1. The Tasmanian Gay and Lesbian Rights Group

The Tasmanian Gay and Lesbian Rights Group (TGLRG) was formed in 1988, as part of the effort to reform Tasmania's repressive anti-gay legislation. The TGLRG has since played a significant role in assisting Tasmania to the forefront of legislative recognition of lesbian, gay, bisexual, transgender and intersex (LGBTI) human rights – with the state now arguably having the most progressive anti-discrimination and relationships legislation in the country. In addition, the TGLRG contributes to policy development and implementation within a number of government agencies through participation in several LGBTI reference groups, as well as playing an active role in national LGBTI issues.

Our achievements have been recognised by a number of awards including the Tasmanian Award for Humanitarian Activity (1994), the International Felipa da Souza Award (1995) and the National Human Rights Award for Community Groups (1997).

The TGLRG is in contact with LGBTI people across Tasmania, and conducts regular consultation with the LGBTI community. The outcomes of these consultations form the basis of this submission.

2. Recommendations

1. The Commonwealth must act to provide better discrimination protections on the grounds of sexual orientation, gender identity and intersex (SOGII) for its employees and for those to whom it provides goods and services
2. "Sexual orientation", "gender identity" and "intersex" are our preferred terms
3. The Tasmanian Anti-Discrimination Act has no exceptions specific to sexual orientation and neither should equivalent Commonwealth legislation
4. Commonwealth law should prohibit incitement to hatred on the grounds of sexual orientation, gender identity and intersex without religious exemptions
5. Commonwealth legislation must provide protections from harassment on the grounds of sexual orientation, gender identity and intersex

3. The need for stronger federal protections

At a federal level there are no comprehensive or enforceable provisions protecting Australians from discrimination on the grounds of sexual orientation, gender identity and intersex (SOGII).

The Human Rights Commission has the power to investigate and report on discrimination in employment on the grounds of sexual preference. But it does not have the power to impose remedies in this area, or investigate discrimination in other areas.

The Federal Government has enacted laws to prohibit discrimination on the grounds of race, sex, disability and age, but none of these statutes provide remedies for discrimination against gay, lesbian, bisexual, transgender or intersex people. A SOGII protections would send a strong message that discrimination on these grounds is inappropriate. This would be particularly important in states like Tasmania which continue to have rates of SOGII discrimination higher than the national average (see attachment 1).

All of the states and territories have anti-discrimination statutes which provide various levels of protection for GLBTI people. However, some of the these statutes are quite old and provide limited protection. Further, following the federal court decision in Nichols v Commonwealth of Australia 2008 it remains uncertain whether state anti-discrimination statutes bind the Federal Government. This means federal employees and the recipients of federal services who suffer discrimination on the grounds of sexual orientation, gender identity or intersex may not be protected by any anti-discrimination statutes.

For all these reasons we support national SOGII protections from discrimination.

This statute would have its constitutional basis in the external affairs power. Beginning with the Tasmanian case of Toonen v Australia (see below), the UN Human Rights Committee has found that Australia has a treaty obligation to prevent discrimination on the grounds of sexual orientation.

4. Terminology

The Tasmanian Gay and Lesbian Rights Group supports the use of the terms "sexual orientation", "gender identity" and "intersex" in Commonwealth anti-discrimination law.

"Sexual orientation" is the term we recommended to the UN Human Rights Committee in our case (Toonen v Australia) against Tasmania's former laws criminalising homosexuality. We did this because the term connotes the intrinsic and relatively fixed nature of sexual and emotional attraction.

The UNHRC adopted the term in its favourable finding. This finding not only gave the Commonwealth an obligation to override Tasmania's former laws. It also gave it a mandate to protect all Australian citizens from discrimination on the ground in question.

The TGLRG supports the term "gender identity" and "intersex" because they are the most comprehensive. We note that the Tasmanian Government has introduced legislation amending the Tasmanian Anti-Discrimination Act to include these two grounds. The definitions of these terms have met with strong support from relevant communities and set a valuable national standard the Commonwealth should copy. The legislation has passed the Tasmanian Lower House and our lobbying indicates there is no opposition to the relevant provisions in the Upper House.

