



Issues Paper

March 2019

Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) children and young people

What is meant by LGBTI?

The Commissioner for Children and Young People understands there are a range of terms and definitions that people use to define their gender or sexuality. The Commissioner's office uses the broad term LGBTI to inclusively refer to all people who are lesbian, gay, bisexual, trans and have an intersex variation, as well as to represent other members of the communities that use different terms to describe their diverse sexuality and/or gender.

LGBTI people exist across all countries, cultures, and communities, and evidence of their existence has been noted from early human civilisation to the modern day.¹ Many cultures and societies have traditionally accepted and/or recognised diverse identities of gender and sexuality,² including recognition of Aboriginal and Torres Strait Islander 'sistergirls' and 'brotherboys'.

Limited and inconsistent data collection makes it difficult to provide accurate estimates of the population of LGBTI people in Australia, however, common estimates suggest that LGBTI comprise around 11 per cent³ of the Australian population.

Understanding gender identity and sexuality can be complex, however, the following concepts provide some guidance.

¹ UN Free and Equal n.d., *Fact Sheet: LGBT Rights: Frequently Asked Questions*. United Nations Human Rights Office. Retrieved from <https://www.unfe.org/wp-content/uploads/2017/05/LGBT-Rights-FAQs.pdf>

² UN Free and Equal n.d., *Sexual Orientation and Gender Identity Throughout History*. United Nations Human Rights Office. Retrieved from <https://www.unfe.org/sexual-orientation-gender-identity-nothing-new/>

³ Department of Health and Ageing 2012, *National Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Ageing and Aged Care Strategy*, Commonwealth of Australia. Retrieved from https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/08_2014/national_ageing_and_aged_care_strategy_lgbti_print_version.pdf

Gender identity: This refers to the way that a person defines their internal sense of gender. While many people's gender identity matches the sex they were assigned at birth (i.e. male or female), for some people this is not the case. People who do not identify as the sex they were assigned at birth may identify as transgender, trans, non-binary, gender diverse or another term that reflects their gender identity.⁴

Sexual orientation: This refers to a person's physical, romantic and/or emotional attraction towards other people. People who identify as heterosexual are attracted to people of the opposite sex or gender, whereas gay men and lesbian women are attracted to individuals of the same sex or gender, and bisexual people are attracted to both men and women. Some people may have other sexual orientations, including being pansexual or omnisexual (i.e. attracted to all genders, including non-binary genders), as well as asexual (i.e. does not experience any form of sexual attraction but may experience emotional attraction).⁵ A person's sexual orientation is distinctly different to their gender identity.

Intersex: This refers to people who are born with sexual anatomy, reproductive organs and/or chromosomes that are inconsistent with the typical definitions of male or female. There are a range of different intersex variations, and the specific health needs or other experiences of children and young people with an intersex variation vary greatly depending on their particular condition. Some intersex variations, including atypical external genitalia, may be apparent at birth whilst others, such as chromosomal or internal gonad variations, may not become known until later in life. People with an intersex variation experience the same range of diversity in relation to their gender identities and sexual orientation, and may identify as male, female or as having a different gender identity.

Why do we need a specific focus on LGBTI children and young people?

Most LGBTI people live happy, successful and fulfilling lives, have developed strength and resilience as a result of their life experiences and have positive hopes and aspirations for their futures. Many LGBTI people are passionate about creating positive changes for the LGBTI community, by translating their own experiences to pursue social justice and advocacy for LGBTI rights and equality.

LGBTI people are not a homogenous group. As well as individual differences between people, the needs and experiences of people who are trans or gender diverse are likely to be very different to those who are lesbian, gay, bisexual or of other sexual orientations, and different to people with an intersex variation.

⁴ UN Free and Equal n.d., *Fact Sheet: LGBT Rights: Frequently Asked Questions*. United Nations Human Rights Office. Retrieved from <https://www.unfe.org/wp-content/uploads/2017/05/LGBT-Rights-FAQs.pdf>

⁵ Ibid.

Regardless of the differences between individual members of the LGBTI community, there are a range of factors and common issues that impact on their health, safety and wellbeing, or prevent them from being recognised and respected for who they are, treated equally, or from having the same opportunities as other members of the community. All of these issues affecting LGBTI people or communities apply equally to, and impact significantly on, children and young people, and in some situations may affect children and young people disproportionately.

The issues that affect LGBTI people largely stem from social and cultural beliefs and assumptions about gender and sexuality, including systemic discrimination at an individual, social, political and legal level. In regards to sexuality, some of these dominant social views include the assumption and belief that that most people are heterosexual,⁶ that people should partner with a person of the opposite sex, or by stereotyping same-sex attractions or relationships as being a 'phase'. This may result in explicit discrimination and stigmatisation towards an individual, or a failure to recognise their relationship.

Similarly, dominant social views result in gender and sex typically being viewed in a binary and fixed manner which does not recognise people whose identity lies outside of this (e.g. people who identify as non-binary, trans or gender fluid) or people who are intersex. This can lead to explicit discrimination towards people who do not present as stereotypically male or female in their appearance, characteristics or behaviours, or through a failure to acknowledge anything other than male or female gender identities (for example, survey forms that only provide gender options as male or female, exclusively male and female facilities such as bathrooms and change rooms, or single-sex competitive sporting activities).

