



Submission

Consolidation of Commonwealth anti-discrimination laws

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beyondblue, the national depression and anxiety initiative, is pleased to present this submission on the consolidation of Commonwealth anti-discrimination laws to the Attorney-General's Department. In making this submission, *beyondblue* has focussed on the **relationship between discrimination and the high prevalence mental health disorders of depression and anxiety**, the impact on consumers and carers, and areas that are most relevant to our work and research findings.

beyondblue has conducted qualitative research on experiences of discrimination and its relationship with mental health. This has included:

- a series of focus groups with people who experience depression and anxiety and their carers (2010). The stigma and discrimination associated with mental illness was identified as a major issue in these groups.
- market research with a Gay, Lesbian, Bisexual, Trans¹ and Intersex (GLBTI) online community on the experiences of discrimination, depression and anxiety (2011).

The issues identified through this research, and the personal experiences reported, have informed this submission.

beyondblue is a national, independent, not-for-profit organisation working to address issues associated with depression and anxiety in Australia. Established in 2000, *beyondblue* is a bipartisan initiative of the Australian, State and Territory Governments, with the key goals of raising community awareness about depression and anxiety and reducing stigma associated with the illnesses. *beyondblue* works in partnership with health services, schools, workplaces, universities, media and community organisations, as well as people living with depression and anxiety, to bring together their expertise. Our **five goals** are to:

1. Increase awareness of depression and anxiety - we will increase awareness of depression and anxiety in the Australian community.
2. Reduce stigma and discrimination - we will reduce the stigma and discrimination associated with depression and anxiety in the Australian community.
3. Encourage help seeking - we will increase the proportion of people in the community with depression and anxiety who seek help.
4. Reduce impact and disability - we will reduce the impact and disability associated with depression and anxiety.

¹ 'Trans' is being used here as an umbrella term to cover a diverse range of experiences of sex and gender and ways of describing oneself such as trans, transgender, transsexual, genderqueer, gender questioning etc. This term has been adopted based on: Aizura, A.Z., Walsh, J., Pike, A., Ward, R., & Jak, 2010. Gender Questioning. A joint project of Trans Melbourne Gender Project, Gay and Lesbian Health Victoria & Rainbow Network Victoria. Accessed at: <http://www.glhv.org.au/node/242>

5. Facilitate learning, collaboration, innovation and research - we will facilitate learning, collaboration, innovation, research and information sharing to build the knowledge base of depression and anxiety and increase capacity across the Australian community.

Specific population groups that *beyondblue* targets include young people, Indigenous peoples, people from culturally and linguistically diverse backgrounds, people living in rural areas, GLBTI and older people.

Prevalence and impact of depression and anxiety disorders

Depression, anxiety and substance use conditions are the most prevalent mental health disorders in Australia.¹ One in three Australians will experience depression and/or anxiety at some point in their lifetime and approximately 20 per cent of all Australians will have experienced depression, anxiety or a substance use disorder in the last year.² People experiencing depression and/or anxiety are also more likely to have a co-morbid chronic physical illness.³

Mental illness is the leading cause of non-fatal disability in Australia, and it is important to note that depression and anxiety accounts for over half of this burden.⁴ Globally, the World Health Organization predicts depression to become the **leading cause of burden of disease by the year 2030**, surpassing ischaemic heart disease.⁵

Mental illness costs the community in many different ways. There are social and service costs in terms of time and productivity lost to disability or death, and the stresses that mental illnesses place upon the people experiencing them, their carers and the community generally. There are financial costs to the economy which results from the loss of productivity brought on by the illness, as well as expenditure by governments, health funds, and individuals associated with mental health care. These costs are not just to the health sector but include direct and indirect costs on other portfolio areas, for example welfare and disability support costs. **It is estimated that depression in the workforce costs the Australian society \$12.6 billion over one year, with the majority of these costs related to lost productivity and job turnover.**⁶ The individual financial costs are of course not exclusively borne by those with mental illness. It is often their carers who experience financial hardship due to lost earnings, as well as increased living and medical expenses.⁷

Discrimination, depression and anxiety

It is well understood that **discrimination is a risk factor for poor mental health and wellbeing.**⁸ Discrimination and prejudice can result in rejection by families, bullying, violence (including a fear of violence occurring and experiences of violence), restricted access to resources, and internationalisation of negative stereotypes.

