



Submission to the Australian Human
Rights Commission's Consultation on

Protection from discrimination on the
basis of sexual orientation and sex
and/or gender identity

by

Barbary Clark, Lorene Gottschalk
and
Spider Redgold
for

Erinyes Autonomous Activist Lesbians



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Definition of terms

The Commission might find that some of the terms and definitions used in this submission are long, complex and cumbersome. However they are necessary to convey the meaning we intend. For example, the simple term 'woman' no longer describes women-born-female as it has been extended to be used as a collective noun, which includes MTCF. However, the invisibility of women-born-female, raised as girls, in changes to anti-discrimination legislation, has resulted in the loss of women-born-female rights and thus there is the need for such specific definitions for the groups that this submission represents. Definitions of terms that can potentially be misinterpreted follows:

- Woman – one who is born with female sex characteristics.
- The term lesbian refers to women who are emotionally and sexually attracted to other women. Wherever, possible in this submission, the term lesbian is used in preference to homosexual and does not include bisexual women.
- Living in society as woman – we use this term to be quite clear that we are referring to women and lesbians who are born-female, who are not living as female to male transgendered people.
- Male-to-Constructed-Female and Female-to-Constructed-Male – using the word 'constructed' clearly differentiates between women who were born female and have biologically female bodies and transgendered people who have received hormone treatment or who have been surgically changed to have an apparently female body.
- Heterosexism: a belief that heterosexuality is or should be the only acceptable sexual orientation "and that alternative sexualities pose a threat to society" (Australian Medical Association: 2002)
- Lesbophobia –refers to a hatred of lesbianism. However, as pointed out by Kirk and Madsen (1989:xxii) the term phobia refers to "fear of". The emotion experienced by those called lesbophobes is hatred rather than fear.
- Homophobia and transphobia – the definition of lesbophobia can be applied here by substituting the words homophobia or transphobia for lesbophobia.
- Internalised lesbophobia – the process where society's conditioned hatred of Lesbians is believed by lesbians and this self-stigmatisation affects their self worth
- Gender and sex -- The word 'sex' refers to biological characteristics and the word 'gender' refers to socially constructed behavioural characteristics arbitrarily assigned to either women or men.

About Erinyes Autonomous Activist Lesbians

Whilst Erinyes is an organisation that advocates for the rights of lesbians broadly including in the areas of rights in the workplace, health rights, education and so forth Erinyes believes that the issue of gender identity recognition is urgent and not only erodes lesbians rights but the rights of all women. Both the idea of gender, and any talk of gender identity, hide hatred of Lesbians and all women born and raised female.

Erinyes is making this submission because of grave concerns about the potential violation of the rights of women who are born and raised female in particular those who are Lesbians, that is posed by the proposed legislation. However all women-born–female, raised as girls, not only Lesbians, are affected by the proposed legislation. It is important to reflect on the fact that women-born–female, raised as girls are 50% of the Australian population.

Erinyes draws on instances in recent history where the rights of lesbian-born-female, raised as girls, have been transgressed or denied by male-to-constructed-female (MTCF) transgendered persons who have realised that they are still attracted to women after surgery and have then sought to take on lesbian identities. Whilst calling themselves lesbians these transgendered people seek to enter spaces and events that have specifically been designed to provide a forum for women-born-female, raised as girls to share their experiences of being a lesbian in a patriarchal world; experiences with which MTCF who have been born with male bodies and raised male cannot empathise.

In addition we draw on instances where MTCF, whether or not they identify as lesbians, have sought to enter, as both workers and clients, women’s refuges against violence or specialised sexual assault services for women survivors. These places have been designated as ‘places of safety’ for traumatised women. Such spaces are also important to lesbians-born-female, raised as girls, as they too are victims of male violence. This issue of safe space equally applies to workers and clients in Women’s Health Services where women seek health treatment or advice from services that specialise in female bodies.

Introduction

Women-born-female, raised as girls seek equal rights before the law; rights guaranteed by various international bodies including the United Nations. Lesbians are the canary in the mine of Australian society i.e. when human rights start to disappear; theirs are some of the first to go.

Changing laws, in itself, does not change values, attitudes and beliefs. However, legislation may, eventually, affect the outward expression of those values, attitudes and beliefs.

Erinyes supports the protection of transgender and other gender non-conforming people from violence and humiliation.

Protection on the basis of sexual orientation should be contained in federal anti-discrimination laws prohibiting discrimination. However the inclusion of the category of 'gender identity' is undesirable unless it is able to provide equal protection for all identities and does not privilege one identity over another, thus inadvertently providing a context where the rights of one group violate the rights of another. At present, the inclusion of 'gender identity' in the proposed anti-discrimination legislation excludes, or works against, women who are born with female bodies and raised female.

Lesbians struggle against erasure. That lesbians have an identity that is different to that of gay men and certainly different to that of male-to-female transgendered peoples, is often not recognised by various institutions and by various legislations. It has been necessary to defend our distinct lesbian identity even within the Sydney and Melbourne AHRC consultation processes in October and November 2010.

The discrimination faced by lesbians is greater than the discrimination faced by heterosexual women because lesbians are discriminated against both as women and as lesbians. What distinguishes the human rights violations of Lesbians is based firstly on misogyny and then on homophobia. The combination of misogyny and homophobia results in an intensification of discrimination, harassment and vilification that is greater than that against heterosexual women, gay men and transgendered people. Lesbians'-born-female, raised as girls, rights are not protected under the umbrella term of GLBTI and will be seriously disadvantaged by the inclusion of gender identity.

It is the experience of lesbians that the idea of 'gender' hides misogyny and lesbophobia and it is because of this that the authors of this submission, on behalf of Erinyes, focus specifically on 'gender identity'.

1. What benefit would there be in federal anti-discrimination laws prohibiting discrimination on the basis of sexual orientation and sex and/or gender identity?

One of the major potential benefits in federal anti-discrimination laws prohibiting discrimination on the basis of sexual orientation and sex and/or gender identity might be that Lesbian-born-female, raised as girls, living in society as women might have the human rights guaranteed them in the *Universal Declaration of Human Rights and International Covenant on Civil and Political Rights* and deemed desirable in the *Yogyakarta Principles* and the *United Nations General Assembly's Statement on Human Rights, Sexual Orientation and Gender Identity* (2008) to which Australia is a signatory: equality before the law.

Erinyes agrees that protection on the basis of sexual orientation should be contained in federal anti-discrimination laws prohibiting discrimination. However, we do not find that there is need or benefit in protecting gender identity.

The category of 'gender identity' is problematic for women-born-female, raised as girls. Lesbian identity is based in sexual orientation and from being born female. This identity can only be experienced by women-born-female, who are attracted to other women-born female both emotionally and sexually; 50% of the population. As one of our members states,

"My gender identity is woman-born-female but not feminine". I do have a Lesbian identity that makes me feel different from heterosexual women. I personally do not have a Lesbian gender identity."

Sex discrimination legislation is designed to protect women from discrimination. Other legislation is designed to protect people from discrimination on grounds such as race, age, disability, sexual orientation, or other characteristics. Transgendered people have the right to be protected from discrimination as transgendered people.

We support the protection of transgender and other gender non-conforming people from violence and humiliation. We accept that transgender persons strongly desire to be recognised as a different sex but we argue that they *do not, and cannot*, become that sex. Therefore transgender people should logically retain only their rights to sex discrimination protection in their original sex. All other discrimination protections must come from human rights and protection through specially named transgender rights or the criminal code but not from sex discrimination protection as women.

1.1 Including Gender Identity Protection Creates Injustice

Inclusion of the category of gender identity is a case of 'deep colonisation' (Rose, 1996). To include the category of gender identity essentially means that any man who says that he identifies as a woman (and he may be pre-operative or post-operative) has the rights of a woman. But, more importantly, he has the right to enter any women-only spaces for example refuges from domestic violence. Such rights effectively undermine the legislation that is supposed to protect women, that is, the *Sex Discrimination Act* and various *Equal*

Opportunity Acts in the States and Territories. The result is that one gender identity, male-to-constructed-female (MTCF) transgendered people, is privileged over another (women-born-female, raised as girls). However it is important to consider that the potentially disadvantaged group includes all women-born-female, both lesbian and heterosexual. This means that the rights of a small minority infringe the rights of 50% of the population. The experiences of women-born-female, raised as girls are significantly different from the experiences of those who are born and raised male, but uncomfortable with their gender.

Despite the discomfort with their bodies MTCF have, nevertheless, been raised and conditioned as male, and raised to see themselves as belonging to the dominant male culture, with a sense of male entitlement.

Any legislative change should recognise that the needs of women-born-female, raised as girls, and the needs of Lesbians-born-female, raised as girls, in many instances differ from those of male-to-constructed-female (MTCF) transgendered people.

If the Australian Human Rights Commission decides to include gender identity as a protected attribute, then separate categories of women-born-female, raised as girls, and Lesbians-born-female, raised as girls, living as women in society must be included in federal legislation. This is to ensure that the human rights of all, while not excluding women-born-female from being fully protected.

When the definition of 'women' is repurposed to include male-to-constructed-female transgendered people then women-born-female, raised as girls are left with no word to express their identity and experiences of women-born-female. The impact of not having words to describe a personal feeling or experience is well researched in the context of ethnic and indigenous people. However this impact is now experienced by women-born-female.

