*A Gender Agenda*

# HREOC Submission: Sex and Gender Diversity

May 2008

# INTRODUCTION

## *A Gender Agenda*

The Canberra based lobby group "A Gender Agenda" welcomes the opportunity to provide this submission in response to HREOC's Sex and Gender Diversity Issues Paper.

A Gender Agenda is an inclusive group of ACT citizens who are committed to achieving legal and social recognition and protection of human rights for all people regardless of their legal or biological sex, or their gender identity or presentation.

If you require any further information, we can be contacted via Peter Hyndal on 0419 471 756. We consent to any part of this submission being made public.

## *Terminology*

We welcome HREOC's use of the term "sex and gender diverse communities", and we strongly support the continuing use of this terminology. We make the following points in support of this terminology:

- It is our view that the sex and gender diverse community is, itself, highly diverse.
- There is nothing about the use of an umbrella term such as "sex and gender diverse community" that should be seen in any way to deny this internal diversity.
- There is nothing about the use of an umbrella term such as "sex and gender diverse community" that should be seen in any way to be saying that, for example, an intersex person is 'the same as' a transsexual.
- There is nothing about the use of an umbrella term such as "sex and gender diverse community" that means that issues specific to any one sub group, such as "intersex", will be overlooked in favor of another sub group.
- The use of more specific terms such as "transsexual" "transgender" or "intersex", although useful at times for specific purposes, are cumbersome in areas of discrimination and legal discussion to the degree that they require specific and carefully worded definitions that are difficult to agree upon and liable to change.
- We believe that as a society, we should be acknowledging, encouraging and celebrating the gender diversity of ALL people and not entrenching a form of 'hierarchy' which seeks to give greater attention to 'trans' or 'intersex' people at the expense of the far greater numbers of sex and gender-diverse individuals.

## *Case Studies*

We are able to provide many more case studies if useful. We have limited their use in this document for the sake of brevity.

## *Priority Areas*

Our submission discusses what we believe to be a number of critically important priority areas, as follows:

1. Identity Recognition and Changing Official Documentation
2. Medical Issues
    a) Children
    b) Adults
3. Discrimination Issues
    a) Employment Related
    b) Other
4. Education

## PREFERRED PROJECT OUTCOMES

It is our view that sex and gender diverse communities currently face some of the most severe and consistent forms of discrimination; denial of treatment or provision of sub-standard treatment; government interference in personal/medical issues; and inadequate recognition before the law. Accordingly, we believe it would be preferable if HREOC could conduct the broadest possible examination of the human rights issues faced by the sex and gender diverse community, rather than focusing on one particular topic.

We would encourage HREOC to undertake a process of public hearings, as occurred in the 'Same Sex: Same Entitlements' project. We believe that some of the most productive project outcomes would include:

- The documenting of qualitative information about the discrimination suffered by members of sex and gender diverse communities.
- An analysis of the extent to which existing Federal, State and Territory laws breach the human rights of sex and gender diverse individuals.
- A series of recommendations for action which address:
    - Law reform required at the Federal, State and Territory levels to uphold the human rights of individuals from sex and gender diverse communities; in particular, the right of all individuals to have their identity recognised consistently before the law.
    - Steps necessary to rectify the lack of adequate health services available to members of sex and gender diverse communities.
    - The need for all Government to prioritise public education on issues regarding sex and gender diversity.
    - The need for collection of accurate statistical information relating to sex and gender diverse communities.

## IDENTITY RECOGNITION AND OFFICIAL DOCUMENTS

### *Current Legislative Definition of Sex*

Despite the fact that much legislation relies on identifying the sex of an individual, there is no legislative definition of the terms "female" and "male". Instead these terms are assumed to be socially self-evident and legally determinable on the basis of the sex recorded at birth on each individual's birth certificate.

### *Case Law - Legal Definition of Sex in Re: Kevin*

On 12 October 2001 Justice Chisholm of the Family Court of Australia handed down his decision in *Re: Kevin*[1]. This case determined that a person's legal sex does not equate solely to the appearance of their genitals at birth. Rather, account must also be taken of other biological determinants of sex and relevant social determinants (relating to gender). It is important to note that the issues raised by *Re: Kevin* relate to determining the legal sex of any person, not just those who identify as transsexual.

### HOW DOES IDENTITY RECOGNITION AFFECT THE SEX AND GENDER DIVERSE COMMUNITY?

## 1) Birth Certificates

Currently, all Australian States and Territories require every child to have their sex registered as either male or female at birth. This determination is made solely on the visible appearance of external genitalia. The sex recorded on the birth certificate determines each individual's legally recognised sex for the rest of his or her life.