Research suggests that ethnic and race-based discrimination has a negative impact on mental health, with self-reported discrimination being linked to depression, psychological distress, stress and anxiety.⁹

A number of Australian and international studies have demonstrated that prejudice, discrimination and abuse is strongly related to an increased risk of developing depression and anxiety in GLBTI populations.^{10,11,12} Studies have found that non-heterosexual people face up to two times more abuse or violence (including physical, mental, sexual or emotional) than heterosexual people.¹³ A fear of violence is also a strong predictor of depressive symptoms.¹⁴

beyondblue's research with GLBTI Australians suggests that¹⁵:

- early experiences of discriminatory attitudes and behaviours within families may be internalised, and impact on overall wellbeing and identity formation
- within workplaces, both experiences of discrimination, and a fear of discrimination, may lead to individuals feeling conflicted about openly being themselves, and seeking employment in certain industries which may provide more supportive workplace environments
- a lack of understanding and sensitivity in mainstream healthcare services is a barrier to accessing care
- the threat and expectation of discrimination is a daily occurrence for GLBTI Australians, which may manifest as stress and anxiety
- transphobia is perhaps more prevalent than other forms of discrimination and seems to stem from ignorance, naivety, misunderstanding, stereotypes and stigma
- both the immediate and longer-term impact of discrimination and its negative impact is powerful and complex.

In addition to discrimination being a risk factor for the development of depression and anxiety disorders, there are **significant levels of stigma and discrimination associated with having a mental illness**. This discrimination may be experienced in a number of contexts, including:

- employment – the stigma associated with depression and anxiety may lead to discrimination during recruitment, returning to work and promotions¹⁶
- housing - SANE Australia reports that nearly 90 per cent of respondents in a housing survey who had a mental illness believed that they had been discriminated against in their search for appropriate housing¹⁷
- health services – a fear of negative responses from health professionals may impact on help seeking¹⁸
- insurance - people with depression and anxiety experience difficulties when seeking all types of insurance products (e.g. life, income protection, travel, health) that are otherwise readily available to people without a history of mental illness.¹⁹

The relationship between discrimination, depression and anxiety highlights the need for a comprehensive and coordinated approach to address discrimination. The consolidated anti-discrimination laws provide an opportunity to help protect against experiences of discrimination, and it therefore has the potential to contribute to improved mental health and wellbeing.

beyondblue's response to the consolidation of Commonwealth anti-discrimination laws discussion paper

Question 4: Should the duty to make reasonable adjustments in the DDA be clarified and, if so, how? Should it apply to other attributes?

Clarifying the duty to make reasonable adjustments in the Disability Discrimination Act, by including a specific standalone positive duty, will provide greater guidance to organisations regarding their responsibilities. Specific information should be provided about when reasonable adjustments need to be made, the process for undertaking this, and the limits of the obligations. Although the Victorian Equal Opportunity Act (2010) provides one example of a standalone reasonable adjustment duty, it is important to consider other alternatives to ensure the consolidated legislation clearly describes the responsibilities of duty holders.

The duty to make reasonable adjustments should be extended to all protected attributes, in order to clarify the legislation and ensure consistency. In the context of employment, this is particularly important for people with responsibilities that include caring for a family member with a disability such as mental illness. Carers of people with a mental illness face barriers to participating in employment. They are significantly less likely to participate in full and part time employment compared to those in the general community, due to their caring responsibilities.

Recommendation

1. Clarify the duty to make reasonable adjustments by including a specific standalone positive duty, and extending this to all protected attributes.

Question 6: Should the prohibition against harassment cover all protected attributes? If so, how would this most clearly be expressed?