The expansion of the definition of women has also resulted in women born and raised female being denied the freedom to choose to associate specifically with other women born and raised female in certain circumstances such as festivals, counselling groups, women's refuges, spiritual practices, sporting teams, and Lesbian social support groups.

The legislative changes, which seek to be inclusive of MTCF transgendered people, have changed the definition of what a woman is. It is now illegal for a woman to claim, or even name publically, an identity that is independent of the transgender experience.

This denies women-born-female, raised as girls access to any space to meet separately with their own kind when it is important for them to do so. Examples are Women's Refuges for women who are escaping violence, Centres Against Sexual Assault (CASAs) that have specifically been formed to provide a safe space for women escaping from male violence. The category of gender identity will undermine the very reasons that such spaces were set up in the first place by allowing men and transgendered people who have been raised as male access to such spaces, either as workers or as clients. (See Gottschalk 2009)

Jeffreys in her 2008 peer reviewed article, *They Know it When They See It: the UK Gender Recognition Act 2004* makes the argument that legislation that legitimises the idea of gender identity, and allows men who seek to be women the rights of all women, conflicts with the rights of women born and raised female to women's spaces. Jeffreys also points out that this legislation conflicts with the rights of women who are partners of men who have transgendered during the relationship.

1.2 All Gender Identities Are Socially Constructed

The historical, social and political context in which a person lives must be considered when interpreting their experiences. We argue that the personal experiences of transgendered people, including their understanding of identity, reflect the dominant attitudes, values and beliefs in the time in which they were born and raised.

We draw on the work of Gottschalk (2003) to illustrate the spurious connection between childhood gender non-conformity and adult identity. She points out that, throughout the 20th century, the underlying belief about the aetiology of homosexuality has been that it is essential or biologically based, although biological theories were mitigated by the theories of feminism during the 1970s. For women who became Lesbians in the 1950s and 1960s, a belief in a biological basis was overwhelmingly the dominant account. In the 1970s and early 1980s, a choice to be a Lesbian was the dominant account, and since the 1990s, there is a tendency to revert to biological explanations.

Biological or essential explanations of homosexuality are usually based upon an assumption of childhood gender non-conformity, that is, that a Lesbian is in some way masculinised and a gay man in some way feminised. Such explanations are used in contemporary times as explanations for transgenderism. Commonly, and also because of the assumption of biology such evidence of gender inversion is sought in childhood, not only by Lesbians, gay men and transgendered peoples but also by those who theorise about them. Gottschalk (2003) and in current research on transgenderism being prepared for publication, challenges this theory. For example Gottschalk (2003) commenting on gender non-conformity in Lesbians points out the often ignored fact that childhood gender non-conformity is even higher in heterosexual women, than it is in gay men. Thus there is a strong challenge to the theory that homosexuality is related to congenital gender inversion. It was pointed out by Gottschalk that the relationship between childhood gender non-conformity and adult sexuality or gender identity is subject to the meaning individuals give to their childhood gender non-conformity.

We propose that the idea of childhood gender non-conformity is now, in the attitudes and beliefs, and social context of the early 21st century, being adopted as evidence of transgenderism in the people who show gender non-conformity. In the 20th century gender non-conformity was experienced by Lesbians, gay men and heterosexual women, and to a lesser extent by heterosexual men (who are more strongly conditioned to be masculine), Thus people, who in the past may have become Lesbians or gay men or even gender non-conforming heterosexual men and women, are now interpreting their behaviour as transgender.

We acknowledge transgender people's discomfort with their assigned gender role. Many Lesbians, gay men and heterosexual women and, to a lesser extent, heterosexual men also experience discomfort with their assigned gender roles. The idea that transgendered people are 'born in the wrong body' is rejected by the evidence. We assert that transgenderism is a social construct that has been too easily associated with 'becoming a woman', and that it is short sighted and dangerous to legislate as though there exists a proven biological basis.

1.3 Gender Identity Protection Conflicts with Sex Identity Protection

Recent research provides evidence of how the inclusion of gender identity in the category of women works against women born and raised female. See for example peer-reviewed research, by Gottschalk, *'Transgendering Women's Space: A feminist analysis of perspectives from Australian women's services'* (see also Vancouver Rape Relief and Women's Shelter, 2006; Sweeney, 2004; Mantilla, 2000; Greer, 1999; Jeffreys, 1997; Raymond, 1994; Kline (unpublished)). In Gottschalk's research the women who were in charge of refuges, CASAS and Women's Health Centres were interviewed regarding their experience with transgender inclusion, both as clients and as workers. The findings were that those organisations that had not sought exemptions have policies of including male to constructed female (MTCF) transgendered people as clients and workers and that, where transgendered people had been employed, or were clients of the service this had frequently turned out to be problematic. In particular, it has been problematic for the female clients, meaning women-born-female and raised as girls. These women were seeking safe space, or refuge, away from men for reasons of sexual or other violence or were seeking advice in a service that specialises in female bodies and women's psychology. Male to constructed female (MTCF) transgendered people, while not necessarily intending to be threatening, were to the women present, recognisably born as men and this caused the women present, especially women clients, to feel threatened. On other occasions, male-to-constructed-female (MTCF) transgendered people behaved inappropriately, for instance by harassing women-born-female clients and, in their behaviour, showing a lack of understanding of women's experiences and women's needs (Gottschalk, 2009).

Similar problems have been experienced in other organisations, in particular the Vancouver Rape Crisis Centre, which took its case for the right to employ only women-born female, raised as girls all the way to the Canadian High Court. The Centre won the legal challenge to be able to exclude male to constructed female (MCTF) transgendered people on the basis that the women clients needed a safe space (VRRWS, 2006). The VRRWS decision has also been used as a legal precedent for protection of rights for other oppressed groups. For example in a case where a white man took legal action because he was refused employment for a senior position in a Canadian indigenous group, the VRRWS decision was used to support the rights of the indigenous group to exclude white men

In addition, other organisations, for example a Lesbian social and support group in Vancouver that had to close down because they could not afford the legal expense of asserting their freedom of association when challenged by a MTCF transgendered person.

Women-only social groups, such as that which closed down in Vancouver, are under threat. Such groups are set up with the aim of providing a forum for women to share their

experiences. These experiences are foreign to male to constructed female (MTCF) transgendered people as their experiences are radically different. Male to constructed female transgendered peoples who have sought access to women-only groups have repeatedly demonstrated that they do not empathise with women (Gottschalk, 2009; Sweeney, 2004; Mantilla, 2000; Jeffreys, 1997). One example of this was an MCTF transgendered person, who worked as a counsellor in one of the centres in Gottschalk's study. This employee regularly conducted workshop/support groups for lesbians, bisexual women and MTCF transgender people in the same group, failing completely, to understand that the experiences and needs of each of these groups are very different. (Gottschalk 2009)

Most transgendered people are MTCF and their 'rights' infringe on women's rights. It does not work in reverse. For example there is anecdotal evidence of a female to constructed male (FTCM) trying to enter male space and being easily ejected by the men who run and frequent the place (for example, a leather club). If a MTCF tries to enter women space they usually succeed by bullying their way in. This means any man, either post-operative or with penis, can insist on entry, with Australian state law to support their preference for being considered as a woman. There have been cases of sexual assault and sexual harassment. For example, naked men in women's showers at Michigan Women's Festival, a MTCF being housed alone in a three bedroom women's refuge in Australia, thus denying refuge to other abused women who might have needed the space. The fact that all transgendered people, both MTCF and FTCM, are put into women's gaols in the UK is evidence that men use violence to exclude FTCM from their spaces. The contradiction here is that transgender people are supposedly the sex they claim to be and yet FTCM transgender people do not go to men's prisons, rather they are sent to women's prisons.

1.4 Biology Is Not Destiny, But It Is A Significant Contributor To The Construction Of Personal And Social Gender

MTCF wrongly construct what a woman is, or what they define as female - and the femaleness they embrace is one that most women would reject - ie stereotypical feminine characteristics. We argue that identity, gender, sexual identity and homosexuality are social constructions. Socialisation is the process by which social norms and personal realities are made known and congruent. People's reality is shaped by the social norms of the culture to which they belong; such norms change over time (Berger and Luckman, 1966). Identity is developed through interactions with others of the same social group and shaped by relationships with others inside and outside the social group. Likewise identity development, which can be likened to personality development is also shaped by interpersonal relationships and influenced by social forces.

It has been argued that gender is fixed in the first trimester of foetal life however that is a misrepresentation of the biological process. It sex, not gender that is developed in the early weeks of foetal life. If the foetus is not influenced by a Y chromosome then normal human development continues and a women born female is birthed. If a Y chromosome is present then male sexual characteristics begin to develop.

Gender or gender identity does not equal sex. The range of 'sex' is broad although in our society only two are named and recognised: female and male. That only two are named is

due to an overlay of social construction that puts in place two genders, that is, feminine and masculine (Hawthorne, 2004).

The word gender is used inappropriately to refer to biological sex. Sex refers to physiological characteristics and gender refers to socially constructed characteristics which according Catharine MacKinnon (1982) are arbitrarily assigned to either women or men based on the social requirements of heterosexuality. This arbitrary arrangement institutionalises male dominance and female subordination and is the basis of discrimination against women, Lesbians and all others who are not male, that is gay men and male to constructed female transgender people.

