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12 February 2024

The Secretary  
Social Development Committee  
GPO Box 572, Adelaide 5001  
[sdcc@parliament.sa.gov.au](mailto:sdcc@parliament.sa.gov.au)  
08 82379416

By email

## **Submission re: Inquiry into the potential for a Human Rights Act for South Australia**

To the Social Development Committee of the Parliament of South Australia,

Thank you for the opportunity to provide feedback on the potential for a Human Rights Act for South Australia.

This feedback is provided by the SA Rainbow Advocacy Alliance (SARAA), the peak body for advocacy for South Australia's LGBTIQ+ community. We are a community-run charity working to advocate, inform and educate for an LGBTIQ+ inclusive, healthy and safe South Australia.

On Human Rights Day, 1st December 2022, we were 1 of over 150 organisations and individuals to sign the Joint Statement Proposing a Human Rights Law for South Australia.<sup>1</sup>

In this submission, we confirm our support for a Human Rights Act in South Australia.

LGBTIQ+ South Australians face inequities based on our sexuality and gender identity in our health, safety and inclusion. In this submission, we explore some of the human rights issues that impact LGBTIQ+ South Australians and how a Human Rights Act could further protect our LGBTIQ+ communities.

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<sup>1</sup> Human Rights Act for South Australia, 2023, 'Joint Statement: Proposing a Human Rights Law for South Australia', available at [https://hra4sa-hra4nsw.nationbuilder.com/joint\\_statement\\_proposing\\_a\\_human\\_rights\\_law\\_for\\_south\\_australia](https://hra4sa-hra4nsw.nationbuilder.com/joint_statement_proposing_a_human_rights_law_for_south_australia).

## Overview of LGBTIQ+ South Australia

South Australia has a proud history of being a champion at the forefront of LGBTIQ+ rights, as the first State to decriminalise homosexuality in 1975.

Nevertheless, LGBTIQ+ South Australians continue to face inequalities and discrimination based on our sexual orientation and gender identity, which result in inequities in our health and wellbeing.

Private Lives 3 (2020)<sup>2</sup>, Australia's largest national study on the health and wellbeing of LGBTIQ people, found that:

- 57% of participants had been treated unfairly because of their sexual orientation in the last 12 months
- 31.2% of participants rated their health as very good or excellent compared to more than half (56.4%) of the general Australian population
- 57.2% of participants reported high or very high levels of psychological distress during the past four weeks.

A Human Rights Act to secure the dignity and equality of all South Australians is strongly supported by LGBTIQ+ South Australians.

In November 2022 we surveyed over 600 LGBTIQ+ South Australians to form our Vision for SA Pride 2030,<sup>3</sup> which sets out key priorities for an LGBTIQ+ health, safe and inclusive South Australia. Our Vision calls for our leaders to progress human rights issues including to:

- protect our equality and safety under the law
- include and support us in our education systems
- improve our health and wellbeing
- represent and lead for our communities.

This submission will explore some of these current human rights issues faced by our communities and how a Human Rights Act for South Australia could further protect our communities.

## Discrimination

Everyone deserves to live, work and study without fear of discrimination or harm. Yet, loopholes in our law continue to allow religious organisations to discriminate against LGBTIQ+ people in who they hire and serve in education, health, housing and other essential services.

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<sup>2</sup> Hill, A., Bourne, A., McNair, R., Carman, M., & Lyons, A. (2020). *Private Lives 3*. La Trobe University. [https://www.latrobe.edu.au/\\_data/assets/pdf\\_file/0009/1185885/Private-Lives-3.pdf](https://www.latrobe.edu.au/_data/assets/pdf_file/0009/1185885/Private-Lives-3.pdf)

<sup>3</sup> South Australian Rainbow Advocacy Alliance, 2021, Vision for SA Pride 2030, available at <https://www.saraa.org.au/advocacy/vision-for-sa-pride/>.

The *Equal Opportunity Act 1984* (SA) protects individuals from discrimination based on sexual orientation, gender identity, and intersex status in areas including employment, education and accommodation.

Section 50(1)(c) of that Act provides a broad exemption that allows religious bodies to discriminate on the grounds of sex, sexual orientation, gender identity or intersex status.