Harassment and discrimination

"Going out into society and feeling safe, and feeling respected....you can't put a price on that." 2018 Advisory Committee member

The Universal Declaration on Human Rights and the principles of equality and non-discrimination apply equally to all people, making it unlawful to discriminate against a person based on their sexual orientation, gender identity or if they have an intersex variation.⁷ Despite this, the United Nations has expressed significant concern about violence and discrimination against LGBTI people. LGBTI people, both internationally and in Australia, often face issues such as social exclusion; violence,

⁶ Levay S et al n.d., *Discovering Human Sexuality: Glossary*. Retrieved from <https://discoveringhumansexuality3e.sinauer.com/glossary.html>

⁷ UN Free and Equal n.d., *Fact Sheet: International Human Rights Law and Sexual Orientation and Gender Identity*, United Nations Human Rights Office. Retrieved from <http://www.ohchr.org/Documents/Issues/Discrimination/LGBT/FactSheets/unfe-11-UN Fact Sheets GenderIdentity English.pdf>

abuse and discrimination; a lack of support from their families and communities; and barriers to accessing appropriate support services.^{8 9}

LGBTI young people in the Commissioner for Children and Young People's 2018 Advisory Committees spoke about their experiences of discrimination, including bullying, public harassment, the use of homophobic and transphobic language, slurs and insults, 'casual' homophobia in everyday language, harmful stereotyping about their identity, and discrimination against particular identities within the LGBTI community.¹⁰ These experiences of discrimination and social exclusion negatively impact the health and wellbeing of LGBTI people, particularly their mental health, and contribute to higher rates of mental health issues, including rates of suicide attempts.¹¹

Some LGBTI people may also experience pressure to change their sexuality or gender identity in order to conform to the dominant social beliefs or assumptions, including those discussed earlier in this document, such as that sex and gender are binary and fixed, and that heterosexual relationships are paramount. Formalised attempts to change sexuality or gender identity are often known as 'conversion therapies', and have been denounced by a number of leading Australian and international health and human rights organisations, as well as the current Western Australian government.¹² These attempts to change sexuality or gender identity can have harmful psychological and physical impacts on the individual, and there is no evidence to support that sexual orientation or gender identity can be changed, or that it should even be classified as any kind of disorder.^{13 14 15} These 'therapies' are

⁸ UN Free and Equal n.d., *Fact Sheet: International Human Rights Law and Sexual Orientation and Gender Identity*, United Nations Human Rights Office. Retrieved from http://www.ohchr.org/Documents/Issues/Discrimination/LGBT/FactSheets/unfe-11-UN_Fact_Sheets_GenderIdentity_English.pdf

⁹ Hillier, L., et al. 2010, *Writing Themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people*, Australian Research Centre in Sex, Health and Society, La Trobe University.

¹⁰ Commissioner for Children and Young People 2018, *Final report: Commissioner for Children and Young People's 2018 Advisory Committees*. Retrieved from <https://www.cyp.wa.gov.au/media/3632/final-report-commissioner-for-children-and-young-people-advisory-committee-2018.pdf>

¹¹ Suicide Prevention Australia 2009, *Position Statement: Suicide and self-harm among Gay, Lesbian, Bisexual and Transgender communities*, Suicide Prevention Australia. Retrieved from [https://www.suicidepreventionaustralia.org/sites/default/files/resources/2016/SPA-GayLesbian-PositionStatement\[1\].pdf](https://www.suicidepreventionaustralia.org/sites/default/files/resources/2016/SPA-GayLesbian-PositionStatement[1].pdf)

¹² OutinPerth 2018, 'WA Health Minister voices his opposition to gay conversion therapies', *OutinPerth*, 3 July 2018. Retrieved from <https://www.outinperth.com/73697-health-minister-roger-cook-against-gay-conversion-therapy/>

¹³ Schroeder M & Shidlo A 2002, 'Ethical issues in sexual orientation conversion therapies: An empirical study of consumers', *Journal of Gay and Lesbian Psychotherapy*, Vol. 5 No 3-4.

¹⁴ United Nations Human Rights Office of the High Commissioner 2016, *"Pathologisation – being lesbian, gay, bisexual and/or trans is not an illness" For International Day against*

often in direct violation of human rights conventions, and fail to recognise the individual's differences as normal variations in sexuality or gender identity.¹⁶

"Conversion therapy...is fraught, it doesn't work, and [people will] go through it for no reason, with the impact being they may end up with lifelong trauma."

2018 Advisory Committee member

The wellbeing of LGBTI children and young people will only improve when there is improved understanding, awareness and acceptance of LGBTI people within the community. It is critical that the broader community, as well as mainstream organisations and services, are equipped with the knowledge and information that they need to ensure greater respect, inclusion and acceptance of LGBTI people.

Children and young people with intersex variations

There is often limited attention or knowledge about the specific needs and experiences of people with an intersex variation. These needs vary significantly depending on the specific intersex variation, and some people with an intersex variation may not actually consider themselves to be members of the LGBTI community, identify as having an intersex variation, or be aware that they have an intersex variation.

