canberra would be helpful. Ensure that trans, gender diverse and intersex people can nominate the gender of the person who will conduct an invasive procedure.
- Only certain gender affirming hormone treatments are covered under the PBS, limiting options for treatment for some trans people.
- Trans people undergoing gender affirming hormone treatment require regular ongoing additional medical interventions (Eg: liver function tests, blood tests for hormone trough levels). These interventions are costly and often out of pocket.

- Unless the trans or gender diverse person has legally changed their gender markers with Medicare their results are returned as their assigned sex at birth – often while interacting with service providers (Phlebotomists for example) these gender markers listed on scripts can and often will be arbitrarily changed without consent: For example: one of our colleagues has had “U” for unspecified or unknown listed on their scripts for bloods. This colleague has also had their gender marker changed to Female and/or Male by the technician at their own discretion.
- Addressing trans people by their correct pronouns is often missed and/or they can be dead-named by medical professionals unless they have gone through the legal framework to change these. This is costly and laborious. There is also a lack of trans or gender diverse terminology awareness in medical paperwork and reception workers in most medical centres.
- More accessible birth certificate laws required for trans and gender diverse people, particularly young people.

- **Intersex:**

- Meridian affirmed the [Darlington Statement](#) demonstrating our commitment to the rights and agency of people born with an intersex variation. We acknowledge the ACT Gov’s current work in this space towards ending harmful practices, including forced and coercive medical interventions, to ensure the bodily integrity of children with intersex variations.
- Need to ensure that access to redress, independent, affirmative peer support and psychological support for people with intersex variations and their families is implemented too.

- **Families:**

- While the ACT was the first jurisdiction to legalise adoptions by same sex couples, it has lagged behind in other areas of family development and composition, in particular surrogacy and access to assisted reproductive treatment. In addition, the providers of adoption and IVF services have applied their own ‘criteria’ around access to these services, which often follow moral or religious views and restrict access to these services by same sex couples and single lesbians.
- Legislation relating to family and parenting needs to be reviewed to ensure that it doesn’t discriminate against lesbian, gay, bisexual, transgender and intersex people; ensure female specific provisions in relation to pregnancy, childbirth and leave entitlements are gender inclusive and inclusive of non-biological parents.
- The ACT Government should amend the Domestic Violence Agencies Act 1986 (ACT) to include a representative to raise issues experienced by LGBTIQ+ people in family violence on the family violence advisory council. The ACT Government should consider adding representation and consultation with LGBTIQ+ people to existing and future legislative advisory mechanisms to ensure effective consultation on issues where LGBTIQ+ people are disproportionately affected.

People living with HIV/AIDS:

- Review all current legislation to see where HIV / AIDS may be mentioned and conduct an assessment to see if these references are still current/up-to-date especially if the references are punitive, particularly in light of current Undetectable = Untransmissible scientific evidence
- Review of legislation to ensure that HIV/AIDS language/terminology in general is up to date.

Sex Worker Rights:

- Sex work and LGBTIQ+ rights battles are about the liberation of bodies, sexual identities and expressions. Many sex workers identify with the 'Q' in LGBTIQ+. The ACT has recently taken great steps towards decriminalisation as the best practice model for sex work. There are some minor areas of further law reform that require amending to ensure that sex worker rights to autonomy, safety and freedom of trade are upheld. These include:
 - o The right for sex workers to work privately in pairs or small groups to ensure their safety and control of their working environment
 - o The right for sex workers to provide the services the market requires without onerous legislation or moral policing
 - o Further law reform needs to be undertaken to protect sex workers from discrimination and exploitation.

Drug Users:

- Higher rates of drinking drug use in LGBTIQ+ communities due to minority stress. Concerns about discrimination by drug users when accessing services – particularly when services are provided by faith based organisations. This links to Anti-discrimination exemptions needing to be overhauled.