These loopholes allow religious institutions to discriminate against LGBTIQ+ South Australians in the provision of essential services including health, disability, education and housing services.

Of particular note have been recent cases of discrimination by faith-based schools including:

- Southern Vales Christian College releasing a policy to not hire LGBTIQ+ staff<sup>4</sup>
- findings of faith-based schools treating LGBTIQ+ students unfairly, including tolerating bullying and harassment documented by the Commissioner of Children and Young People.<sup>5</sup>

Closing loopholes in our anti-discrimination laws that allow religious institutions to fire, not hire and discriminate against us in education, health and community services was the second most important issue to the 600+ LGBTIQ+ South Australians who contributed to our Vision for SA Pride 2030, with 85% of participants rating this as extremely or very important.

One 18-24 year-old bisexual woman living in regional South Australia told us:

*We weren't safe at school because of our identities. My friend is trans and dropped out after the counsellor told him he was a sinner who'd always be a girl. He then got kicked out of home for causing trouble.*

More recently these exemptions were explicitly called out to the UN Human Rights Council in June 2023 by the UN Independent Expert on Sexual Orientation and Gender Identity, with the report stating "it is not permissible for individuals or groups to invoke 'religious liberty' to perpetuate discrimination against LGBTI persons when it comes to the provision of goods or services in the public sphere."<sup>6</sup>

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<sup>4</sup> Star Observer, 1 September 2021, Adelaide Christian School Defends Policy Not To Hire Gay Staff, available at <https://www.starobserver.com.au/news/adelaide-christian-school-defends-policy-not-to-hire-gay-staff/205470>.

<sup>5</sup> Commissioner for Children and Young People, 2021, 'No Exceptions – creating safer schools for LGBTQIA+ Students', available at <https://www.cryp.com.au/every-lgbtqia-student-has-the-right-to-feel-safe-at-school-no-exceptions/>.

<sup>6</sup> United Nations Human Rights Council, 'Freedom of religion or belief, and freedom from violence and discrimination based on sexual orientation and gender identity', *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, (7 June 2023), UN Doc A/HRC/53/37. Available at

In 2016 the South Australian Law Reform Institute (SALRI) recommended the removal of s50(1)(c) of the *Equal Opportunity Act* to “make it clear that it does not apply to exempt discrimination with respect to the provision of key public services such as education or health services.”

In November 2020, the then-Liberal government conducted a public consultation on a draft Bill proposing to narrow the scope of s50(1)(c) to make it clear that some essential service providers cannot rely on these exceptions.<sup>7</sup>

The Bill was not introduced to the South Australian Parliament and the outcomes of the consultation were not released.

A Human Rights Act that recognises the right to freedom from discrimination would provide an avenue to address discrimination that LGBTIQ+ South Australians experience, including when accessing fundamental services.

### **Vilification and hate speech**

There are no protections for LGBTIQ+ South Australians from vilification, that is to incite hatred, revulsion, serious contempt or severe ridicule of a person or group of people.

Recent examples of vilification include:

- anti-LGBTIQ+ protesters at the 2023 Southern Pride March yelling unfounded abuse and accusing attendees of being “pedophiles”, “child molesters” and “child traffickers”, whilst SA Police were present but failed to meaningfully intervene
- Aldinga tourist beach being spray painted with homophobic messages including “F\*\*k gays” in March 2023<sup>8</sup>
- Adelaide’s Pride Walk, celebrating LGBTIQ+ diversity, was defaced with religious vandalism in 2019 and 2021<sup>9</sup>
- a pride flag in Mallala flown during Pride Month being graffitied with “F\*\*\* the faggots”<sup>10</sup>

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<https://www.ohchr.org/en/press-releases/2023/06/freedom-religion-or-belief-not-incompatible-equality-lgbt-persons-un-expert>.

<sup>7</sup> YourSAy, November 2020, ‘Religious exceptions - Anti-discrimination changes’, available at <https://yoursay.sa.gov.au/religious-exceptions-anti-discrimination-changes>.

<sup>8</sup> News.com.au, 24 March 2023, ‘Anti-LGBTQI vandals target popular South Australian tourist beach’, available at

<https://www.news.com.au/national/south-australia/antilgbtqi-vandals-target-popular-south-australian-tourist-beach/news-story/8983f4f736ffca660a371e68ccec3ee>.