In reality the behaviours of masculine or feminine can be carried out by people who fall anywhere along the spectrum of female sex to male sex bodies. It is an abuse of the body to chemically or surgically change the physical body to align with prescribed or preferred gender behaviour. All gender behaviour should be, freely available to any person regardless of their biological sex.

Another member states:

"I identify as a Lesbian-born-woman born and raised female. And from this life experience of being born/raised female my identity evolves. MTCF transgendered people do not have this evolution of female identity, even if they feel they would like to be female. Their identity evolves into a confused one, caused by their discomfort with male gender characteristics, but never becomes female. They can only ever emulate what they think a woman is because they have never been a woman, or female child, so they can never really know what it is to be female."

1.5 Problems with Lesbian Invisibility and Being Subsumed Under 'Women'

Some very major problems for Lesbians result from them being rendered invisible within the group, 'women'.

When important research, such as *Australian Longitudinal Study on Women's Health (Women's Health Australia) (ALSWH)* excludes any data collection about lesbians there is no recourse to be found in either the Sex Discrimination Act or the Age Discrimination Act.

This ongoing refusal, by the people running the Australian Longitudinal Study on Women's Health (Women's Health Australia) (ALSWH), to ask the older cohort a question about sexual orientation is explained by them below,

'...As our first priority has to be to the maintenance of the cohorts over time, we are careful to avoid asking questions that are associated with risk of offending, or which are not obviously related to health which is the stated purpose of the study and the reason why women participate...'(Clarke and Lee, personal email, 14-10-'04. Re-confirmed in 2008)

ALSWH clearly do not understand that sexual orientation is relevant to women's health, nor understand how the impact of discrimination might affect Lesbians' health-seeking behaviour, access to health, nor health outcomes.

We suggest that the Australian Bureau of Statistics could better serve the community by broadening statistical collection, analysis and reporting by replacing the existing question on gender with the options: heterosexual female; heterosexual male; lesbian; bisexual; homosexual male; MCTF transgender and FTCM transgender. Without these categories, all single people are subsumed into heterosexual data.

2. What benefit would there be in federal law prohibiting vilification and harassment on the basis of sexual orientation and sex and/or gender identity?

We consider that providing legislation to protect gender identity will be problematic. The impact is that a transgendered person, who has outwardly the appearance of a male but identifies as a woman, could be more protected than a woman who is born-female and raised as a girl. In addition, a pre or post-operative male-to-female transgender, despite having the appearance of a woman through hormone treatment, could also be more protected than a woman–born-female and raised as a girl.

Federal legislation sets the tone and culture of Australia. There should be great care taken to ensure that federal legislation does not replicate human rights violations, such as the refusal to allow lesbians-born-female, the right to conduct workshops, the removal of born female” as a requirement to play in women’s golf tournaments (California, USA) and allowing MTCF to have women specific jobs, as if they can really represent women born female. These violations already exist in State law and Commonwealth processes, such as the exceptions and exemptions in the *Equal Opportunity Acts*.

On the other hand, there is legislation in some states that would be beneficial to include in federal legislation. For example in Victoria, the Sentencing Amendment Act 2009 requires a sentencing court to take into account whether an offence was motivated (wholly or partially) by hatred of, or prejudice against, a group of people with common characteristics with which the victim was associated or with which the offender believed the victim was associated. Note: Barbary Clarke will make a supplementary submission concerning this issue.

We are unaware of the specific legislation in other states contains such provisions, but it would seem logical to have similar laws in all states and territories. One way of doing this would be to enshrine them in federal law.

Another example of inconsistencies in state legislation is the issue of adopting or fostering children. It is ironical that GLBTI couples in Victoria are encouraged to foster children while at the same time they are regarded as unfit parents and forbidden to adopt children in legislation. On the other hand, in NSW they are able to adopt as well as foster children. Federal legislation could harmonise statutes to make it equitable in all states.

In order to be effective, a law must be enforceable **and** enforced. Liberty Victoria’s submission to retired Supreme Court judge, the Hon Geoffrey Eames’ *Review of Identity Motivated Hate Crime in Victoria* (Gardiner, 2010) pointed out that vilification laws have proven to be ineffectual and should, therefore, be repealed. It was argued that harassment laws would be more likely to succeed in addressing discrimination on the basis of sexual orientation and sex or transgender identity - as long as harassment was defined broadly enough to include both harassment of an individual, and of a group of people sharing a particular characteristic.

This submission by Erinyes supports that view.

This submission supports the argument, contained in Gardiner (2010), that harassment based on sexual orientation and gender identity (as well as on sex) should contain provision for redress, restitution, and satisfaction to an individual, or a group, that has been harassed via the perpetrator(s) of harm being held to account for their actions. Numerous publications, including *With Respect*, enumerate the harms that discrimination, harassment, and violence do to GLBTI people, such as causing low self-esteem, anxiety, depression, chronic ill-health and, sometimes, suicidal ideation and suicide.

Although homophobia, lesbophobia and transphobia are a set of attitudes and beliefs which cannot, directly, be corrected by legislation, at least legislation goes the first step in indicating to society that harassment on the grounds of sexual orientation , sex or transgender status is not acceptable, nor to be condoned.

3. Can you provide examples of situations where federal protections from discrimination on the basis of sexual orientation or sex and/or gender identity are needed because state and territory laws do not provide adequate protections?

Lesbians-born-female, raised as girls, living as women in society, need specific protection from prejudicial treatment and discrimination by religious organisations. These organisations are currently protected under exceptions and exemptions in equal opportunity acts. These exceptions and exemptions for religious organisations have not been removed in the recent round of legislative changes in anti-discrimination law. Some of these are state laws, such as Equal Opportunity Act Vic 2010, which would not protect the Lesbian, whose story we include in Appendix A: - Interview With a Young Lesbian (YL), from the bullying she underwent in her religiously-run school. Any lesbian or heterosexual woman suffering discrimination by religious organisations delivering services has no legal protection under existing state and territory laws.

As discussed under question 1 of this submission the recent legislative changes in anti-discrimination laws have resulted in the violation of the rights of women-born-female, raised as girls, to meet exclusively with other like women and to access safe space. Redgold, at The Feminist international Summit addressed the colonisation of women's spaces by explaining:

"It seems that the debates among women over inclusion or exclusion of MTCF's in Lesbian and women's spaces, highlights the contrasts between female and male socialisation. Males are socialised to expect to take up space, so although MTCF's are claiming to be women, those who demand access to women's spaces are demonstrating a very male expectation of taking space and prioritising their needs over the needs of women born and raised female. Women's socialisation trains us to take care of everyone else's needs before our own. It is not surprising that many Lesbians are concerned about the tough time MTCFs have and want to open our women's spaces to them, often prioritising MTCF wishes and criticising those Lesbians who state the wish to keep our spaces for women and Lesbians only." (Redgold:2007).

However, this tendency to prioritise transgender desires over the needs of lesbians born female to have female only space is problematic.

Violence and harassment towards Lesbians may be individual, but it may also be institutional. It can manifest at any time, in any setting. It can be hard, like a bureaucratic brick wall in a hospital, or being (literally) hit over the head with a bottle; it can be subtle, such as words left out ('by accident') of important policy documents which are put up on a website so long after a consultation that everyone who was involved in the consultation forgets to check the website; it can be soft like the voice of a barrister in a courtroom, who argues that denying a GLBTI youth suicide prevention group access to a holiday camp is wholly in line with the client organisation's religious principles.

Erinyes asserts that gender identity protection will result in transgendered people (both MTCF and FTCM) having more rights than lesbians-born-female, women-born-female and homosexual-men-born-males.

4. Have you experienced discrimination because of your sexual orientation or sex and/or gender identity for which there is no legal protection?

Is there a woman alive who has not been discriminated against for being a woman? For instance, women are discriminated against through sex role expectations; employment with the gender pay gap; the widespread assumption of heterosexuality; the representation of women in the media and advertising; stereotyping of women from culturally- linguistically and spiritually-diverse backgrounds; ageism; domestic violence; being trafficked, prostituted, and murdered with impunity.

As identified in our introduction, there is double jeopardy if a woman born female is also a lesbian-born-female and raised as a girl, living as a woman in society. Lesbians are discriminated against as women and as lesbians.

Overall lesbian invisibility is endemic in policy and research at all levels of government and at all levels of practice. This is a potent form of discrimination for which there is no recourse.

Legal protection is not always available even if it exists in the law. Lesbians are excluded from work social gatherings. Lesbians are discriminated against by work cultures. At an executive level the men often go to strip clubs or similar venues with important clients; venues which by their nature exclude both lesbian and heterosexual women. Additionally men may not advise female colleagues that they have attended such venues with clients. Frequently important business matters are discussed and decisions made at these venues (Jeffreys 2010). Such 'business' meetings are important to career advancement but women, other than the strippers and prostitutes (who themselves may be discriminated against, and indeed are, if they are trafficked women) who provide the 'entertainment' are excluded.