This presents no practical problem where the external genitalia identified at birth correspond to all other biological determinants and the gender identity that the individual develops throughout life. However, where this is not the case, issues of profound inequality emerge. Specifically, there are only extremely limited provisions—available in a minority of jurisdictions— which recognise contradictory biological information, or contradictory information regarding an individual's gender identity.

## 2) Changing Legal Sex/Gender

A record of each individual's birth is placed on the births, deaths and marriages registry in the state or territory in which they were born. A birth certificate is then issued to the child's parents. Currently, the only way that an individual can alter their legal sex is by applying to that registry to have the sex on their birth certificate altered and the certificate re-issued.

Changing a birth certificate provides an individual with conclusive evidence of their sex for the purposes of most State,Territory and Commonwealth laws.

As HREOC is no doubt aware, laws determining when the sex on an individual's birth certificate can be changed—if at all—differ greatly between jurisdictions. For example, we understand that South Australia and Western Australia do not have any provisions allowing an individual to administratively alter the sex on their birth certificate. Nonetheless, we consider the existence of such provisions in the other 6 States and Territories an

[1] *Re: Kevin (validity of marriage of transsexual)* [2001] FamCA 1074

acknowledgement of the fact that assigning an individual's legal sex based only on the appearance of external genitalia at birth is not definitive of that person's legal sex for the rest of their life.

For those individuals born in a State or Territory that *does* provide for the altering of birth records, there are extremely onerous conditions that must be met before this can occur. Individuals are generally required to be at least 18 years of age and they cannot be married. Of most concern is the consistent requirement that the individual concerned has undergone "sex reassignment surgery." In the relevant legislation, the phrase "sex reassignment surgery" is generally not defined, or is defined with reference to "surgical alteration to the reproductive organs". In practical terms, any such surgical alteration results in permanent infertility.

A Gender Agenda is strongly of the view that surgical intervention should *not* be a pre-requisite for recognition of any individual's identity. Sexual affirmation surgery is medically unnecessary, invasive and complicated surgery that is prone to unpleasant complications. Further, such surgery often requires a number of separate surgical procedures. Sexual affirmation surgery is not available in most jurisdictions and, to our knowledge, female to male sex reassignment surgery is not available anywhere in Australia. Most surgery is performed overseas, is very expensive and is rarely subsidised by Medicare. For these reasons, many transgender people cannot or choose not to undergo sexual reassignment surgery.

Further, because laws relating to birth certificates require individuals to deal with the registry of the jurisdiction in which they were born, there are significant inequities in treatment and recognition between people who may have been born in one State or Territory and now live in another. This adds to the legal complexities faced by individuals seeking to amend their birth certificates.

The situation faced by individuals born outside Australia is particularly striking. We understand that no State or Territory will recognise a change of sex for an individual born outside Australia, unless their country of birth alters their original birth record. Of course this is not possible in many countries around the world.

The profound inequity that results is that:

- Australia will only legally recognise the gender identity of an individual if that gender identity corresponds to the appearance of their external genitalia at birth.

- where gender identity does not accord with external genitalia at birth, certain jurisdictions will only legally recognise the gender identity of citizens if they first submit to surgery that makes them incapable of reproducing, even if (as is mostly the case) there is no medical reason to perform such surgery.

Further, we argue that:

- the decision for particular medical procedures to be undertaken by particular citizens does not appropriately fall within the role or expertise of government;

- requiring that the reproductive organs of particular individuals be surgically destroyed before the granting of legal recognition is not an appropriate role for government;

- requiring that an individual present documentary medical evidence from multiple practitioners of particular surgical interventions and their effect is an invasion of the individual's privacy with no parallel; and

- the surgery currently required by government which results in the destruction of the individual's reproductive capacity does not in any way aid an individual's ability to be recognised and accepted in line with their gender identity.

The current requirements for legal recognition of a change of sex - where available - discriminate against citizens who:

- choose not to subject their bodies to invasive and medically unnecessary surgery;
- wish to maintain their fertility/ability to reproduce;
- cannot afford sexual reassignment surgery (which is not easily accessible in Australia);
- have health problems which prevent them from undergoing surgery;
- were born in a jurisdiction which does not allow for amending the sex recorded on an individual's birth certificate**;** or
- are married and do not wish to divorce their spouse.