<sup>9</sup> QNews, 11 October 2021, ‘Adelaide’s Rainbow Walk defaced with religious vandalism – again’ available at <https://qnews.com.au/adelaides-rainbow-walk-defaced-with-religious-vandalism-again/>; Pink News 28 October 2019 ‘A rainbow walk was vandalised with homophobic ‘Jesus loves you’ graffiti’, <https://www.thepinknews.com/2019/10/28/adelaide-rainbow-walk-graffiti-jesus-loves-you-australia/>.

<sup>10</sup> ABC News, 12 November 2020, ‘Mallala community celebrating ‘Pridevember’ has rainbow flag vandalised in homophobic attack’, available at

- homophobic religious pamphlets placed in Adelaide letterboxes.<sup>11</sup>

A Human Rights Act that recognises freedom of expression and the right to freedom from discrimination would provide a legal framework to protect LGBTIQ+ South Australians from vilification and hate speech.

## **Hate crimes**

LGBTIQ+ South Australians continue to face hatred because of who we are, yet current laws do not adequately protect us from hate crimes.

We know there were many historical LGBTIQ+ hate crimes against in our community that reflect systemic injustice, violence and hatred towards LGBTIQ+ South Australians.

Most notably, this includes the unsolved death of gay university lecturer Dr George Duncan who was thrown into the River Torrens by a group of men believed to be police officers.<sup>12</sup>

We commend the recent Special Commission of Inquiry into LGBTIQ hate crimes established in NSW to investigate unsolved suspected hate crime deaths of LGBTIQ people in NSW between 1970 and 2010 which found:

*There is no doubt that the response to the deaths of those who were perceived to be members of the LGBTIQ community frequently reflected the shameful homophobia, transphobia and prejudice that existed both in society broadly, and within the NSWPF.*

These experiences in NSW are reflective of those attitudes present in South Australia, which continue to have an ongoing impact on LGBTIQ+ communities today.

Hate crimes are now partly protected by South Australian law with changes in November 2021 to the *Sentencing Act 2017* (SA) now requiring Courts to consider whether hate or prejudice towards a person or group of persons was a motivating factor in a crime and add prejudice-motivated conduct as a sentencing factor.

In addition, in 2020 South Australia became the last Australian jurisdiction to allow the so-called "gay panic" defence to murder. Used as recently as 2015, the common law defence of provocation could reduce a conviction of murder to manslaughter in circumstances where a heterosexual man has killed another man for making a 'pass' at him.

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<https://www.abc.net.au/news/2020-11-12/rainbow-flag-vandalised-in-homophobic-attack-at-mallala/12877362>.

<sup>11</sup> InDaily, 24 January 2020, 'Homophobic pamphlet "disturbing" but not illegal', available at <https://www.indaily.com.au/news/local/2020/01/24/homophobic-pamphlet-disturbing-but-not-illegal>.

<sup>12</sup> InDaily, 7 March 2022, 'Duncan drowning files a disturbing reminder of past attitudes', available at <https://www.indaily.com.au/opinion/2022/03/04/duncan-drowning-files-a-disturbing-reminder-of-past-attitudes/>.

A Human Rights Act would provide an avenue to protect LGBTIQ+ South Australians from hate crimes and remedies to address historical injustices.

### **Historical homosexual convictions**

Homosexuality was considered a crime in South Australia up until 1975.

Historical homosexual offences will likely appear on a person's police record which can create challenges for people who have them, for example when seeking employment or travelling.

A person may apply to have historical homosexual offences removed from their police record.

However, South Australia is one of few States and Territories where there is no legislation protecting a person from discrimination in employment on the grounds of a spent conviction or an irrelevant criminal record.<sup>13</sup>

A Human Rights Act could provide an avenue to address challenges experienced by South Australians with a historical homosexual conviction.

### **Conversion practices**

Conversion practices such as "praying the gay away" have been repeatedly shown to be extremely damaging to the long-term health and happiness of LGBTQ+ people.

Unlike our counterparts in VIC, ACT and QLD, there are no laws in South Australia protecting LGBTIQ+ South Australians from practices that seek to change or suppress a person's sexuality or gender identity.