The United Nations sends out conflicting messages regarding the human rights of Lesbians. On the one hand, the *General Assembly published the Statement on Human Rights, Sexual Orientation and Gender Identity*, in 2008, reaffirming that non-discrimination applies 'equally to every human being regardless of sexual orientation or gender identity'. This statement condemned the 'violence, harassment, discrimination, exclusion, stigmatisation and prejudice' directed at people around the world, as a result of their sexual orientation and gender identity; calling upon states to incorporate anti-discrimination legislation in their domestic laws; and 'to ensure that human rights violations based on sexual orientation or gender identity are investigated and perpetrators held accountable and brought to justice'. Yet on the other hand, less than one week ago, the UN General Assembly passed a motion removing sexual orientation as one of the discriminatory reasons that requires 'extrajudicial, summary or arbitrary executions' to be investigated. (UN General Assembly, 2010) The impact of this change is that Lesbians and homosexual men can be murdered with impunity. This sends a shocking message, both to Lesbians and to individuals and governments.

5. Have you experienced vilification or harassment because of your sexual orientation or sex and/or gender identity for which there is no legal protection?

There is no law that protects women and girls from vilification. Women-born-female, raised as girls, including Lesbians-born-female living as women in society are never protected from vilification. On the other hand MTCF transgendered people are protected as children from some vilification by virtue of the fact that they are boys, whether or not they are uncomfortable with this identity.

A lesbian-born-female, raised as a girl, living as a woman in society wishing to provide workshops to other lesbians-born-female, raised as girls, living as women in society was derided and insulted, threatened and refused the opportunity to present at two conferences. There is no legal protection from this behaviour.

From as early as 2004 Lesbians-born-female, raised as girls, living as women in society have been denied access to holding workshops and presenting papers at festivals, for example Feast, Adelaide 2004 and even as recently as 2010 for the F Conference (Sydney 2010). Internationally films presenting the lives and issue of Lesbians-born-female, raised as girls, living as women in society have been censored from GLBTI film festivals (San Francisco 2009).

The continued harassment by MTCF transgendered people of any public events by Lesbians-born-female, raised as girls, living as women in society effectively stops other Lesbians-born-female, raised as girls, living as women in society from becoming aware of the existence of this community and sharing with those of like mind. A frequent response from lesbians-born-female, raised as girls, living as women in society when they do manage to find this community is delight and regret that such events are so hard to find now. The harassment of public events and the denial of workshop space at conferences since 2003 has meant that very few have been attempted.

One example of such an event was Sappho's Party Inc., in South Australia, which was the defendant in a complaint of discrimination in SA in 2006-2009. The stated intention of the MTCF transgendered Complainant was to prevent the event from occurring, rather than to attend the event. The impact, had the Complainant succeeded, would have been to prevent communication between Lesbians-born-female, raised as girls, living as women in society, and preventing any cultural identity to form among the existing population of lesbians-born-female, raised as girls, living as women in society by reducing their access to shared experience and supportive community.

During the EO mediation proceedings prior to the Tribunal Hearing the members of Sappho's Party who attended suffered vilification, insults, threats and witnessed acceptance of these human rights violations by the EO Officers present (See Appendix B: Sappho's Party Inc and EO practices in SA).

During the Tribunal Proceedings the Claimant presented pornographic self-portraits to prove sufficient beauty and femaleness to qualify as lesbian-born-female, raised as a girl, living as a woman in society and therefore arguing acceptability to attend Sappho's Party Inc gatherings. This behaviour indicates what to lesbians-born-female, raised as girls, living as women in society is the intrinsic and unchangeable maleness of a MTCF's idea of femaleness.

6. What terminology should be used in federal anti-discrimination legislation if protection from discrimination on the basis of sexual orientation is to be included?

The term 'sexual orientation' should be used in Federal legislation rather than 'sexual preference' (which directly implies choice, as the idea of choice is rejected by many GLBTI), or 'sexuality' (which gives the misleading impression that it is only about who we have sex with, rather than a person-wide way of being).

Lesbians-born-female, raised as girls, living as women in society should not be subsumed under the term 'homosexuality', in the way that 'woman' is often subsumed under 'man'. 'Homo', as well as meaning 'same', also means 'man'. Lesbians are subsumed in the wording of the equal opportunity legislation some states e.g. 'homosexuality (including lesbianism)' (**Equal Opportunity Act Vic 1995**). Lesbians are invisible in other states' laws e.g. Qld, SA, NT and Tas. Most Lesbians do not want to be subsumed under the term 'gay' because that, too, has male connotations in that it is the preferred term for self identification chosen by homosexual men. Furthermore most Lesbians choose to be called Lesbians rather than homosexual or gay (Gottschalk and Newton 2003). Lesbians-born-female, raised as girls, living as women in society choose terms such as lesbian, dyke, and gay woman, rarely queer, and almost never 'homosexual' to describe themselves (see Appendix C – Labels used on forms for self identification).

Any identifying labels in legislation should be 'female', 'male', 'intersex', 'transgender (MTCF)' and 'transgender (FTCM)' and if sexual orientation is to be included in any way, then heterosexual, bisexual, Lesbian, homosexual and transgender should be used. We do not accept that transgendered people, who are born male, ever become female and, therefore, can never be Lesbians. A survey of lesbians-born-female, raised as girls, living as women in society revealed how Lesbians-born-female needs become invisible and are not addressed when the Lesbians are lost in the GLBTI group term (see Appendix D: Survey of Lesbians-Born-Female on Issues of Lesbian Born Female Needs for Lesbians-Born-Female Space).

Erinyes members express themselves as having their sexual orientation being Lesbian and their identity being Lesbians-born-female, raised as girls, living as women in society. The term same sex attracted should not be used as it reflects only one of the three aspects of sexual orientation, namely attraction, behaviour, and identity (Solarz, 1999)

7. What terminology should be used in federal anti-discrimination legislation if protection from discrimination on the basis of sex and/or gender identity is to be included?

Raymond (1979) first used the term male-to-constructed- female (MTCF) to refer to transgendered males in 1979. Erinyes asserts that **sex is not constructed by gender and that no person can become another sex**. Thus using the terms MTCF and FTCM makes it clear that no actual sex change is possible. Only outward change in gender presentation is possible, that is, persons of one sex may appear to belong to a different sex, but change of sex has not occurred.

Erinyes recognises that many transgendered people do not want to have the terms 'chosen gender'; or 'gender history' used. While we are, in principle, happy to support them if they do not deem these terms to be appropriate for them, Erinyes does not support the current moves to have gender re-assignment made invisible in any person's identity by, for example, allowing documentation change.

This submission asserts it is short-sighted to confuse sex with gender. This is now common practice and fails in its societal duty to women-born-female, raised as girls, and to men-born-male raised as boys, to intersex people and to transgendered people by forcing transgendered and intersex people to fit into these two sex categories. These sex categories have been elided into only two 'gender' categories on most forms. If these sex categories were extended, in legislation, to identify intersex, MTCF and FTCM as such, and thus not forcing transgendered and intersex people into these restrictive male and female sex categories disguised as gender then many of the rights of women-born-female that are currently being eroded would be restored.

If transgendered people continue to be reclassified as male and female, then the rights of women-born-female, and of course men-born-male, will continue to be transgressed.

Using the grouping GLBTI, as if the individuals and groups within the term are homogenous, is in error and leads to human rights abuses of lesbians-born-female and others.

As pointed out in question 6, any identification labels should be 'female', 'male', 'intersex', 'transgender MTCF' and 'transgender FTCM'. We do not accept that transgendered people, who are born male, can ever become female and therefore can never be Lesbians.

8. What terminology should be used to ensure that people who identify as intersex are protected from discrimination in federal law? Should the term 'intersex' be used? Should protection from discrimination on the basis of 'sex' include people who are of 'indeterminate sex'?

This question refers to people who are intersex and it is rightfully up to them to decide on terminology. Erinyes has no objection to the use of the term intersex Erinyes believes that people of indeterminate sex have the same right of protection from discrimination as all other people.

9. What other actions would you like to see the Australian Government take to better protect and promote the rights of LGBTI people in Australia?

The right to be free from persecution is a human right. In some states in Australia, rights, such as freedom of association, such as the right for lesbians-born-female, raised as girls to meet together, are at risk from the very legislation that was intended to provide protection from discrimination. The most important action is recognition that lesbians-born-female become invisible under the grouping of GLBTI and that the categories to be used in anti-discrimination legislation are sex, sexual orientation and FTCM and MTCF transgender. The categories of MTCF and FTCM transgender must not be subsumed under 'sex' or hidden under 'gender identity' but rather they should be given recognition as separate categories in their own right.

9.1 Protection from Repeated Challenges

Transgendered individuals, actively supported by well-funded transgender centres, frequently use anti-discrimination law to challenge Lesbians'-born-female rights to meet with other Lesbians-born-female. Each case that has been fought through the courts has been won by the lesbians-born-female, raised as girls, group. Some of these cases were appealed and yet still won by the Lesbians-born-female. The effort and expense of Lesbians continually having to defend their human rights through legal actions in courts is exhausting and culturally and psychologically traumatising. It is also a drain on the resources of the State to keep hearing such cases repeatedly.

Erinyes questions whether vexatious claims could be more effectively prevented by using only the terms sex and sexual orientation in anti-discrimination legislation.