Harassment should be prohibited for all protected attributes, including disability, sexual orientation and gender identity. *beyondblue* research has demonstrated the impact that harassment, relating to sexual orientation and gender identity, may have on mental health and wellbeing:²⁰

- *“The vast majority of my harassment was experienced throughout my years at high school. The schoolyard bullying was unbearable and occurred on a daily basis. There was not a single day where I was not subjected to taunts and name-calling. It was a horrible time for me and marked some of the worst depression and anxiety I have ever felt. At a time when I was still sorting out who I was and what it meant to be me, having other people bully me for my perceived sexuality was demoralising and soul-destroying. I still carry those scars today and always will...”* (25-45, Male, Gay, QLD, Regional)
- *“Sadly, sometimes it doesn't take much harassment to severely impede on someone's self-confidence and self worth. Even the smallest forms such as a sneer, a funny face or a rude remark can have a lasting effect. I know when I have held my boyfriend's hand in public and we have received unwanted remarks or gestures, it*

stays in my head so that I am more reluctant or think twice next time I go to hold hands. I guess things like this have a way of staying engrained at the back of your mind and can lead to lasting affects of depression and anxiety. Even constantly having to second guess whether you should hold hands, kiss someone in public is a form of anxiety and is not healthy.” (18-24, Male, Gay, QLD, Metro)

Given the relationship between experiencing discrimination and harassment and an increased likelihood of developing depression and anxiety disorders, it is important that discrimination and harassment for all protected attributes is prohibited within legislation.

Recommendation

2. Prohibit discrimination and harassment against all protected attributes in the consolidated bill.

Question 7: How should sexual orientation and gender identity be defined?

It is important that the definitions for sexual orientation and gender identity are inclusive. The definitions should recognise that same sex attraction, sex and gender diversity are within the normal range of human sexual orientation and characteristics. Furthermore, legislation should recognise that gender is broader than a binary construct - a person’s gender identity can be defined as their *“internal sense of being male, female, something other or in between.”*²¹ Using binary categories to describe a person’s sex is insufficient, as this kind of categorisation may exclude intersex people.

Recommendation

3. Consult with relevant representative groups to define sexual orientation, sex (including intersex) and gender diversity as protected characteristics in the consolidated legislation.

Question 8: How should discrimination against a person based on the attribute of association be protected?

To ensure consistency and clarity in the consolidated bill, associated discrimination should be extended to all protected attributes, including disability, sex, gender diversity and sexual orientation.

Recommendation

4. Extend associated discrimination to all protected attributes, including disability, sex, gender diversity and sexual orientation.

Question 10: Should the consolidation bill protect against intersectional discrimination? If so, how should this be covered?

It is important that the consolidation bill protects against intersectional discrimination, due to the significant impact this type of discrimination may have on wellbeing, and the difficulties in separating different forms of discrimination. The interconnections between different personal attributes and discrimination have been explored in *beyondblue* research:

- *“I believe there still is a stigma with it [mental health issues], but I struggle with my mother because she’s also black. I find it hard to weigh up whether certain friends have shied away because she’s black and angry, or mentally ill and angry... My mum’s been refused a taxi because they thought she was another black lady that hadn’t paid her bill. And of course, mum having a mental illness, went off her head. He looked at her as if to say, ‘well, you’re just a typical black woman’” (Mental health carer)²²*
- *“I have always been judged as gay, first as a gay woman and now as a gay man... As I’ve never identified as either I find it invalidating to be judged for what I’m not. My biggest dislike is being diagnosed with a mental disorder in Gender Identity Disorder, I do not believe it is one and the result is those who do not understand my gender identity can disregard my view as deluded by simply saying I have a mental illness while pointing to the DSM-IV. This results in a medical condition that is surrounded by stigma and prejudice. For the most part people will not be disrespectful to my face... they’ll wait till I leave the room.” (25-45, Transsexual, Queer, SA, Metro)²³*

Incorporating an explicit focus on intersectional discrimination in the consolidated bill may help to address the multiple forms of discrimination that an individual may experience.

Recommendation

5. Protect against intersectional discrimination in the consolidated bill.

Question 11: Should the right to equality before the law be extended to sex and/or other attributes?