## 3) Problems Caused by Document Identity Issues

There are many problems caused by the current Federal, State and Territory provisions relating to identity recognition.

For people who are able to change the sex recorded on their original birth certificate, public and private institutions are not legally obliged to accept the individual's 'new' sex or to change their records to reflect the individual's appropriate title (for example, from Ms to Mr).

For people who are unable to legally change the sex recorded on their original birth certificate:

a) Their most primary form of identification discloses their status as sex/gender diverse and unnecessarily exposes them to a substantial risk of discrimination.
b) There is general confusion and inconsistency within government agencies as to whether and how to recognise a person presenting as male but with a birth certificate stating they are female.

> *"I currently hold a male Australian passport (that was only issued on the basis that I not provide it to anyone to attempt to prove my legal sex as male). The ATO says that I'm male. Medicare at first refused to change my record to male, but then they changed it one day without me even asking because when they looked at me, and noticed that my file said I was female, they thought that their trainee had accidentally changed my sex to female when processing my claim. My birth certificate says that I am female and I an unable to change it (although it has been changed to show my male name without my consent).."*
>
> *"I live my life as a man. Hormonally I am male, chromosomally I am female. For legal purposes in the ACT I am recognised as female or, under various specific legislative provisions as transgendered and/or transsexual. Under Commonwealth law, without instigating court action to obtain clarity, I am unsure of my legal status. Medicare and the ATO recognise me as male, Centrelink recognises me as female. Insurance and superannuation funds recognise me sporadically as female or male. Everyone who meets me (apart from ACT and Commonwealth government departments) recognises me as male".*
>
> *"I changed my name 10 years ago, but I have some documents that I have not been able to change over (such as title deeds to property). I also avoid wherever possible showing my birth certificate or change of name certificate because both these documents show my sex incorrectly. I was with one bank when I changed my name and now I can not open a bank account with any other bank because I do not have enough points of ID to do so."*

## 4) Inclusion of "Sex" on ID Documents

The three most important identity documents for a sex or gender diverse person are their Birth Certificate, Passport and Medicare Records. Individuals face persistent difficulties when one or more of these documents do not match their gender presentation.

Sex is included on most ID documents because it is assumed that 'sex' is a straightforward identifying feature. However, this is not the case where a person's gender presentation is at odds with the sex recorded on a particular ID document.

If sex is to be a useful inclusion on ID documents, then it must be listed in a way that accords with the current gender identity of the individual. If this is not the case, the inclusion of sex is no longer a useful identifying feature. Ideally, it should be replaced by a more effective and accurate way of identifying an individual, such as their height or date of birth.

In our discussions with the ACT Government, concerns have been raised about aligning the sex recorded on an individual's ID documents with their gender identity, if their gender identity conflicts with the sex recorded on their birth certificate. The concern was that this situation may lead to the creation of false or fraudulent identity documents. We believe such arguments only emphasise the need for legal mechanisms which allow a person to alter their birth certificate and subsequently obtain other identity documents which consistently reflect their gender presentation.

### *Passports*

Passports are essential travel identity documents. It is critical that all individuals are able to obtain a passport which accords with their gender identity. We believe that where an individual is forced to travel on a passport that does not match their gender presentation, they are placed at risk of exposure to discriminatory, degrading and unsafe treatment. For example, intensive questioning and ridicule from custom officials and the possibility of being detained on the accusation of travelling on a fraudulent passport.

Federal Government policy relating to passports is frustratingly inconsistent. We have found it impossible to obtain clear information from the passports office about the criteria they use to assess applications where an individual's birth certificate does not match their gender presentation. However we do know that:

- some individuals have been issued a passport in their acquired sex, despite the fact that their birth certificate has not been amended to reflect their acquired sex;

- some individuals have been issued a passport in their acquired sex but only upon the production of medical evidence that their sole purpose for international travel is to undertake 'reassignment surgery'; and

- some individuals have been told that it is not administratively possible for them to be issued with a passport which reflects their acquired sex until they have had their birth certificate amended to reflect their acquired sex.

We are aware that prior to policy changes made by the Howard Government, individuals could, at the very least, be issued with temporary passports in their acquired sex if they could demonstrate that they were travelling overseas for the express purpose of undertaking sex reassignment surgery. We believe this policy should be reinstated as a matter of urgency.

### *Medicare*

Issues faced by individuals where their Medicare Records do not match their gender presentation are generally related to the linking of specific items numbers and PBS medications to the recorded sex of the patient. These issues are discussed in more detail below under 'Medicare, Private Insurance and PBS Issues'.