It is our contention that, in instances such as the Sappho's Party case in the South Australian Equal Opportunity Office, it will be beneficial if federal legislation circumvents the need to try similar cases in each state legal system.

9.2 Protection for Sexual orientation, Education on Human Rights and criminalisation of violence

All people should be protected from abuse and bullying and anything but merit based employment and progression. Erinyes believes it to be preferable and more effective, to ensure that all actions of violence and bullying are criminalised, and that education on human rights should be delivered on a society-wide basis, and through all stages of the lifecycle, to prevent sexual orientation and gender-based harm from happening in the first place, than to protect gender identity by law.

9.3 Gender Reassignment Documentation Hides the Real Facts

Gender identity/gender diversity legislation is at risk of protecting men who think they are women from vilification but leaving the actual women-born- female and- raised as girls with no protection from vilification as women, whether or not they are Lesbians.

The provision of identity document changes for transgendered people allows any man to enter any women's space and puts women at extreme risk of sexual assault. Women will have no safe space. Furthermore research and anecdotal evidence has shown that MTCF transgender people still behave like men even after hormone treatment and gender reassignment surgery see Greer (1999), Gottschalk (2009), Jeffreys (2008) Raymond (1979)

The category of women born-female and raised girls must be included or the category of gender identity must be excluded to ensure the safety of 50% of the population (women born and raised female) and protect their human rights

9.4 Medical Interventions and Protection of Children

Erinyes asserts that government funding should never be available for gender reassignment surgery. The human rights of transgender people are violated if government funds the mutilation of healthy bodies to align these bodies with a politically constructed ideal.

Furthermore, puberty delaying drugs should not be available for the treatment gender dysphoria and children should not be treated for transgenderism with physiological methods. Jeffrey (2006) in an article "*Judicial Child Abuse: Family Court of Australia Gender Identity disorder and the Alex Case*", argues that the diagnosis and treatment of transgenderism is particularly harmful to children and that such diagnosis and treatment is a form of child abuse.

9.5 Exemptions and Tax Payer Funded Discriminatory Service provision

Erinyes asserts that all human rights would be better protected if the blanket exemption for religious bodies were removed for any occasion when they are offering government funded or co-funded services to the community. Any government funding should not be used to proselytise bigotry and prejudice. Thus automatic exceptions should not be available to religious schools and if they wish to continue to receive government funding they would have to cease discriminatory practices and teachings.

It is a betrayal, and contradiction, of social justice if a Lesbian citizen-taxpayer's dollars are used to fund the very organisations that exclude, marginalise, and treat her as unequal before the law. Religious organisations plead that permanent exceptions and exemptions from the States' Equal Opportunity Acts, due to their religious beliefs, are reasonable. The latest confirmation of this position was by Victoria's Scrutiny of Acts and Regulations Committee (SARC) as late as November, 2009.

Not only do Lesbians involuntarily fund discriminatory organisations, via taxation. As a result of *Exceptions and Exemptions* to most States' *Equal Opportunity Acts*, *Lesbians' safe access to schools, as teachers, pupils, or even gardeners, to welfare agencies* and other community services (as workers or clients), to hospitals (as workers or patients), and even to residential and community aged care (again, as either workers or clients) cannot be assured. For instance, if a Lesbian tried to access the 21 public hospitals, 54 private hospitals, and 550 aged care services run by one particular religious institution she would have absolutely no

legal redress if they abused her, discriminated against her, sacked her, or denied their services to her.

Erinyes therefore submits that the Federal government should remove all exceptions or exemptions given to religiously-run organisations if they receive any public funding whatsoever for any of their activities and that, in fact, their tax exempt status – which, in effect, amounts to taxpayer subsidisation – should forthwith be removed. If this cannot be achieved, then, **at the very least**, a religiously-run organisation which wishes to discriminate against Lesbians should be held accountable in a court of law and have to justify doing so on a case-by-case basis (at its own expense), with punitive damages awarded if it fails to do so. The current situation, in which neither the Victorian Charter nor the Victorian Parliament has the power to compel an institution not to behave in a discriminatory manner is unacceptable in a democracy in which there is **supposed** to be a separation of Church and State, and where there is a putative belief in social justice.

9.6 Application of Religious Exceptions to Commercial Activities

In the recent Victorian Civil and Administrative Appeals Tribunal hearing *Cobaw Community Health Services v Christian Youth Camps Ltd & Anor* (2010) a case of a religiously-run adventure camp denying access to a rural GLBTI suicide prevention group was heard. The defence used was that the religious organisation was exempt under the act. The court ruled that the campsite is a business and an exception did not apply. If the exemption for religious organisations was removed these cases would not have to be brought before the courts. This principle was also illustrated in the Sappho's party case discussed above.

9.7 Human Rights and Justice Education is Federal Responsibility

The Federal government takes little or no responsibility to ensure that the education materials and activities of government funded organisations are non-discriminatory. Currently, the responsibility is on the victim to report. We believe there should be more active auditing to deter discriminatory services and practices. If this auditing revealed discriminatory services, a funding moratorium could be instituted.

If any educational material or services about human rights and anti-discrimination fails to include the rights, and identity, of lesbians-born-female and women-born-female (thus 50% of the total population) we argue that this is discriminatory material or services and should not be funded.

9.8 Peak Bodies Not Representative

There is no peak body that adequately represents Lesbian-born-female rights. It was pointed out in Question 6 that GLBTI organisations do not adequately represent Lesbians-born female needs and views. Federal government departments should be wary of assuming that any submissions from GLBTI peak bodies actually adequately represent the views and needs of Lesbians-born-female. It is urgent that funding should be made available to support a lesbian specific peak body in Australia.

9.9 Bill of Human Rights Required To Harmonise Legislation

The rights of women-born-female, raised as girls and therefore the rights of Lesbians-born-female, raised as girls should be embedded in the Constitution of Australia. Until this is achieved, any Federal or State Government can simply remove the piece of legislation that bestows those rights.

9.10 Lesbian Visibility in Research and Statistical Data

Government funded research, and also the collection of statistical data, such as the annual EEO statistics, should be required to disaggregate on the basis of sex and sexual orientation, for instance, separating not only male and female data, but also data Lesbians and heterosexual women's.

All Federal policy consultations should include lesbian-specific target groups wherever any specific target groups are mentioned. For, instance any research into aged care services should investigate the needs of older Lesbians (Appendix E: The Catch-22 of Lesbian Aged Care).

Summary Erinyes submission

Erinyes supports the protection of transgender and other gender non-conforming people from discrimination, violence and humiliation.

Erinyes argues that the term 'gender identity' should not be included in legislation. Instead the terms 'male to constructed female transgender' and 'female to constructed male transgender' should be used as specific identity categories in recognition that MTCF and FTCM are not, in actuality, biologically the sex they present to society. The use of gender identity allows an almost invisible transgression of women-born-female and lesbian-born-female rights. Any proposed legislation should use the identities of (i) Women-born-female, raised as girls, and living in society as women (that is, 50% of the population) and (ii) Lesbians-born-female, raised as girls and living in society as women (see Q6 for complete list of identity labels).

We assert that If gender identity is included in legislation than women-born-female and lesbians-born-female, will be unable to exercise their rights to

- i. Freedom of peaceful assembly and association;
- ii. Peaceful enjoyment of lesbian-born-female culture;
- iii. Freedom of female-centred spiritual practice;
- iv. Political expression (the freedom of to speak publically of their understanding of the world);
and
- v. Access for women-born-female to a space that is safe from all men.

Erinyes accepts that transgender persons strongly desire to be recognised as a different sex but we argue that they do **not** become that sex. Therefore, transgender people should logically retain only their rights to sex discrimination protection in their original sex.

All other discrimination protections must come from human rights and protection, through specially named transgender rights, or the criminal code, but not from sex discrimination protection as women.

In summary the reasons for Erinyes' proposition is:

- The category of gender identity means that any man (pre-operative or post-operative) who says that he identifies as a woman is classified as a woman in law. Thus, such individuals can undermine institutions and laws that have been designed to protect women born and raised female.
- The freedom to associate specifically with other women–born-female and raised as girls in certain circumstances such as festivals, spiritual practices, sporting teams, and lesbian social support groups and counselling groups is important to the development of self.

- Women cannot be fully protected in institutions such as women’s refuges, and CASAs if individuals who are not female born are allowed entry.
- The experiences of transgendered people, like the experiences of gay men and lesbians, reflect the dominant attitudes, values and beliefs in the time in which they were born and raised. The historical, social and political context in which a person lives must be considered when interpreting their experiences.
- The idea of childhood gender non-conformity is now being adopted as evidence of transgenderism. This gender non-conformity has traditionally been experienced by lesbians, gay men and heterosexual women, and to a lesser extent by heterosexual men (who are more strongly conditioned to be masculine), and was simply viewed as resistance to social stereotyping. Thus some people, who in the past may have become lesbians or gay men, or even gender non-conforming heterosexual men and women, are now interpreting this as evidence of transgenderism.
- Contemporary research poses strong challenges to the theory that sexual identity is related to congenital gender inversion and childhood gender non-conformity.
- The argument/explanation that transgendered people are “born in the wrong body” is rejected by the evidence. We assert that transgenderism is a social construct that has been too easily associated with gender identity

It is short sighted and dangerous to legislate as though a proven biological basis for the phenomenon of transgenderism exists. Such legislation will result in the denial of rights of women-born-female.