There are a range of concerns about the possible long-term implications and adverse consequences of surgeries that are performed on infants and children with an intersex variation where there is not an urgent medical need to do so. This includes where the surgery is undertaken to 'normalise' the aesthetic appearance or function of the infant or child's genitalia, or where the surgery occurs prior to the child having the capacity to consent or an opportunity to express their gender identity. Some national and international advocacy organisations as well as an Australian Senate Inquiry¹⁷ have called for medical procedures (including surgeries or sterilisations) on

Homophobia, Transphobia and Biphobia, Office of the High Commissioner of Human Rights. Retrieved from

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19956&LangID=E>

¹⁵ Australian Psychological Society 2015, APS Position Statement on the use of psychological practices that attempt to change sexual orientation, Melbourne: APS. Retrieved from <https://www.psychology.org.au/Assets/Files/APS%20Position%20Statement%20on%20Psychological%20Practices%20that%20attempt%20to%20change%20Sexual%20Orientation%20Members.pdf>

¹⁶ UN Free and Equal n.d., *Fact Sheet: LGBT Rights: Frequently Asked Questions*, United Nations Human Rights Office. Retrieved from <https://www.unfe.org/wp-content/uploads/2017/05/LGBT-Rights-FAQs.pdf>

¹⁷ Senate Community Affairs Committee Secretariat 2013, *Involuntary or coerced sterilisation of intersex people in Australia*, Commonwealth of Australia. Retrieved from [https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/~media/Committees/Senate/committee/clac_ctte/involuntary_sterilisation/second_report/report.ashx](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/~/media/Committees/Senate/committee/clac_ctte/involuntary_sterilisation/second_report/report.ashx)

infants and children with an intersex variation to be restricted to situations where there is an urgent medical need for this, citing the psychological and physical consequences that can occur as a result of these surgeries. As there are a broad range of conditions that children and young people with an intersex variation experience, decision making about any treatment and support options must be undertaken by highly specialised and multidisciplinary teams.

Understanding and expressing identity

Children and young people often develop an awareness of their sexuality or gender identity at a young age or prior to adolescence^{18 19} and may experience a range of challenges as they come to understand their sexual orientation, gender identity or their intersex variation. These issues might include not having the information available to understand and make sense of their identity, the fear of 'coming out' and being open about their identity to family and friends, being bullied or excluded at school or by peer groups, a lack of support from friends and families, reliance on parental consent and support to access services, and all of the other stresses that children and young people face in relation to managing school and education, relationships, puberty, body image and independence.²⁰

"Young people need support to understand their identity. There is not enough information available to young people, and it only really gets talked about in high school – if at all." 2018 Advisory Committee member

For trans or gender diverse children and young people, and children and young people with an intersex variation, puberty can also be a time of distress in regards to the physical changes and developments of their bodies, and in terms of navigating gendered environments and activities, such as school camps, toilets, school uniforms and sporting teams. Some, but not all, trans and gender diverse children and young people may choose to change their name, pronouns, appearance or body to be consistent with, or affirming of, their gender identity. This is generally undertaken as a gradual process, and while this is most often an affirming and positive experience, it may also present some challenges for young people as they navigate their lives, and are more open about their identity.

¹⁸ Q Life 2016, *Young People: Q Life Tip Sheet*, Q Life. Retrieved from.

<https://qlife.org.au/wp-content/uploads/2013/11/19-Young-People-for-web.pdf>

¹⁹ Strauss P et al, 2017, *Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results*, Telethon Kids Institute, Perth, Australia.

²⁰ Response Ability 2014, *Lesbian, Gay, Bisexual, Transgender and Intersex*, Commonwealth of Australia. Retrieved from

http://www.responseability.org/_data/assets/pdf_file/0012/11703/Lesbian,-Gay,-Bisexual,-Transgender-and-Intersex-LGBTI.pdf

"Before I came out to anyone [as trans], I went to a private school, and I wasn't ready to come out, but I just couldn't wear that dress anymore. I just wore the sports uniform, and I just took every detention." 2018 Advisory Committee member

"When people use incorrect pronouns [to refer to you], it has a huge impact on your emotional state, and has a huge impact on your self-esteem." 2018 Advisory Committee member

Experiences in school

"We get a lot of young people who come to the Freedom Centre who say that they don't feel safe in their school environment and as a result they feel like they have to leave or...ditch school, or not feel like they want to go to school... Discrimination and bullying should not be a factor in why someone doesn't get the education that they deserve." Staff member (Freedom Centre – a peer support service for LGBTI young people)

The school environment can be particularly challenging for LGBTI children and young people, with high levels of bullying, violence and discrimination occurring within school and education settings.²¹ Young people in the Commissioner's Advisory Committees reported feeling that there is a lack of understanding, awareness and consideration of the needs and experiences of LGBTI students at schools, and inconsistency across schools in regards to the policies and processes that they have in place to support inclusion.²² This includes challenges in having a student's gender identity recognised and affirmed at the school (e.g. reflecting their names and pronouns on school documentation processes and used by other teachers and students), strict uniform requirements, and lack of visibility of LGBTI people in the school community and curriculum.