5. Exemptions and exceptions

The Tasmanian Gay and Lesbian Rights Group does not support any legislative exemptions or exceptions that are specific to sexual orientation, gender identity and intersex.

The Tasmanian Anti-Discrimination Act has no such exceptions. This has had nothing but a positive impact.

It has meant that Tasmanians who have been discriminated against on the grounds of SOGII in employment or services by a faith-based organisation have had remedies for that discrimination.

It has also meant that these organisations have improved their culture to ensure they meet their obligations under the Anti-Discrimination Act. This is particularly the case with faith-based schools, which were infamous for anti-gay bullying up until a decade ago, but which now implement their obligations under the Anti-Discrimination Act through classroom challenging homophobia programs and through participation in the Department of Education's LGBTI reference group.

In regard to exemptions and exceptions, Commonwealth legislation should not set standards lower than those set in the Tasmanian Anti-Discrimination Act. We certainly will not accept lower standards in Commonwealth legislation.

We note that a compromise position has been put forward whereby faith-based employers and service providers should not be exempt if they receive government funding to provide these jobs or services. The draft legislation also poses the compromise of providing an exemption for faith-based schools and welfare agencies but not aged care facilities.

We do not accept these compromises. The fundamental reason for anti-discrimination law is to provide everyone with equal access to the basics of life including employment, housing, education and key goods and services. Seen this way, what matters is the importance of what is being provided, not who provides it or who pays.

We are particularly concerned about a compromise that protects people in aged care facilities, presumably on the grounds of their vulnerability, but fails to protect young people, who are equally vulnerable. Government has an obligation to protect all schools students from the prejudice, discrimination, bullying and harassment that thrive in the absence of strong legislative protections. This obligation exists regardless of what school the student attends.

6. Incitement to hatred

We strongly recommend Commonwealth provisions prohibiting incitement to hatred on the grounds of SOGII.

In the Tasmanian context, such provisions have proven important in providing remedies for Tasmanians who have faced incitement to hatred on the grounds of SOGII. This includes cases where electoral materials making derogatory statements about LGBTI people were brought to the attention of the Office of the Anti-Discrimination Commissioner, and, following mediation, public apologies were issued by those who authorised the offending materials.

They have also proven useful in dramatically reducing the level of SOGII incitement to hatred since they were enacted in 1999. Incitement to hatred was common in Tasmania up until 1999. Arguably, more common than elsewhere in Australia. The direct link between incitement to hatred and profound harm to LGBTI people was obvious from academic research and from the suicide notes of some LGBTI people. But since the enactment of the Anti-Discrimination Act hate speech has all but disappeared, with Tasmanian public debate now more respectful of LGBTI people than elsewhere on continental Australia.

The Tasmanian provisions do not have an exception for religious organisations or purposes. As a result some of the most positive examples of positive change have been within religious institutions. Commonwealth legislation must meet the same standard.

Tasmania's incitement-to-hatred provisions have not had an adverse impact on freedom of speech. Instead, they have alerted those participating in public debate to the fact that with a right to free speech comes a responsibility to exercise that freedom without harming others. Strong national provisions will, similarly, not infringe free speech.

7. Harassment

A large influx of gay and lesbian immigrants to rural and regional Tasmania since the decriminalisation of homosexuality in 1997 has seen an increase in harassment on the grounds of SOGII, particularly involving neighbours.

The Tasmanian Anti-Discrimination Tribunal has interpreted state provisions against discrimination in accommodation to prohibit such harassment. Equally strong provisions should be provided in Commonwealth law.

ATTACHMENT ONE

1. LEVELS OF ASSAULT BASED ON SEXUAL ORIENTATION

The following research shows reports of physical assault are consistently higher in Tasmania than the national average.

