

Launch of Gender Diversity in the ACT – A Survey of Trans Experiences

By Dr Helen Watchirs ACT Human Rights and Discrimination Commissioner
O'Connor, Friday 6 May 2011

Thanks for inviting me to speak - good evening everyone & distinguished MLAs including Deputy Chief Minister & Treasurer Katy Gallagher MLA, Speaker Shane Rattenbury, Meredith Hunter, Caroline Le Couteur and Amanda Bresnan. Firstly I would also like to acknowledge the traditional owners of the land on which we meet today, the Ngunnawal people. I respect their continuing culture and the contribution they make to the life of this city Canberra and the ACT region.

Congratulations on having this new community space for A Gender Agenda, which I hope will provide a safe space for members of the trans and intersex community to meet and share experiences, as well as feeling a sense of belonging. I've been invited here tonight to launch the *Gender Diversity in the ACT: A Survey of Trans Experiences* conducted by A Gender Agenda, as well as talking briefly about relevant discrimination and law reform issues.

A Gender Agenda Survey

The survey of 83 trans & intersex people aged from 16 to 61 years, is the first of its kind in the ACT (and nationally), and additionally important because the ABS does not record sex & gender diversity. It documents the everyday stigma respondents suffered, including:

- higher unemployment (13% vs 3%) but also education levels (24% post-graduate & 25% undergraduate levels). Income is skewed at lower & higher (not middle) levels;
- High rates of discrimination, especially in accessing employment and health services, with 21% of respondents going inter-State due to lack of knowledge/expertise of medicos (61% of respondents said this was a difficulty) and/or stigmatising attitudes;
- Lower rates of community participation (eg exclusion from sex segregated sports) & being in an intimate relationship (32% compared to 59% in the general population, ie half) - 21% of respondents lived alone, which is double the general rate;
- of the 53 people answering this question, a high rate (85%) wished to change the legal documentation of their sex, but 45% did not meet the criteria (including expensive

sexual reassignment surgery) or the binary genders options available were too limited (40%). Only 5 people had actually changed the sex on their birth certificate (2 in the UK and 3 in Australia where surgical intervention is a legislative prerequisite). Only 10 people had 100 points of ID which did not reveal their gender diversity – this disparity between formal identity and appearance/presentation can be not just hurtful but also dangerous, eg passports – held in airport detention;

- the importance of issues were rated as follows: health (with 95% of respondents highlighting the need to educate professionals about gender diversity issues, as well as 89% wanting access to relevant medical information); followed by legal recognition 87% identifying documentation as very important & 81% for broader law reform; and
- personal issues were ranked in the following order - effect of transition on my life; low income; reliability of medical information; identity documentation; & employment discrimination.

This online survey is consistent with one the HRC conducted with 158 respondents in 2009 for World AIDS Day which showed that there was disproportionate discrimination of respondents and people they knew in health care and the workplace on the grounds of sexuality, gender identity and disability (50% in respect of blood borne viruses).

Law Reform Advisory Council reference

The Law Reform Advisory Council recently accepted a reference to conduct an inquiry into and report on the steps that are necessary to provide for legal recognition of transgender and intersex people in the ACT and to ensure any provisions are compliant with the *Human Rights Act 2004*. It will also look at the potential implications this has for public functions & documentation under Territory & Federal law, as well as mutual & other recognition schemes in other jurisdictions. The implications are wide, ranging from single sex schools & sporting clubs, sex-specific community services (eg shelters), law enforcement identification and searching/detention practices by police & corrections. This work follows on from the Australian Human Rights Commission's 2009 report '*The Sex Files*', which specifically looked at the legal recognition of sex in documents and government records.

In early 2010 the Commission advised the Attorney-General that the ACT *Births, Deaths & Marriages Act 1997* breached the Human Rights Act in several ways, eg a person's sex on

their Act birth certificate may only be changed where two doctors make a statutory declaration that the person has undergone ‘sexual reassignment surgery’, defined as ‘alteration of a person’s reproductive organs’ (ie bilateral mastectomies or breast augmentation, or hormone treatment is not sufficient). The UK *Gender Recognition Act 2004* and similar legislation in Spain in 2007 does not have these oppressive criteria. I understand that Prescribed Form 204 additionally requires that the applicant be unmarried. Also a 2008 amendment requires that when changing name, the person’s sex must be shown on the register (which had not formerly been necessary). I think this LRAC inquiry is a positive step towards ensuring inclusion of trans and intersex people in the ACT community, and will hopefully address some of the barriers that you experience in accessing health care or government & private services.

Discrimination Act review

LRAC’s trans/intersex inquiry work also ties in with the general review of the ACT Discrimination Act, the first comprehensive one since its introduction 20 years ago in 1991. Recent amendments to the Act that came into force in March 2010 replaced ‘transsexuality’ with ‘gender identity’ as a protected attribute under the Act to better reflect the spectrum of gender identity. We are interested to hear your views about whether the term accurately reflects how people identify their gender and I encourage you to make a submission to the inquiry. For example, do we need to get rid of medical models and legal categories that reflect assumptions that trans/intersex people either want binary categories of man or woman.

HRC work on Trans/Intersex issues

I am concerned by the survey results that report problems accessing health services in the ACT. As well as discrimination complaints, the Human Rights Commission also handles health services complaints which are allocated to the Health Services Commissioner. In the past we have had few formal complaints of gender identity (formerly called transsexuality) discrimination (usually 1 or 2 pa eg access to toilets, although last reporting period 2009-10 we had 5 complaints, and 1 of vilification). However it is clear from the survey results that this doesn’t mean trans/intersex people don’t encounter significant stigma in their daily lives.

Conclusion

The Commission has a role to play in promoting and raising awareness of the *Human Rights*

Act 2004. Trans and intersex people have the same rights as everybody else, including recognition as a person before the law, the right to be protected against discrimination, the right to freedom of expression, the right to privacy and reputation. I'd like to finish by quoting 8 year old Lily who said in a recent radio documentary 'Tom Girls' (broadcast on Radio National on 16 April 2011 <http://www.abc.net.au/rn/360/stories/2011/3186431.htm>)

"I don't think of myself as a boy or a girl, I'm just a regular kid, I'm just a normal person".