"As someone who came to this school to transition... the first year I came here they sent out emails to the teachers saying 'This is [young person] and he uses 'He' pronouns so you should respect that.' But this year some of the teachers are using 'she'...and that makes it harder for other people to be like 'Oh yeah, this is a boy.'" 2018 Advisory Committee member

Without a proactive approach to supporting LGBTI children and young people, or addressing bullying and discrimination at school, LGBTI students can be left feeling unsafe and uncomfortable about their identity, which can have a significant impact

²¹ Hillier L et al. 2010, *Writing Themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people*, Australian Research Centre in Sex, Health and Society: La Trobe University.

²² Commissioner for Children and Young People 2018, *Final report: Commissioner for Children and Young People's 2018 Advisory Committees*. Retrieved from <https://www.cyp.wa.gov.au/media/3632/final-report-commissioner-for-children-and-young-people-advisory-committee-2018.pdf>

on the education, employment outcomes, and general health and wellbeing of LGBTI children and young people.²³

Mental health

"Suicide rates and rates of mental health are very high for LGBTI young people, and it is important for them to get the support they need." 2018 Advisory Committee member

LGBTI people are more likely to experience poor mental health than the general population, and the rates of mental health issues among LGBTI children and young people – including depression, anxiety, self-harm and suicidal thought – warrant urgent attention.²⁴ The period of highest risk of suicide for LGBTI children and young people is where they have acknowledged their sexuality or gender identity, but have not told anyone else.²⁵

Mental health issues are particularly high for trans and gender diverse young people, with an Australian research report finding that:

- Around 70 to 75 per cent of trans young people have a clinical diagnosis of depression and/or anxiety.
- Almost 80 per cent of trans young people have self-harmed.
- Close to 50 per cent have attempted suicide at one point in their life.²⁶

Having a diverse sexual orientation, diverse gender identity, or being intersex are not in themselves risk factors for poor mental health. Rather it is the social exclusion and discrimination that LGBTI children and young people face which has a negative impact on their mental health and wellbeing. There is a distinct link between children and young people's experiences of homophobic or transphobic discrimination and abuse with poor mental health outcomes, self-harm, suicide attempts and drug use.^{27 28} Therefore, any mental health interventions aimed at supporting LGBTI

²³ United Nations 2016, *Living Free & Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, United Nations. Retrieved from <http://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

²⁴ Morris S 2016, *Snapshot of Mental Health and Suicide Prevention Statistics for LGBTI People and Communities*, National LGBTI Health Alliance, Sydney, Australia. Retrieved from <http://lgbtihealth.org.au/wp-content/uploads/2016/07/SNAPSHOT-Mental-Health-and-Suicide-Prevention-Outcomes-for-LGBTI-people-and-communities.pdf>

²⁵ Q Life 2016, *Young People: Q Life Tip Sheet*, Q Life. Retrieved from <https://qlife.org.au/wp-content/uploads/2013/11/19-Young-People-for-web.pdf>

²⁶ Strauss P et al 2017, *Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results*, Telethon Kids Institute, Perth, Australia.

²⁷ Strauss P et al 2017, *Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results*, Telethon Kids Institute, Perth, Australia.

children and young people must address the social and political attitudes, beliefs and environments which stigmatise and discriminate against LGBTI people.

Transition to independence and adulthood

Some LGBTI young people report experiencing challenges as they seek to become more independent, including undertaking further education and training, seeking employment and securing housing and accommodation.

LGBTI people often feel that they need to hide their sexuality or gender identity in the workplace, out of a real or perceived threat of discrimination or bullying.²⁹ Trans and gender diverse people often face higher rates of unemployment in comparison to their peers³⁰ and may experience difficulty in the workplace, where their identification documents do not reflect their gender identity or name. This may result in discrimination towards the young person, or force a young person to have to disclose their identity to current or potential employers to explain why their documents are not consistent.

LGBTI young people are also at a higher risk of experiencing homelessness, particularly where they have experienced family rejection or a lack of support as a result of their identity. Trans or gender diverse young people may also experience additional barriers in accessing suitable crisis accommodation or homelessness services due to feeling unsafe, or because the staff, facilities, administrative processes or eligibility requirements (e.g. being a gender-specific service) are not inclusive of trans or gender diverse people.³¹

Access to supports and services

There are a range of challenges and barriers that LGBTI children and young people may face in accessing appropriate supports and services, particularly for trans and gender diverse children and young people. This may include mainstream services lacking the knowledge, skills and confidence to be able to best support LGBTI clients, or the referral and pathway options available to support children and young

²⁸ Hillier L et al. 2010, *Writing Themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people*, Australian Research Centre in Sex, Health and Society: La Trobe University.

²⁹ Leonard W et al. 2012, *Private Lives 2: The second national survey of the health and wellbeing of GLBT Australians*, Monograph Series Number 86. Melbourne: The Australian Research Centre in Sex, Health & Society, La Trobe University.