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Appendix A: - Interview With a Young Lesbian (YL)

These are some edited highlights from an interview with a young Lesbian, who was reflecting upon her experiences in education. It should be noted that homosexuality was removed, from the Diagnostic and Statistical Manual (DSM)- which psychiatrists use to diagnose mental disorders – in 1973. And, in 2002, the Australian Medical Association issued a position statement on Sexual Diversity and Gender Identity. Article 6.1 of this statement reads: ‘The AMA believes that a doctor’s non-judgmental acknowledgment of a patient’s sexual orientation, gender identity and behaviour enhances clinical care’ (AMA, 2002). Nothing within the Victorian Equal Opportunity Act 2010 protects this student from the kind of bullying in school described in this Appendix.

‘I went to a Catholic...Catholic schools right the way through, but the violence didn’t stop...(It) was about Year Nine and people suspected I was gay. I didn’t know I was gay, at that stage, or a lesbian. So I was called a “bricky’s labourer”. That was one of the things, “dyke”.

‘Look, I had a lesbian teacher, at that stage, and once everyone found out she was gay, she was kicked out of school. Also, because in class she mentioned that a good form of contraception was to be gay, ‘cause you wouldn’t get pregnant’.

‘I got “outed” when I was in Year Twelve and the whole school knew I was gay ‘cause it went right the way through and in classes people would make comments, throw stuff at me. The teachers wouldn’t do anything. I had one teacher actually join in. So that was disgusting’.

‘I had another teacher, though, that was my psychology teacher and he brought in stuff to say that some people were gay, biologically, and there’s differences in the brain and that sort of changed a couple of people’s perceptions’.

‘But I had my head slammed into locker doors. I had my school bus...people yelling out comments non-stop, just generally: “It’s disgusting!”, “You fucking lesbian!”, “Fucking dyke!” And generally it’d be in big groups. ‘Cause I was known for beating up school bullies at my school, so no one would take me on one-on-one’.

‘My sister, little sister, went to the same school and she started the year after I finished and she was picked on all the way through her school because it went right through the school. So she was bullied right the way through her schooling, of course. (I) got outed, everyone found out, so all the people in other years knew. So, when she started there, she copped it as well. And none of the teachers, apart from the psychology one, actually actively took steps to stop it’.

The Vice-Principal was gay but he, he could not tell anyone. And I remember, like, he pulled me into his office after I finished and told me that he wished he could have done more, but he would have lost his job. And that his partner died while he was teaching there and he wasn’t able to tell anyone’.

'I was sent to a school counsellor to try and work out why I was gay and to stop me being gay. And my parents were called to tell them that I was gay'

(YL was asked if her parents knew already). 'No, my mum didn't, my dad did...so...but that was because they wanted me... (the school wanted) permission to send me to a psychiatrist, to work out what was wrong with me because I was gay. That there must have been some sort of disorder....So I was sent to a school psychiatrist, psychiatrist near the school, to try and work through why I was. And (I) was told that, because I was abused as a kid, that made me gay'.

'And then I was banned from the school, afterwards. I was supposed to be looking after my sister and...('cause my parents fought heaps), I was supposed to be taking an active role looking after her. And they wouldn't let me in the school, except to see her'.

'My partner was in Year Eleven, below me, and I wasn't allowed to come visit her. And then they made an exception, that I was allowed to come, but I had to be escorted by a teacher in case I made any of the other students gay. So I'm contagious, too! So...Whether it was an official policy, or anything, that I had to report to Admin, and get escorted to go see my little sister. And my girlfriend said she could always tell when I was in the school grounds, because everyone would say, 'The trench coat lesbian's here!' I used to wear an overcoat, and that was just what I was known as'.

'It was...pretty horrific, and I can understand why there was a lot of gay suicides at my school. Like, there was one every year. I knew the guy a year level above me, he went to a party and gave a guy a blow job and then someone found out, and the guy said that he raped him. Someone found out that he had oral sex with a guy. And, rather than admit that he did it voluntarily, he said that he was raped. And the guy had to do a police report and that night killed himself'.

'And the Vice-Principal, that was gay, told me about the suicide, other suicides as well. So... you know, it was just the attitude in the school that...It was so much hatred. Oh, well, that's what the Vice-Principal said'.

'The, the lesbian teacher, who I had in Year Nine did some research on gay experiences in Catholic schools and lesbians and she told me about it, as well. She did her PhD on it. She tried to be as supportive as she could, and she said that she'd picked...that she thought I was a lesbian and was trying to do counselling and stuff, with me, around that, without actually saying I was. But she tried to come in, and be supportive...She used to do massage with people who had AIDS, and one of the students reacted poorly to that, as well, so they wouldn't let her touch 'em, stuff like that, 'cause she'd obviously have AIDS, too'.

'So... like, because it wasn't in the [sex education] curriculum'.

'There was so much fear and hatred. Like, people thought that if they were around me, or anything like that, other girls were thinking that I was attracted to them. I had to have my

own room, on the school camp, 'cause I wasn't allowed in the guys' room, 'cause it's a Catholic school, and I wasn't allowed in the girls' room in case I did anything to the girls. From one camp, I had to be in a room on my own, and the other camp I had to be in a room with the teachers. No other student was treated like that'.

'Oh, I was put on medication, which I later had been told that there was no need for me to be put on medication. And told that part of my post-traumatic stress was that I was a lesbian and that I had phobia of men, and all this kind of stuff, which was completely unfounded'.

'And even the psychologist I went and saw recently, at 28 years of age, and he still said that being gay can be a symptom of a psychological disorder and wanted to work on that. This would have been about three weeks ago' (in 2009).

'I just told him that I'm not prepared to talk about it and I said, as far as I'm concerned, I'm a lesbian, I'm happy being a lesbian, and I don't think that, see that, as a problem in need of fixing...And he sort of took a very big back step and said okay, that he was happy to do that'.

'I've had to see lots of counsellors in my life who've also taken that stance. They thought it was a symptom of bipolar disorder and, um...evidently a border-line personality can have traits of being gay'.

'So...I'd probably call it more... homophobia from professionals and I think it's more part of the medical model that anything different has to be something wrong, something deviant and it's classified as a sickness so I think that's more where that comes from'.

'I'd like say it got better at uni, but it didn't. I know a lot friends that were bashed on campus. Lesbians, lesbians that were bashed on campus. I knew, actually, more lesbians than gay males that were bashed'.

'And walking around the streets, I'd been walking down the street with my mum and had people yell out, "Fucking lesbian!" and, like, my mum doesn't swear. I was horrified it would happen in front of my mum'.

'And my favourite was getting yelled at, "Fucking poof!", at which point I flashed my tits and say, "I'm a lesbian! Get it right - tits, girl!"'

'So I had my own ways of dealing with it. But I sort of, I found it everywhere and I've been reluctant, where I live now, to hold hands even though I can hold hands with my partner. I know two gay guys living on my street, and they're too afraid to do it, as well'.

'It's just...I sort of find it everywhere. Going out in public, I used to go to bars with partners and get guys wanting to join in and get very, very in my face, like they would literally try and kiss me while I was kissing my partner, and stuff like that. So I don't like going to any situations like that now'.

'I think, it's the experiences I had growing up, where people thought that I was instantly attracted to them 'cause I was gay...And all lesbians are some sort of "sex machines", attracted to everyone, that don't have any taste'.

'I think the funny thing is, now, people think that it doesn't happen. Just because being gay and lesbian is more accepted, it doesn't mean that it is completely accepted. I got onto counselling with youth. There was a lot more acceptance there. Except, they still turned around and said, like, jokingly to each other, 'That's so gay!' And I'd pick them up on it'.

'I was talking to one of my mates, on stuff like that. He said, "It's okay", and "People call each other dykes and poofs". Although, if you are gay, that's, that really hurts to hear it'.

Appendix B: Sappho's Party Inc and EO practices in SA

This Appendix is a confidential statement by a Sappho's Party Participant. It is for AHRC Eyes only

Provided separately

Appendix C – Labels used on forms for self identification

In survey design in research on GLBTI people - as well as the presentation of statistics in Australian Human Rights Commission community consultations - care needs to be taken to ensure that the labels used in the demographic section of surveys and forms includes the most commonly used terms.

The following table provides the relative numbers of GLBTI people in various research surveys who identified in different ways. It can be seen that the majority of respondents identify as either Lesbian or gay, rather than transgendered or queer.

As can be seen from the following information and table, Lesbians, when given the opportunity to self-identify, prefer the term Lesbian and yet this term is often not used in official survey forms.

During the Sydney and Melbourne consultations, some very different claims were made with regard to the numbers of transgendered people in the GLBTI population from the figures in the following table, with transgender representatives claiming highly inflated statistics.

The table below makes it clear that in the surveys listed the majority of people identify as Lesbian or gay and that only a very small number of respondents identified as transgender.

Erinyes acknowledge that, due to the partially-hidden nature of the GLBTI population probability sampling is not possible. Thus generalisability is also not possible. Furthermore it is not possible to determine the numbers of people in the population who are gay, lesbian, bisexual or intersex and it is not possible to determine how many people in the population are transgendered people.