The right to equality before the law should be extended and applied to all protected attributes, including disability status, sexual orientation, sex diversity and gender diversity. Enabling all individuals to have the right to equality before the law may be important for symbolic purposes, by demonstrating that discrimination is unacceptable; as well as practical purposes, by helping to drive cultural change and inform policies and behaviour.

Recommendation

6. Extend and apply the right to equality before the law to all protected attributes, including disability, sex, sexual orientation and gender diversity.

Question 17: Should discrimination in sport be separately covered? If so, what is the best way to do so?

It is essential that discrimination in sport be incorporated into the consolidated bill. Sporting environments are a common place in which GLBTI populations experience discrimination. This was clearly described in *beyondblue*’s qualitative research with GLBTI people:

- *“I gave up my sport because I found it unwelcoming, and the prevailing climate abusive. It was the only aspect of my life where I found this... As an example of what we are faced with and how difficult it is to do something about it, one time the referee came in to check that we had taken off anything dangerous before the game e.g. jewelry and his comment was ‘I don’t want to see any poofy bangles’. Ironically, there*

were 10 gay men in that room, but none of us wanted to make an issue. However, on a regular basis stuff like this, and sledging of 'faggots', 'you like it up the bum', 'poofs' makes sport a very different environment to work, school and recreational activities (I think because it is so combative and physical - full contact)." (25-45, Male, Gay, VIC, Metro)

Symons, Sbaraglia, Hillier and Mitchell's (2010)²⁴ research with GLBT Victorians suggests that:

- 41.5 per cent had experienced verbal homophobia sometime during their sports involvement
- Of those experiencing verbal homophobia, 57.6 per cent reported experiencing this 'often', with 2.4 per cent experiencing homophobia 'always' within their sporting context
- 86.8 per cent of respondents indicated that the experience of discrimination had affected them in some way
- 42.7 per cent of respondents had experienced sexism at some time during their sports involvement. Transgender sport participants experienced the most sexism, followed by females and males.

Hillier, Turner and Mitchell (2005)²⁵ also report that only 19 per cent of young same sex attracted Australians feel safe in their sporting environment. Given the strong relationship between experiences of discrimination and abuse and the increased likelihood of developing depression and/or anxiety, it is important that the consolidated bill incorporates discrimination in sporting contexts.

Recommendation

7. Prohibit discrimination in sport in the consolidated bill.

Question 18: How should the consolidation bill prohibit discriminatory requests for information?

Many people with a mental illness experience significant discrimination when applying for, and making claims against, insurance policies.^{26,27} In 1993, the *Report of the National Inquiry into the Human Rights of People with Mental Illness* by the Human Rights and Equal Opportunity Commission (now Australian Human Rights Commission), revealed the systemic nature of discrimination experienced by people living with mental illness:

"The Inquiry was told that insurance companies frequently impose loadings, or even exclusions, on people who have (or have had) a mental illness. Witnesses considered these loadings and associated conditions were out of keeping with the true risk which their state of health implied. In particular, they considered that insurers took insufficient or no account of the type of illness, its severity, its prognosis, or its consequences for longevity or for income-earning capacity".²⁸

These findings have been confirmed by a recent national survey of people with a mental illness, conducted by *beyondblue* and the Mental Health Council of Australia.²⁹ This research has indicated that:

- Over 35 per cent of respondents strongly agreed that it was difficult for them to obtain any type of insurance due to them having experienced mental illness, increasing to 67 per cent for life and income protection insurance
- 45 per cent of respondents indicated their application for income protection insurance was declined due to mental illness
- 50 per cent of respondents received their insurance products with either increased premiums or exclusions specifically for mental illness.

While insurance is incorporated into the existing Disability Discrimination Act, the experiences of people with a mental illness, and their carers, suggests that the legislation needs to be strengthened to better protect the rights of people with a mental illness. Prohibiting discriminatory requests for information within the consolidation bill may lead to improved policies and practices within the insurance industry, to enable greater and fairer access to insurance for people with a mental illness.

Recommendation

8. Prohibit discriminatory requests for information relating to experiences of mental illness within the insurance industry.

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