³⁰ James S et al. 2016, *The Report of the 2015 U.S. Transgender Survey*, Washington, DC: National Center for Transgender Equality.

³¹ McNair R et al. 2017, *LGBTW Homelessness: Risks, Resilience and Access to Services in Victoria*. Gay and Lesbian Foundation Australia. Retrieved from <http://www.lgbthomeless.com/wp-content/uploads/2017/09/LGBTI-Homelessness-project-Final-report-September-2017.pdf>

people and their families.^{32 33} There is variance in the accessibility of mainstream services for LGBTI children and young people, and also possible gaps and challenges for children and young people who are transitioning from child or youth health services into adult services.

"Some therapists or counsellors might not actually know how to support trans young people, or know how to properly discuss gender identity with a young person, and so they might not actually address it." 2018 Advisory Committee member

Specialist services to support LGBTI children and young people are limited in number, resourcing and in their capacity to provide support across Western Australia. The Gender Diversity Service was established in 2015, and provides multidisciplinary assessment, care, and treatment for children and young people who identify as trans or gender diverse. Concerns have been raised about the inadequacy of funding and staff resourcing available for this service to be able to meet the needs of the children and young people accessing it. In particular, there are concerns about the impact of the waitlists for the service, which may result in deterioration of mental health and wellbeing in children and young people, as well as possible unwanted physical changes that may be experienced (for example, the onset of puberty) whilst awaiting appointments.

Further gaps exist in the provision of services for children and young people with an intersex variation and their families. There are no specialist clinics to support intersex children or young people, no long-term social workers or psychological support for these children and their families, and limited funding and capacity to access a second opinion in relation to the treatment and care of children and young people with an intersex variation.

Given the mental health issues affecting many LGBTI children and young people and the importance of accessing appropriate and timely support, it is important that services are expanded and resourced to support the demand.

Young people involved in the Commissioner's Advisory Committees discussed a lack of activities and events for LGBTI children and young people, and LGBTI-inclusive safe spaces. Committee members felt that these spaces and activities were important to provide them with an opportunity to come together with other LGBTI

³² Commissioner for Children and Young People 2018, *Final report: Commissioner for Children and Young People's 2018 Advisory Committees*. Retrieved from <https://www.cyp.wa.gov.au/media/3632/final-report-commissioner-for-children-and-young-people-advisory-committee-2018.pdf>

³³ National LGBTI Health Alliance 2016, *National lesbian, gay, bisexual, transgender and intersex mental health and suicide prevention strategy: A new strategy for inclusion and action*, National LGBTI Health Alliance, Sydney.

children and young people, experience a sense of belonging, and develop new friends and supports within the community.³⁴

Diverse identities of LGBTI people

Some of the challenges faced by LGBTI children and young people may be further exacerbated for those who have other distinct identities or experiences, including children and young people who are Aboriginal, from culturally and linguistically diverse backgrounds, have a disability, are asylum seekers or refugees, are from a religious faith community, or from regional or remote locations.^{35 36} The experiences of these LGBTI children and young people may be very different to others, and these circumstances may impact a child or young person's willingness to 'come out' to family and friends, the level of support they receive from their peers, families, or the wider community, access to services, as well as their experience of other forms of discrimination.³⁷

What is already being done to support LGBTI children and young people in Western Australia?

Direct service provision to LGBTI children and young people

There are a small number of dedicated government-funded services available to support LGBTI children and young people in WA, however, these services typically operate on limited funding and with limited service capacity across regional areas.

The services that exist include:

- A specialist Gender Diversity Service that provides support, consultation and treatment for trans or gender diverse children and young people

³⁴ Commissioner for Children and Young People 2018, *Final report: Commissioner for Children and Young People's 2018 Advisory Committees*. Retrieved from <https://www.cyp.wa.gov.au/media/3632/final-report-commissioner-for-children-and-young-people-advisory-committee-2018.pdf>

³⁵ United Nations 2016, *Living Free & Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, United Nations. Retrieved from <http://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

³⁶ Morris S 2016, *Snapshot of Mental Health and Suicide Prevention Statistics for LGBTI People and Communities*, National LGBTI Health Alliance, Sydney, Australia. Retrieved from <http://lgbtihealth.org.au/wp-content/uploads/2016/07/SNAPSHOT-Mental-Health-and-Suicide-Prevention-Outcomes-for-LGBTI-people-and-communities.pdf>

³⁷ Hillier L et al. 2010, *Writing Themselves in 3: The third national study on the sexual health and wellbeing of same sex attracted and gender questioning young people*, Australian Research Centre in Sex, Health and Society: La Trobe University.

- The Gender Pathways Service which provides a specialist assessment and consultation service for trans or gender diverse young people aged 17–24, provided by YouthLink
- Peer-support services for LGBTI young people provided by the Freedom Centre
- Educational and inclusion support programs for school settings provided by Inclusive Education WA
- Other services to provide education and information sessions on LGBTI issues and telephone counselling provided by Q Life (through Living Proud).

A number of other localised services and programs are being offered by local community and/or volunteer-run organisations, making it difficult to have a comprehensive picture of what is occurring across the State.