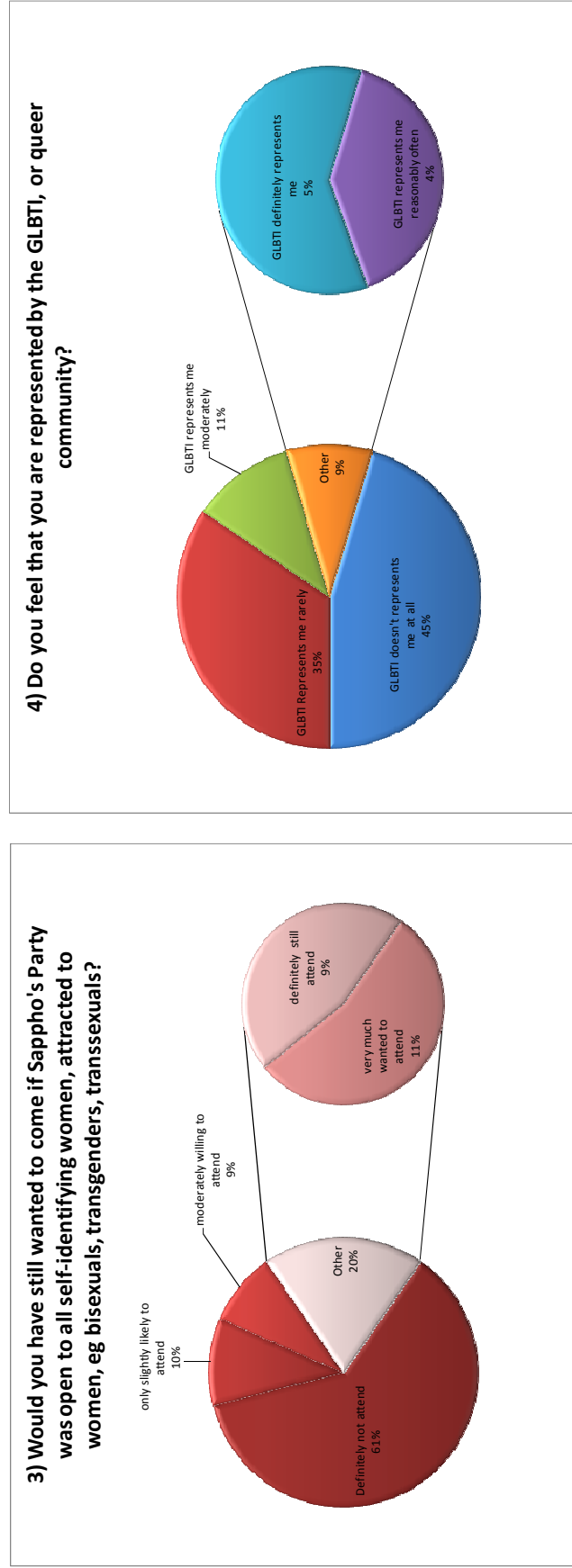
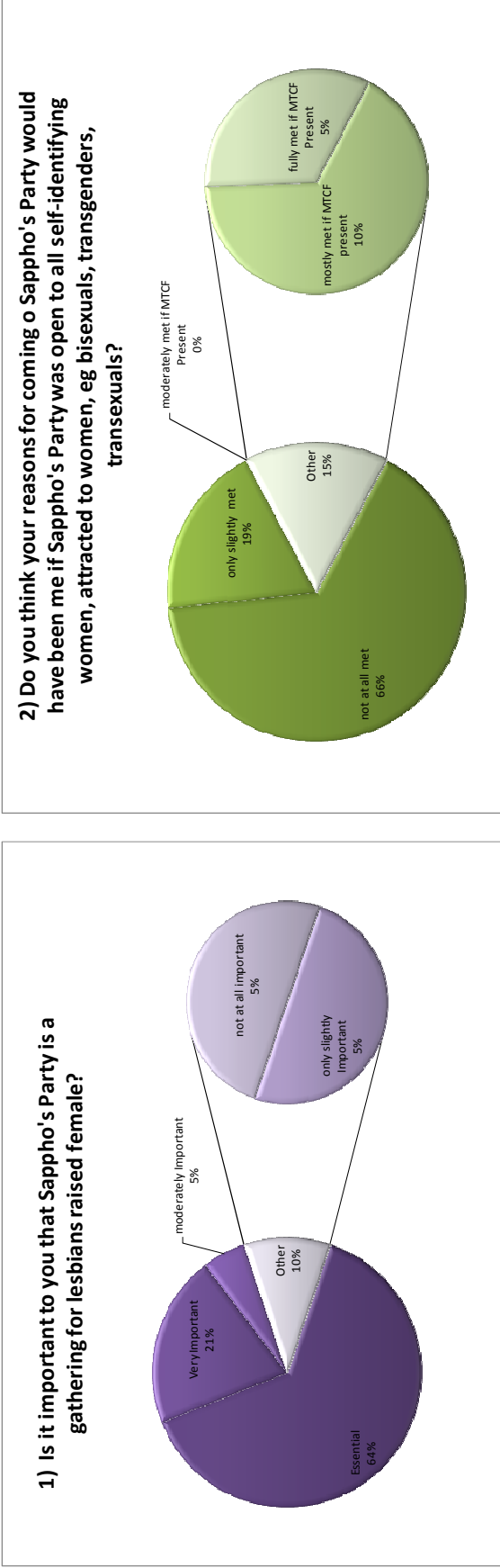
Sexual Orientation/Gender Identity Represented in Various Australian Surveys of Non-Heterosexual People 1994-2010

No. of Survey Participants, Title, Year Published and State Data Collection Method, Undertaken/Sponsored by:	Identify as: Lesbian/Dyke/ Gay Woman/ Homosexual	Gay Homosexual	Man/ Homosexual	Bisexual	Trans-gender	Intersex (Not asked – may be included in 'Other')	Queer	Other	Not Given
n=1002 1994 VIC Not a Day Goes By Hard copy survey Gays and Lesbians Against Discrimination	450	458		66	4	(Not asked – may be included in 'Other')	6	6	12
n=600 2003 NSW You Shouldn't Have to Hide to be Safe Hard copy/online survey & 8 focus groups, Attorney-General's Dept of NSW (Urbis, Keys, Young)	251	297		37 (incl 2 trans- gendered people)	9			6	
N=95 2003 VIC (rural, Grampians area) Not so Gay in the Bush: 'Coming Out' in Regional and Rural Victoria, Paper questionnaire and personal, in-depth interviews, University of Ballarat and Victorian Department of Health Services (Gottschalk and Newton)	40 'lesbian' 7 'gay' 0 'homosexual'	0 'lesbian' 30 'gay' 4 'homosexual'		Women - 4 Men - 0			Women - 2 Men - 5		Women - 2 Men - 1
n=649 2005 VIC Not Yet Equal Hard copy survey Victorian Gay and Lesbian Rights Lobby (McNair and Thomacos)	376 355 'lesbian' 19 'gay' 0 'homosexual'	222		34	5 (1 identifies 'lesbian', 2 as 'bi- sexual', 2 as 'other')	1 (identifies as 'lesbian')	10	1	
n=390 2008 VIC Coming Forward Online survey Victoria Law Foundation, Gay and Lesbian Health Vic, Victoria Police (Leonard, Mitchell, Patel and Fox)	95 95 'lesbian' 12 also 'gay' 0 'homosexual'	212		35 (incl 5 M2F, 1 F2M)	M2F 8 F2M 4 (Plus 3 M2F who identify as 'lesbian')	1	9	23*	
n=1094 2010 QLD Speaking Out Online survey, plus 7 focus groups Q'ld Dept of Justice and Attorney-General, Griffith and Bond Universities (Berman and Robinson)	472 439 'lesbian' 0 'homosexual'	445		123	M2F 13 F2M 11	(See 'Other')	(See 'Other')	54**	

* Includes heterosexual/straight (17), pansexual, "don't use any of these labels", "generally use same sex attracted" and "gay only under certain circumstances/context".

** Includes queer, asexual, pansexual, fluid, transsexual, omniseual, intergender, queer as partner is transitioning, sex work

Appendix D: Survey of Lesbians-Born-Female on Issues of Lesbian Born Female Needs for Lesbians-Born-Female Space



Raw Data

1) Is it important to you that Sappho's Party is a gathering for lesbians raised female?	Essential	Very Important	moderately important	only slightly important	not at all important	not marked
	37	12	3	3	3	1
2) Do you think your reasons for coming to Sappho's Party would have been me if Sappho's Party was open to all self-identifying women, attracted to women, eg bisexuals, transgenders, transsexuals?	not at all met	only slightly met	moderately met if MTCF Present	mostly met if MTCF present	fully met if MTCF Present	not marked
	38	11	0	6	3	1
3) Would you have still wanted to come if Sappho's Party was open to all self-identifying women, attracted to women, eg bisexuals, transgenders, transsexuals?	Definitely not attend	only slightly likely to attend	moderately willing to attend	very much wanted to attend	definitely still attend	not marked
	35	6	5	6	5	3
4) Do you feel that you are represented by the GLBTI, or queer community?	GLBTI doesn't represent me at all	GLBTI Represents me rarely	GLBTI represents me moderately	GLBTI represents me reasonably often	GLBTI definitely represents me	not marked
	25	19	6	2	3	4
5) When making your decision to come to Sappho's Party was it important to you that there were no boy children?	essential	very	moderately	only slightly	not at all	not marked
	15	19	5	7	10	

Appendix E: The Catch-22 of Lesbian Aged Care

This Appendix deals with the effects of the Exceptions and Exemptions to the Equal Opportunity Act Vic 2010 (in parallel with legislation in other states), which gives Lesbians no legal recourse if they are discriminated against, or abused, in community or residential aged care run by religious bodies.