Tasmanian research

~ Research period five years or over

) 46% among 16-26 year old Tasmanian gay and bisexual men (Menzies Centre for Population and Rural Health, 1998)
a) 46% of 14-18 year old same-sex attracted people in three Tasmania High Schools (La Trobe University Centre for Sex, Health and Society Research, 1998)
b) 32% amongst 15-25 year old southern Tasmanian lesbians (Department of Community and Health Services and Hobart Women's Health Centre, 1998)

~ Research period previous twelve months

c) 12.5% amongst gay men ("Tasmanian Council on AIDS and Related Diseases, CARD's Men who have sex with men survey", 1998)
d) 15% amongst Tasmanian gay men (Project MaleCall, Macquarie University Centre for HIV social research, 1996)

National or interstate research

~ Research period five years or over

e) 33% of lesbians (NSW gay and lesbian community study, "Off our Backs", 1992)
f) 20% amongst gay men and 11% amongst lesbians (NSW Anti-violence Project, "Street Watch Report", 1997)
g) 20% amongst gay men and 11% amongst lesbians (Victorian gay and lesbian community survey, 1994)

~ Research period previous twelve months

h) 14% amongst gay men and 12% amongst lesbians (NSW Police gay and lesbian community survey, "Out of the Blue", 1995, sample=297)
i) 11% amongst Australian gay men (Project MaleCall, Macquarie University Centre for HIV social research, 1996, sample =3039)

2. LEVELS OF ASSAULT AND VERBAL ABUSE BASED ON SEXUAL ORIENTATION

The following research shows reports of assault and verbal abuse are consistently higher in Tasmania than the national average.

Tasmanian research

~ Research period five years or over

j) 94% amongst 16-26 year old Tasmanian gay and bisexual men (Menzies Centre for Population and Rural Health, 1998)
k) 91% amongst 15-25 year old southern Tasmanian lesbians (Department of Community and Health Services and Hobart Women's Health Centre, 1998)

~ Research period previous twelve months

l) 47% amongst Tasmanian gay men (Project MaleCall, Macquarie University Centre for HIV social research, 1996)
m) 42% amongst gay men ("Tasmanian Council on AIDS and Related Diseases, CARD's Men who have sex with men survey", 1998)

National or interstate research

~ Research period five years or over

n) 70% of gay men and lesbians (Victorian gay and lesbian community survey, 1994)
o) 79% of gay men and lesbians (Victorian gay and lesbian community survey, 1999)
p) 83% of gay men and lesbians (NSW Police gay and lesbian community survey, "Out of the Blue", 1995)
q) 91% of lesbians (NSW gay and lesbian community study, "Off our Backs", 1992)

~ Research period previous twelve months

r) 40% amongst Australian gay men (Project MaleCall, Macquarie University Centre for HIV social research, 1996)

THREE TASMANIAN STUDIES ON HOMOPHOBIA

1. DISCRIMINATION AND HARASSMENT IN SCHOOLS

According to a study of attitudes to homosexuality amongst 300 students at Hobart's Elizabeth College,

8% of students admitted to being homosexual or bisexual

32% of males and 20% of females admitted feeling uncomfortable around a homosexual person

16% of students admitted to physically or verbally abusing someone on the basis of their sexuality.

2. THE EFFECT ON YOUNG LESBIANS, GAY AND BISEXUAL PEOPLE

According to a study of health compromising and suicidal behaviours among young gay and bisexual men in Tasmania conducted at the Division of Community and Rural health,

the young Tasmanian gay and bisexual men surveyed were two and a half times more likely to seriously consider suicide than their heterosexual peers,

62% of the young Tasmanian gay and bisexual men surveyed had experienced physical assault, and 94% had suffered verbal abuse because of their sexual orientation,

the young Tasmanian gay and bisexual men were more likely to experience conflict with parents and peers, lose friends because of coming out, abuse alcohol and have unsafe sex.

According to a health needs analysis of young lesbians in southern Tasmania coordinated by the Women's Health Unit of the Department of Community and Health Services

91% of the young lesbians interviewed had experienced verbal abuse because of their sexuality, with 32% reporting physical abuse,

all but three of the young lesbians interviewed had experienced serious discrimination because of their sexuality, identifying friends, school, church and family as the main sources of this discrimination.