The WA State Government is currently in the process of developing the WA LGBTI Health Strategy,³⁸ which will provide a framework for understanding and addressing the specific health and mental health challenges facing LGBTI people in WA. The Western Australian Youth Health Policy also recognises LGBTI young people as a priority population with particular vulnerabilities, and the need for health services to be accessible, inclusive, and supportive of their diverse needs.³⁹

Legal recognition of gender identity

"Having documents that reflect one's sense of identity is important for employment, access to healthcare and medicines and also for self-affirmation and acceptance by the government that - yes - this is who you really are."

Consultation participant, Australian Human Rights Commission project⁴⁰

It is important that trans and gender diverse people, and people with intersex variations, are able to have their gender identity legally recognised, where they wish to do so, and have personal documents and identification which reflect their gender identity and name. The *Gender Reassignment Act 2000* sets out the current legislation around this in WA, and describes a process for a formal application through the Gender Reassignment Board of Western Australia. A review of this legislation has occurred, with the Law Reform Commission making recommendations to improve processes associated with the legal recognition of people who are trans,

³⁸ Cook, R 2017, *Funding boost for LGBTI community*, Ministerial Media Statements, <https://www.mediastatements.wa.gov.au/Pages/McGowan/2017/11/Funding-boost-for-LGBTI-community.aspx>

³⁹ Western Australian Department of Health 2018, *WA Youth Health Policy 2018–2023*. Perth: Health Networks, Western Australian Department of Health.

⁴⁰ Australian Human Rights Commission 2009, *Sex Files: the legal recognition of sex in documents and government records* (Sex Files), Australian Human Rights Commission.

gender diverse or have intersex variations.⁴¹ This review occurred in recognition that the current process can be quite daunting and difficult to navigate, which presents barriers to some people from being able to have their identity recognised.

Legal protections for LGBTI people in Western Australia

The WA *Equal Opportunity Act 1984* (EO Act) makes it unlawful to discriminate against a person because of their sexual orientation (specifically, heterosexuality, homosexuality, lesbianism and bisexuality) or a persons' gender history where they have been issued with a recognition certificate under the *WA Gender Reassignment Act 2000* (or equivalent), in certain areas of public life.

Anyone who believes they have been discriminated against on these grounds is able to lodge a complaint with the Equal Opportunity Commission who will assess the complaint and, if accepted, work to investigate and conciliate the complaint. Where conciliation is not successful, or where the complainant is unsatisfied with the outcome, a referral can be made to have the matter addressed by the State Administrative Tribunal. If the Commissioner for Equal Opportunity has determined the matter has substance, the complainant may get assistance from the Commission at the Tribunal.

As it currently stands, the EO Act provides protection for discrimination on the grounds of sexual orientation, however the definition of *sexual orientation* refers only to heterosexuality, homosexuality, lesbianism or bisexuality. This means that people who identify as other than those diverse sexualities listed, such as pansexual or asexual, are not protected under the current definition of sexual orientation used in the EO Act.

The EO Act provides limited protections for trans and gender diverse people, only providing this for a 'gender reassigned person' who has been issued with a recognition certificate under the *Gender Reassignment Act 2000*, and who is 'living or seeking to live, as a member of the opposite sex'. This means that there are no protections for people who have other diverse gender identities, who may be in the process of transitioning, are unable to meet the requirements to apply for a Gender Reassignment Certificate due to their age, or do not wish to medically transition. This lack of protection may disproportionately affect trans children and young people, given their age and that they may be questioning their gender identity or in the process of transitioning. These protections are provided through the Commonwealth *Sex Discrimination Act 1984* (SD Act) after this Act was amended in 2013.

⁴¹ Law Reform Commission of Western Australia 2018, *Project 108 Final Report: Review of Western Australian legislation in relation to the registration or change of a person's sex and/or gender and status relating to sex characteristics*, Law Reform Commission: Perth.

In addition to this, the EO Act is limited in its ability to investigate complaints where people have experienced multiple forms of discrimination, for example, where they may have been discriminated against because of their gender identity or sexuality, as well as other factors including their cultural background, age or because they have a disability.

The SD Act makes it unlawful to discriminate against a person on the basis of sexual orientation, gender identity and intersex status under federal law. This Act includes more inclusive definitions and addresses gaps that exist at a state or territory level. People, other than state public sector employees, are able to make a complaint through the Australian Human Rights Commission (AHRC) if they believe they have been discriminated on the grounds of their sexual orientation, gender identity or intersex status. While broader in its scope, the limitation of the SD Act and the AHRC process is that if the matter is not resolved through conciliation, the complainant needs to progress their own matter to the Federal Circuit Court or Federal Court.

There are number of exceptions in the Western Australian EO Act and the Commonwealth SD Act for faith-based and religious bodies and organisations, including religious schools or religious run community support services, which potentially do not make it unlawful to discriminate against a person due to their sex, sexual orientation and gender identity if it can be demonstrated that the exclusion is in keeping with the doctrines, tenets or teachings of that religion. These exceptions mean that LGBTI children and young people, or the child of LGBTI parents, may be denied access to a religious or faith-based school, or put in a position where they have to hide their gender identity or sexuality.