Improving the social and economic conditions of people's lives:

- People's social and economic circumstances affect their health and wellbeing. Housing, employment, education, contact with the justice system, culture and family all influence an individual's mental health and wellbeing. Discrimination is a barrier to LGBTIQ+ people's access to sustainable housing and emergency accommodation. LGBTIQ+ people with disabilities and /or who are elderly are particularly restricted in terms of their options for accessing services, particularly if the services available can discriminate on the basis of sexuality and/or gender identity. The Canberra Inclusive Partnership's (CIP) LGBTIQ+ Housing Position Paper makes the following recommendations:
 - o Establishing a community-controlled and co-designed, trauma-informed, LGBTIQ+ homelessness and housing support service in Canberra.
 - o Building crisis accommodation and housing supply in Canberra to tackle LGBTIQ+ homelessness and housing insecurity.
 - o Ensuring accessible design principles are integrated into the national construction code.
 - o Adopting the *LGBTIQ+ Inclusive Practice Guide for Housing and Homelessness Sectors in Australia (2020)* as a standard of practice supported by comprehensive training in effective response to the unique needs of trans and gender diverse Canberrans, and all LGBTIQ+ people experiencing homelessness.

- The ACT Government investigate and review instances where services are reported to be unable or unwilling to meet the standard of practice after a transition period.
- Providing ongoing LGBTIQ+ training to mainstream services and Community Services Directorate staff working in the areas of housing and homelessness.
- Establishing research into the causes, rates and experiences of Canberra's homeless LGBTIQ+ population.

Additional Information:

Recommendations based on the Blueprint for a Coordinated Response to the Health Needs of LGBTIQ People, their Families and Communities in the ACT:

- Improve access to LGBTIQ-Inclusive and competent psychosocial support services.
- Facilitate strategic partnerships to more effectively respond to the complex, diverse and intersectional needs of LGBTIQ people.
- Respond to the needs of LGBTIQ+ people throughout their lifespan.
- Ensure policy and programmatic decisions are informed by accurate data about LGBTIQ people's experiences and needs.

Specific Amendments to the ACT Discrimination Act recommended by Equality in the ACT LGBTIQ+ Legal Audit: Reforms for an Inclusive ACT:

- **RECOMMENDATION 23:** The ACT Government should implement the remaining recommendations from the ACT Law Reform Advisory Council's Review of the Discrimination Act 1991 (ACT), particularly recommendation 18 to replace permanent statutory exceptions with a justification defence.
- If recommendation 23 is not implemented: **RECOMMENDATION 24** The ACT Government should amend the Discrimination Act 1991 (ACT) to abolish the broad religious exception in s 32(1)(d).
- If recommendations 23 or 24 are not implemented: **RECOMMENDATION 25** The ACT Government should amend the Discrimination Act 1991 (ACT) to make employment a defined act as a limitation on the broad religious exception in s 32(1)(d) so that discrimination by religious organisations in employment is no longer permitted.
- **RECOMMENDATION 26** The ACT Government should amend the Discrimination Act 1991 (ACT) to make service delivery a defined act as a limitation on the broad religious exception in s 32(1)(d) so that discrimination by religious organisations in service delivery is no longer permitted.
- If recommendations 25 to 26 are not implemented: **RECOMMENDATION 27** The ACT Government should insert provisions in the Government Procurement Act 2001 (ACT) and amend government funding agreements to require all organisations to provide inclusive and non-discriminatory services, unless the organisation has a specific exemption in the Government Procurement Act 2001 (ACT). In the alternative, the ACT Government should amend government funding agreements to require government funded organisations delivering services to the public provide inclusive and nondiscriminatory services.
- If recommendation 23 is not implemented: **RECOMMENDATION 28** The ACT Government should review the permanent statutory exceptions (other than religious exceptions) particularly in sections 28, 31, 34, 36, 37, 38, 39(3), 40 and 41 of the Discrimination Act 1991 (ACT). Recommendations 29 and 30 apply irrespective of the ACT Government's response to recommendations 23 to 28.
- **RECOMMENDATION 29** The ACT Government should amend the Discrimination Act 1991 (ACT) to update the protected attribute of 'intersex status' to 'sex characteristics'. **RECOMMENDATION 30** The ACT Government should amend the Discrimination Act 1991 (ACT) to make clear that the attribute of 'gender identity' also provides protections from discrimination on the basis of gender expression.

References:

<https://ihra.org.au/wp-content/uploads/key/Darlington-Statement.pdf>

<https://www.abc.net.au/news/2021-01-06/trans-and-gender-diverse-clinics-in-victoria/12997534>

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<https://docs.google.com/viewerng/viewer?url=http://genderrights.org.au/wp-content/uploads/2020/03/Blueprint-on-health-needs-of-LGBTIQ-Canberrans.pdf&hl=en>

<https://www.hrlc.org.au/submissions>

<https://www.niaid.nih.gov/diseases-conditions/treatment-prevention>

https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0006/1663611/EQAU-ACT-legal-report-2019.pdf