The South Australian Government has committed to working to ensure conversion practices do not occur in South Australia, following repeated calls for a legislative ban by South Australian survivors of change or suppression (conversion) practices.<sup>14</sup>

This was the most important issue for LGBTIQ+ South Australians who contributed to our Vision for SA Pride 2030, with 85% of participants rating this as extremely or very important.

We commend the approach taken in Victoria where the *Change or Suppression (Conversion) Practices Prohibition Act 2021* provides for a civil response scheme run by the Victorian Equal

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<sup>13</sup> The University of Queensland Pro Bono Centre, 'REFORMING CRIMINAL CONVICTION DISCRIMINATION IN QUEENSLAND', 3 February 2022, available at [https://law.uq.edu.au/files/87974/REPORT\\_PBC\\_HUB\\_CriminalConvictionsDiscrimination\\_FIN\\_20220223.pdf](https://law.uq.edu.au/files/87974/REPORT_PBC_HUB_CriminalConvictionsDiscrimination_FIN_20220223.pdf).

<sup>14</sup> The Advertiser, 5 February 2024, 'Labor confronted on gay conversion vow', available at <https://www.saraa.org.au/conversion-practices-survivor-calling-for-ban-in-sa/>.

Opportunity & Human Rights Commission (VEOHRC) to support survivors of conversion practices and address the harm they have endured.

The Act empowers the VEOHRC to consider and respond to reports of change or suppression practices from any person, as well as launch investigations and enforce outcomes where there is evidence of serious or systemic change or suppression practices. Responses to reports are survivor- and trauma-informed, focusing on education and facilitation processes. The focus on educative and facilitative functions reflects that the most effective way to prohibit and eliminate change or suppression practices is through long-term cultural change.

Like in Victoria, a Human Rights Act could create the legal and institutional frameworks to protect LGBTIQ+ South Australians from harmful and damaging conversion practices.

### **Legal recognition of gender identity**

Transgender and gender diverse South Australians face challenges in having their identity recognised under the law.

The *Births, Deaths and Marriages Registration Act 1996* (SA) allows people born in South Australia to apply to change the registration of their sex or gender identity.

From August 2016, South Australians are no longer required to undergo sex reassignment surgery to legally change their gender. Consultations with medical and psychological professionals are still required and the South Australian Civil and Administrative Tribunal (SACAT) must approve any application made by a child aged under 18. Additionally, the process is both costly and administratively burdensome for transgender and gender diverse people undertaking it.

Practically, transgender and gender diverse people continue to experience challenges in having their name and gender identity reflected by organisations and services, even where it has been legally changed. These challenges include:

- educational institutions like TAFE, SACE and Universities being unable or refusing to update their educational certificates<sup>15</sup>
- organisations and services have outdated customer information systems that only allow staff to record people as binary genders of male or female.

A Human Rights Act that recognises freedom of expression and equality before the law would provide further protections for the legal recognition of transgender and gender diverse identities.

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<sup>15</sup> CityMag, 11 November 2021, 'Misgendered and misnamed', available at [https://citymag.indaily.com.au/culture/misgendered-and-misnamed-sa-tertiary-institutions-are-not-accommodating-trans-students/?fbclid=IwAR16-e2MOvY1kPGuSmFO71OQUcvepyyKPWt3y\\_ol9uTkea4E4cTWx-1F9uE](https://citymag.indaily.com.au/culture/misgendered-and-misnamed-sa-tertiary-institutions-are-not-accommodating-trans-students/?fbclid=IwAR16-e2MOvY1kPGuSmFO71OQUcvepyyKPWt3y_ol9uTkea4E4cTWx-1F9uE).

## Access to healthcare

Our experiences of discrimination, stigma and misunderstanding from health professionals keep us from being our best selves.

LGBTIQA+ South Australians continue to experience discrimination when accessing health services.

Private Lives 3 (2020)<sup>16</sup> found that mainstream medical clinics had the lowest proportion of participants who felt that their sexual orientation or gender identity was very or extremely respected (58.6% and 37.7% respectively). Additionally, the report found that LGBTIQA+ people reported lower self-rated health than that of the general Australian population.