The Commissioner for Children and Young People has raised concerns about the impact of these exceptions in a of submissions to a number of inquiries and reform processes, including the Commonwealth Senate Legal and Constitutional Affairs Committee Inquiry on *Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff*.⁴² These submissions have outlined concerns about the potential impact that the exemptions have on both educational opportunities and experiences, as well as the mental health and wellbeing of the child or young person.

"Where I live, the only school that offered ATAR subjects was the religious school, so you had to go there if you wanted to go on to university. This means if you were excluded there, you couldn't go on and continue your education and achieve your goals." 2018 Advisory Committee member

⁴² Commissioner for Children and Young People 2018, *Submission to Senate Legal and Constitutional Affairs Committee, November 2019*. Retrieved from <https://www.cyp.wa.gov.au/media/3631/submission-to-senate-legal-and-constitutional-affairs-committee-november-2018.pdf>

"Having the religious exemptions (sic) in place gives a message that LGBT people are second class citizens. It makes people feel like a freak – it tells a kid they're an outsider and don't belong there." 2018 Advisory Committee member

The Equal Opportunity Commission in WA has previously undertaken some work to highlight the issues facing LGBTI people in WA and provide some guidance towards addressing their needs, including an annual lecture series on gender diversity and also guidelines for schools. However, the Commission's remit is very broad and has experienced capacity constraints under funding changes.

The Australian Human Rights Commission has a broad responsibility to promote and protect human rights in Australia. They have undertaken a number of major projects to better understand and promote community understanding about the issues affecting LGBTI people in Australia, as well as advocacy to improve federal laws and policies to protect the rights of LGBTI people.⁴³

'Conversion' interventions attempt to change a person's sexuality or gender identity, and are widely recognised as having a harmful impact on LGBTI individuals. However, there are gaps and inconsistencies in relation to the way that legislation is applied to prevent, and protect individuals from, this harmful practice. In Western Australia, there is currently no legislation or regulation around this practice, and no recourse avenues for individuals who have experienced or been impacted by it.

The WA State Government has made a commitment to adopting the first National Code of Conduct for Health Care Workers (National Code), with the view that this code provides a minimum standard of conduct and practice and that health complaints agencies would take responsibility for receiving complaints relating to health care workers. This would effectively prohibit the delivery of 'conversion' therapies in health settings, however, given 'conversion' practices are often conducted informally in religious settings, alternative methods must be explored to provide protections for children and young people who may be, or have been subject to the harmful practice. A report by the Human Rights Law Centre provides more details on the existence and nature of the practice in Australia, as well as recommendations which would enhance protections, including legislation to prohibit practices, the need for community interventions in settings where 'conversion' interventions may take place and a specific focus on ensuring protections for children and young people.

⁴³ Australian Human Rights Commission 2015, *Resilient individuals: sexual orientation, gender identity and intersex rights*, Australian Human Rights Commission.

What needs to be done to promote better inclusion of LGBTI children and young people and better outcomes?

In order to improve the outcomes of LGBTI children and young people, and support better inclusion, there needs to be clear direction, priorities and oversight at a systemic level. The WA State Government's approach to addressing outcomes for LGBTI people has predominantly sat within the health and mental health portfolio areas, for example, through a small amount of mental health funding for LGBTI services, and the development of an LGBTI health strategy. However, without a clear responsibility and broader approach to ensuring the rights and protections of LGBTI people, change and progress will likely occur in an ad-hoc manner, and result in government departments responding to or developing their own priorities, processes, policies and strategies relating to LGBTI people in isolation. A whole-of-government plan or strategy would provide important direction and guidance to achieve cross-sector change and improve LGBTI inclusion and outcomes. Examples of these include the South Australian Strategy for the Inclusion of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer People (LGBTIQ) 2014–2016⁴⁴ or Victoria's Equality Branch of the Department for Premier and Cabinet and appointment of a Commissioner for Gender and Sexuality.

Key areas for reform

Strengthening protections and recognition

- Anti-discrimination laws, policies and strategies should offer full protections and promote the rights of all LGBTI children and young people, including strengthening the *Equal Opportunity Act 1984* to provide protections for trans or gender diverse children and young people and people with diverse sexualities.
- Amending the *Equal Opportunity Act 1984* to recognise and allow for people to make complaints where they are subject to multiple forms of discrimination, for example, due to their gender identity, sexuality, cultural background, age, etc.
- Removal of religious exceptions which allow faith-based and religious schools and organisations to discriminate against LGBTI children and young people.
- Explore and implement options to prevent children and young people being subject to 'conversion' interventions to change their gender identity and sexuality, including the introduction of legislation, regulation and targeted education and intervention strategies in faith-based and religious settings.

⁴⁴ Department for Communities and Social Inclusion 2014, *South Australian Strategy for the Inclusion of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer People 2014 – 2016*, Government of South Australia, Adelaide. Retrieved from <https://publicsector.sa.gov.au/wp-content/.../20140501-DCSI-LGBTIQ-Strategy.pdf>

- Rigorous and evidence-based protocols used to guide decision making about surgery on infants and children with an intersex variation, with decisions considering immediate medical need as well as deferring such decision making until the infant or child is able to provide informed consent.
- Simplify the processes and systems required to legally change gender, sex markers, and names, and ensure that these processes are accessible and viable options for children and young people.
- Ensure there are recourse avenues for children and young people who have experienced discrimination and harassment as a result of their identity.