This is in direct contravention of Article 5 of the UDHR, Article 7 of the ICCPR, the Victorian Charter section 10, Yogyakarta Principles 10 and, especially, Principle 29 regarding 'accountability'.

Walton, who wrote the final report on the Federal government's Aged Care Accreditation and Aged Care Complaints consultations, found that **Lesbians were often reluctant to complain 'because they may be required to disclose their non- heterosexual identity or the same sex relationship for fear of victimisation'** (Walton, 2009:32). This was shown to be a terrifying prospect for older Lesbians, who had lived in a time when homosexuality was defined as mental illness (Matrix Guild, 2009, 2008).

In consultation submissions, it was requested that the law be changed to allow **anonymous complaints** 'particularly as a safety mechanism to support complainants where there is **genuine fear of retribution....Some care recipients have been threatened with 'outing' by providers if they raise a complaint about service standards'** (Walton, 2009:40). This breaches their right to 'privacy' (UDHR Article 12, Victorian Charter section 13, and Yogyakarta Principle 6).

Article 3.5 of the Australian Medical Association's Position Statement on Sexual Diversity and Gender Identity states that **'Australia's Aged Care policies make no reference to the specific needs of GLBTI older people... in relation to institutional care... are not being adequately addressed with culturally appropriate care'** (Online, 2002).

The Exceptions and Exemptions allow these vulnerable aged care residents no 'effective remedy' as per ICCPR Article 2(3) and Yogyakarta Principle 28. When, as shown in Matrix Guild's research (2008), they prescribed libido suppressants, aged care facilities were in breach of Yogyakarta Principle 18 on 'medical abuses'. When they discouraged Lesbians' cultural expression (Matrix Guild, 2008), they contravened CEDAW Articles 1 and 3, ICESCR and Article 1, ICCPR Articles 1 and 27, and Yogyakarta Principle 26.

Service provider management's ignorance of the long-term effects of lesbophobic discrimination can affect their ability to deliver sensitive and competent care to their Lesbian clients (GRAI, WA, 2010; Matrix Guild, 2009, 2008). They may fail to provide relevant professional development to their staff. When presented with evidence of discrimination against Lesbians in aged care, one manager replied:

'It was interesting reading but I don't really know if we would do anything. We don't really have enough numbers of (GLBTI) clients...We see about 5000 clients a year. With everything else going on this would not be a priority unless we had the clients' (Matrix Guild, 2008:36).

The Australian Medical Association suggests that between 8 and 11 percent of Australians are 'not exclusively heterosexual' (AMA, Online, 2002). So she is ignoring 400-550 residents' special needs.

The following information illustrates the needs of a particularly vulnerable group of Lesbians, who are at risk of suicide. Due to a fear of being separated from partners and potential abuse of their rights, **some older Lesbians prefer to commit suicide rather than be admitted to residential aged care** (Harrison, 2004).

There is anecdotal evidence of lesbian couples not being allowed to enter the same aged care facility, and of their joint home having to be sold if one member of a lesbian couple needed to enter aged care (Victoria Legal Aid, Victorian Gay and Lesbian Rights Lobby, and Law Institute of Victoria, 2007).

Discrimination and abuse of elderly Lesbians continues, both in the broader community and in residential aged care (GRAI, 2010; Matrix Guild, 2009, 2008). This directly links through to risk of depression and self-harm, suicide ideation, and suicide. Whilst organisations like beyondblue and the Council for the Ageing run such programs as 'Maturity Blues' (beyondblue, 2007 Online), this program is not targeted specifically to the needs of older Lesbians, nor of any LGBT people.

The Victorian Charter of Human Rights and Responsibilities (VEOHRC, 2006), states that **public agencies are obliged to consider that people have the right to enjoy their human rights without discrimination and the right to enjoy their identity and culture. This includes sexual identity and LGBTI cultures.**

Partly due to the decision of many LGBTI residents not to disclose their sexuality, some 'aged care service providers are unaware of GLBTI clients and their particular needs. This invisibility, and the lack of evidence regarding the experiences of GLBTI seniors, perpetuates the status quo in which discrimination often goes unchallenged.... There are many facets to the question of privacy and if sexual and gender identity are rendered "private" then GLBTI seniors remain invisible' (Matrix Guild Vic Inc, 2009:68, 39).

Heterosexist discrimination, like other forms of discrimination, is often the result of fear and ignorance:

At the base of a lot of homophobia is a fear of a different sexuality... of how a person can have a different sexuality, also that a woman could be a lesbian but might also be straight for some of her life. Some women deny their sexuality because they don't want to deal with the oppression that they might find. (Matrix Guild, 2009:36).

There is evidence of historical and ongoing discrimination in psychiatric and residential aged care:

Having 'shock therapy' was supposed to teach me how to be straight. All it taught me was to keep my mouth shut (Matrix Guild Vic Inc, 2009:14).

I keep my mouth shut. I have to be careful what I say. I have no conversation. I can't talk to the staff in here' (Matrix Guild Vic Inc, 2009:14)

'... women were taught to be self-effacing. A lot of older women try not to attract unfavourable attention, and once it was noticed that you (sic) were a lesbian it perhaps went against them. They became very good at keeping quiet, some of them (Anne, 77 years, lesbian) (Matrix Guild Vic Inc, 2008:36)

In an aged care day care centre, one Lesbian who decided to come out, said: 'I get called a "fucking thing" in here and everything, and "a poor excuse for a bloody woman"' (Matrix Guild, 2008:40).

Internalised lesbophobia can have long reaching effects. The fact that she grew up knowing that her sexuality was 'anathema' to the Christian church in which she was raised reverberates in one Lesbian's interactions with other people to this day:

'The problem is that part of you believes that you are an anathema. It affects your self-esteem and things like that. The effects are insidious. The thing that I have worked out is that if you know something and can work it out intellectually it has less power. But the problem is that a lot of this is so insidious you can't work it out and so there it still retains its power and that's the problem' (Elizabeth, 72 years, Lesbian) (Matrix Guild, 2008:37).

Some comments from aged care providers and advocates in the sector regarding sexuality were:

'There is a silence...Some of the staff whisper and snigger...They don't talk about it. It's not part of their lexicon...We need to acknowledge our discomfort..It requires constantly working with staff to say that it is OK to talk about it (sexuality)' (Matrix Guild, 2009:14).

The normal reaction, in some aged care facilities, when sexual expression occurred 'was often a response aimed at eradication' (Matrix Guild, 2009:35):

'Geriatricians are not good at acknowledging sexuality. There is increased awareness when there are issues but it is addressed from a medical rather than psycho-social perspective. Some geriatricians are positive about sexuality; others struggle and are homophobic' ('Aviva', geriatrician, hospital/community care and education) (Matrix Guild, 2009:35).

Consensus was reached by one focus group of aged care service providers that a LGBTI senior would have 'to be very brave to disclose in aged care' (Matrix Guild, 2009:33) due to potential sexuality discrimination by those who are charged with Lesbians' care.

It was found that 'A sense of mistrust and fear was apparent in many stories' (Matrix Guild, 2009:27) as a result of past discrimination.

The situation of lesbian seniors in rural aged care facilities can be particularly vulnerable and isolated because there are a 'hell of a lot of people who are bigoted because they don't encounter sexual diversity' (Matrix Guild, 2009:33). Older rural Lesbians whose partners die can often face exclusion because they are invisible:

'In rural Victoria a lot of lesbians are not out. Some of them have been living together for many years but haven't come out to work or to their family. So, when their partner dies they are devastated because they can't tell anyone' (Matrix Guild, 2009:33)

Often aged care staff misunderstand sexual orientation and gender identity to mean only a person's choice of sexual partners. They do not comprehend the 'cultural isolation' (Matrix Guild, 2009:36) of Lesbian residents who have lived their younger lives embedded within the lesbian community.

Violation of a resident's right quietly to enjoy her culture was the Director of Nursing in her nursing home approaching her, saying that *'The Muslim girls who worked there objected to the lesbian porn videos that (she) had'* ('Janet', 58 years, Lesbian) (Matrix Guild, 2008:39). Puzzled by this, since she owned no such videos, 'Janet' could only conclude that they had seen her watching the TV series Queer as Folk (Matrix Guild, 2008:39).

Heterosexual co-residents need to be educated, if Lesbian residents are to be in a safe environment in aged care services.

'One of the things that worries me with support is that we need to educate not just staff but other residents who are homophobic as well' (Matrix Guild, 2009:42)

As Matrix's, GRAI's and Harrison's research - which is some of the only research on the needs of older Lesbians in Australia - shows, there is still a long way to go in protecting the human rights of older Lesbians in aged care.