Making mainstream health and community services safer and more inclusive for LGBTIQA+ people was a high priority for 83% of participants who contributed to our Vision for SA Pride. Members of our community told us:

*"When my son was in hospital, nurses laughed at him and refused to call him by his chosen name. It's hard enough being in hospital without being degraded."*

- asexual 45-54 year old from Dernancourt

*"It's difficult accessing health care when doctors have no clue how to talk about me."*

- 25-34-year-old trans man from Mawson Lakes.

Accessing healthcare free from discrimination is important for all LGBTIQA+ South Australians, particularly transgender and gender diverse people, and those living with HIV.

Gender affirming healthcare continues to be politicised and people who seek to access it face significant waiting times and prohibitive costs that can have a long and devastating impact on their mental health.

A Human Rights Act would protect the ability of LGBTIQA+ South Australians to access healthcare free from discrimination.

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<sup>16</sup> Hill, A., Bourne, A., McNair, R., Carman, M., & Lyons, A. (2020). *Private Lives 3*. La Trobe University. [https://www.latrobe.edu.au/\\_data/assets/pdf\\_file/0009/1185885/Private-Lives-3.pdf](https://www.latrobe.edu.au/_data/assets/pdf_file/0009/1185885/Private-Lives-3.pdf)



## **Rights of people with intersex characteristics**

Intersex people are born with innate sex characteristics that do not fit medical norms for female or male bodies.

Like all South Australians, intersex people deserve to make medical decisions about their bodies that are right for them.

Yet the current medical model in South Australia stigmatises intersex people by treating intersex variations as a “problem” to be “fixed” or “erased”.

This often results in intersex people, especially children, being subjected to unnecessary medical interventions without their consent, such as genital surgeries performed for cosmetic reasons to “normalize” the appearance of an intersex person’s genitals rather than to treat a medical problem.

These surgeries can be painful, traumatic and cause long-term physical and psychological harm.

In October 2021 the Australian Human Rights Commission released a report calling on all State and Territory governments to:<sup>17</sup>

- End unnecessary medical procedures modifying the sex characteristics of intersex people without their consent;
- Establish an independent body, including members with lived experience, to oversee decisions where medical procedures are necessary but the person is unable to provide consent;
- Ensure intersex people are provided with fair and accurate information and support to be able to make fully informed decisions about their healthcare;
- Fund and provide access to affirming peer support, counselling and other intersex-led resources to ensure intersex people and their families are supported at every step in their journey;
- Address stigma and discrimination through public and targeted education initiatives;
- Redress the injustices of the past and provide support for healing.

A Human Rights Act could provide a useful avenue for people with intersex characteristics to seek redress when the above-mentioned has occurred and will help prevent the occurrence of such practices in the future.

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<sup>17</sup>Australian Human Rights Commission, *Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics*, available at <https://humanrights.gov.au/intersex-report-2021>.

## **LGBTIQA+ incarcerated people**

LGBTIQA+ people in prison face a range of issues connected to the broader issue of discrimination including:

- discrimination and harassment from other inmates and staff
- safety concerns relating to violence and assault while incarcerated based on their sexual orientation or gender identity
- access to healthcare, including HIV+ treatment and prevention, hormone therapy for gender diverse people and mental health support
- placement within the prison system for transgender and gender diverse people that aligns with their gender identity, and the risk of violence and harassment associated with their placement.

Currently, the Department for Correctional Services states:<sup>18</sup>

*DCS is committed to meeting the needs of transgender and intersex prisoners and ensuring their safety is not compromised.*

*Transgender prisoners will have an individualised management plan developed to take into consideration their individual needs.*

A Human Rights Act would provide correctional service decision-makers with a framework for the proper consideration of human rights in such plans.

## **Right to privacy and reputation**

A Human Rights Act that recognises the right to privacy is important for LGBTIQA+ South Australians who choose not to disclose their sexual orientation or gender identity with certain others, often due to concerns about discrimination or unfair treatment.

LGBTIQA+ South Australians frequently choose not to disclose their sexual orientation or gender identity with certain others, known as remaining “closeted”. Often this is due to fear of discrimination or unfair treatment, for example from a person’s:

- employers or colleagues
- school or teachers
- church or community group
- family.