Strategic approaches to promote LGBTI outcomes and inclusion in WA

- Development of a whole-of-government strategy to ensure policies and practices of all government organisations and funded services are inclusive of LGBTI children and young people, including, but not limited to:
 - health
 - education
 - employment
 - housing and accommodation
 - child protection
 - disability
 - sport and recreation
 - justice
 - regional development.
- Establishing clear responsibilities and systems of accountability within government to promote the rights and monitor the wellbeing of LGBTI children and young people.
- Strategic mechanisms to ensure the voices and experiences of LGBTI children and young people are used to inform public policy and decision making.

Recognition and support of LGBTI children and young people as a priority group in service provision

- Implementing whole-school approaches to LGBTI inclusion across all WA schools, to ensure there are consistent and robust approaches to LGBTI inclusion and diversity. This includes educating students and staff about diversity, ensuring LGBTI inclusive school policies and practices (for example bathroom use, uniforms, same-sex partners being allowed at school formals), providing support to LGBTI students and staff, reducing bullying and discrimination, and ensuring the inclusion and representation of LGBTI people across staff and leadership and in the curriculum.
- Building the capacity of services and professionals to support LGBTI children and young people, in particular the medical and health sector (including GPs,

psychologists etc.)⁴⁵ and the education sector.⁴⁶ This might include ensuring inclusive policies, processes and practices, as well as professional development and training.

- Recognition of LGBTI children and young people as a priority group for mental health interventions and service provision, as well as in statewide health and wellbeing strategies (e.g. health strategies, education strategies etc.).
- Mapping the current provision and demand for services to LGBTI children and young people, and utilising this to plan for adequate funding and the provision of services to address the physical, social and emotional wellbeing needs of LGBTI children and young people across WA, including regional and remote communities.
- Increased resourcing to be provided to the Gender Diversity Service to enhance capacity, reduce waitlist, meet demand and provide timely support to trans and gender diverse children and young people.
- Specific strategies to ensure appropriate housing and accommodation for LGBTI young people experiencing homelessness or housing instability.
- The development and resourcing of a specialist clinic and specific support services for intersex infants, children and young people and their families, as well as resourcing to allow for second opinions for care and treatment pathways.
- Holistic and integrated service provision which is responsive and supportive of individual needs and differences of LGBTI children and young people, for example, those who are Aboriginal, have a disability, from a culturally and linguistically diverse background, or from a religious faith community.
- Improve access and awareness of trans and gender diverse health care, including having clear referral pathways to appropriate services.
- Ensuring that coordinated transition occurs for young people transitioning from child and youth health services to adult health services.
- Evaluation of new and existing services to ensure the inclusion of LGBTI people and that services are meeting their needs.
- The delivery of LGBTI child and youth events and activities as a way to provide safe spaces for young people to develop friends, networks and improve a sense of connection.

Improving community understanding and acceptance

- Community awareness and education strategies directed at children and young people, parents, professionals and the general community to improve

⁴⁵ Strauss P et al. 2017, *Trans Pathways: the mental health experiences and care pathways of trans young people. Summary of results*, Telethon Kids Institute, Perth, Australia.

⁴⁶ United Nations 2016, *Living Free & Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, United Nations. Retrieved from <http://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

understanding about LGBTI children and young people, promote inclusion and address discrimination, including age-appropriate sexuality education for children and young people⁴⁷ and information and support for parents and families.

- Community awareness and education strategies which address discrimination and harassment towards LGBTI people, and which promote respect, acceptance and support for all members of the LGBTI community.
- More positive representation about LGBTI people, and acknowledgement of their contributions, in the media.

Understanding the needs and experiences of LGBTI children and young people

- Targeted research and consultation to improve understanding about some of the specific needs of LGBTI children and young people across the State.
- Improved data collection processes within service provision and population data studies, to be inclusive of LGBTI status and used to inform public policy and service development.⁴⁸
- Use of genuine consultation processes to ensure that LGBTI children and young people have a voice in decision making that affects them.
- Greater consultation and research undertaken to understand the specific needs and experiences of children and young people with an intersex variation.
- Investment into national and international databanks to improve the diagnosis, monitoring, outcomes, and decision making relating to individual intersex conditions.
- Greater consultation and research undertaken to understand the specific needs of LGBTI children and young people who also have other diverse identities, including children and young people who are Aboriginal, culturally and linguistically diverse, from regional or remote areas, or who have a disability.

⁴⁷ United Nations 2016, *Living Free & Equal: What States are doing to tackle violence and discrimination against lesbian, gay, bisexual, transgender and intersex people*, United Nations. Retrieved from <http://www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf>

⁴⁸ Ansara G 2016, *Making The Count: Addressing Data Integrity Gaps In Australian Standards For Collecting Sex And Gender Information [White Paper]*, Sydney, National LGBTI Health Alliance