Telling someone about another person’s sexual orientation or gender identity without their consent is also known as “outing”. Violating a person’s privacy in this way can cause harm to their physical, mental, and financial wellbeing.

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<sup>18</sup> Department for Correctional Services, 2024, ‘Prisoner health and wellbeing’, available at <https://www.corrections.sa.gov.au/prison/prison-life/prisoner-health-and-well-being>.

A right to privacy would protect the choice of LGBTIQ+ South Australians to disclose or not disclose information relating to their sexual orientation or gender identity to certain others.

We particularly commend the Office of the Victorian Information Commissioner for their guidance on [LGBTIQ+ privacy rights](#).

South Australia does not have any legislation that protects a person's right to privacy. Contrarily, South Australia has the *Public Sector (Data Sharing) Act 2016* that allows the government to share information to "benefit the broader South Australian population".

### **Intersecting minorities**

LGBTIQ+ people can have multiple intersecting identities, such as religion, cultural or ethnic background, disability or Aboriginal or Torres Strait Islander backgrounds.

People who belong to multiple social minority groups often experience multiple forms of marginalisation that exacerbate human rights inequities through experiences of "double discrimination".

A Human Rights Act will most benefit those who experience multiple forms of marginalisation, notably LGBTIQ+ people who are also disabled; people of colour or culturally and linguistically diverse; or First Nations, in particular brotherboys and Sistergirls.

LGBTQIA+ people are more likely to live with physical and psychosocial disabilities than the general population, with *Private Lives 3 (2020)* finding that 38.5% of LGBTIQ+ respondents lived with a disability or long-term health condition compared to 17.7% of the general Australian population.<sup>19</sup>

Compared to the broader LGBTQIA+ community, LGBTIQ+ people living with disability are:<sup>20</sup>

- 25.7% more likely to feel unsafe or uncomfortable in educational settings
- 50.1% more likely to face verbal and physical harassment due to their sexuality or gender identity
- 71% more likely to face sexual harassment and assault,
- 23.2% more likely to experience intimate partner violence
- 150% more likely to have attempted suicide.

Similarly, the Australian Human Rights Commission has conducted a body of work into the needs of Aboriginal and Torres Strait Islander peoples who identify as being LGBTIQ+ that

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<sup>19</sup> Hill, A., Bourne, A., McNair, R., Carman, M., & Lyons, A. (2020). *Private Lives 3*. La Trobe University. [https://www.latrobe.edu.au/\\_data/assets/pdf\\_file/0009/1185885/Private-Lives-3.pdf](https://www.latrobe.edu.au/_data/assets/pdf_file/0009/1185885/Private-Lives-3.pdf)

<sup>20</sup> Royal Commission into Violence, abuse, Neglect and Exploitation of People with Disability, 29 November 2022, 'Violence, Abuse, Neglect and Exploitation of LGBTQIA+ People with Disability'.

found there are 'difficulties maintaining cultural ties and family support as well as recognition of diverse sexual orientation and gender identity'.<sup>21</sup>

We welcome the potential for a Human Rights Act to address the multiple forms of marginalisation experienced by LGBTIQ+ South Australians with multiple intersecting identities.

## Conclusion

Thank you again for the opportunity to provide feedback on this important matter. We would welcome the opportunity to provide oral evidence to the inquiry.

If you wish to discuss these matters further, please contact Tamsin Anspach, SARAA Board Chair via email [chair@saraa.org.au](mailto:chair@saraa.org.au).

We will also make this submission publicly available on our website to ensure our members and supporters are aware of our position.

Kind regards,

**Tamsin Anspach**

She/her

Board Chair  
SA Rainbow Advocacy Alliance (SARAA)  
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SARAA acknowledges and pays respects to the Kaurna, Nukunu and Ngarrindjeri people, whose land we operate and live on. Aboriginal land was stolen, never ceded, and we stand in solidarity with First Nations people, especially those who are also members of the LGBTIQ+, Brotherboy and Sistergirl communities.

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<sup>21</sup> Australian Human Rights Commission, 2024, 'Brotherboys, sistergirls and LGBT Aboriginal and Torres Strait Islander peoples', available at <https://humanrights.gov.au/our-work/lgbti/brotherboys-sistergirls-and-lgbt-aboriginal-and-torres-strait-islander-peoples>.