### *Banks and Other Institutions*

Bank Accounts and Title Deeds are also notoriously difficult to change where an individual's recorded sex does not match their gender presentation:

> *"I have tried so many times to have the Deeds of my home changed to my new name and they just keep refusing to do it. So I still get my rates notice issued in my previous (male) name. Who knows what will happen if I ever try to sell – I probably won't be able to prove that I ever owned it!"*

> *"I had to ring up the bank to do some business. The operator duly got on and I was asked for my (female) name. I duly gave it in my male sounding voice and I was then asked over the phone to verify my details. Which I gave correctly. However the telephone operator did not believe me and I asked to be put on to the supervisor. The supervisor duly did not believe me. Although I later complained to the bank and the situation was ultimately resolved, it took way too long and was overly complicated for me".*

However, there are a few stories where organisations have done a great job recognising the diversity of our community:

> *"I was really thinking seriously about transitioning and I'd been in a mum's playgroup with my child for the last two years which I wanted to keep attending, at least for a while – I also wanted to join a more accepting playgroup and present there as male. When I rang the playgroup and talked to them about this they were fine and a few days later they sent me two separate membership cards – one in my female name that I could show at the first playgroup and one in my male name that I could take to the new playgroup".*

## Better Ways to Legally Recognise a Change of Sex/Gender

The Family Court of Australia's decision in *Re: Kevin*[2] evidences the fact that the sex recorded on an individual's birth certificate is not conclusive proof of their legal sex. We believe the sex recorded on a birth certificate is more accurately described as the child's 'indicative sex' based on their outwardly visible genitals at birth.

This case also highlights the fact that individuals may have some legally recognised characteristics (biological, social or psychological) that align to one sex and some that align to another sex. This finding is also evidenced by people whose gender identity is neither exclusively male nor exclusively female. We believe such individuals should have the right to be legally recognised as having an 'undisclosed' sex.

The United Kingdom's Gender Recognition Act (2004) provides one model for recognising an individual's acquired sex without requiring them to undertake unnecessary surgery. However, this model subjects applicants to an invasive, rigorous process of 'assessment' by an unknown panel of experts. The applicant must present a range of supporting medical

[2] *Re: Kevin (validity of marriage of transsexual)* [2001] FamCA 1074

documentation regarding why they wish to have their acquired gender recognised at law. Whilst the Act was a considerable step forward for sex and gender diverse communities in the United Kingdom, we do not believe that the model constitutes best practice in the recognition of sex and gender diverse individuals. Specifically, we do not believe it is appropriate for individuals to be 'assessed' by Government before they can be recognised in their acquired gender.

We call upon the Federal, State and Territory Government to work together to introduce nationally consistent provisions that legally recognise an individual's sex and gender identity whilst upholding that individual's human rights.

In this context, we propose the introduction of a system of 'Identity Certificates' which would provide conclusive proof of an individual's sex and gender identity.

We propose that an individual could apply for an Identity Certificate by:

a) providing a statutory declaration stating that they genuinely identify as their preferred sex (male, female or 'undisclosed') and/or their preferred name; and
b) paying any prescribed fee.

This process should not require any evidence regarding what surgical, hormonal or other medical interventions the person may have undertaken, or intends to undertake. Nor should the Registry require evidence from third parties—such as a psychiatrist—diagnosing any particular medical condition.

We believe an individual's right to be legally recognised in the sex/gender of their choice should be treated no differently from their right to be recognised by whatever name they choose (even if their chosen name is different to the name assigned to them at birth).

Upon receipt of the relevant statutory declaration and payment of any relevant fee, the Registrar would issue the individual with an "Identity Certificate." The "Identity Certificate" would record the individual's chosen sex and name and provide conclusive proof of their legal identity.

Birth Certificates have historically performed two functions in Australia:

1) as a true and accurate record of the details of every birth as at the time of birth; and

2) as an important identification document verifying the identity of the individual throughout their life.

We see these two roles as quite separate and not necessarily compatible. If the applicant for an Identity Certificate was born in Australia, they should have the choice as to whether or not their birth certificate is amended to reflect the details of their Identity Certificate. Where an individual considers such an amendment to be a 'correction' of the official birth records, then they may well choose to change their official record of their birth.

However, other individuals consider their existing birth record to be an accurate official record of their birth, *notwithstanding* the fact that years later, they have taken on a different gender identity and/or name.

Where an individual born in Australia does *not* choose to have their birth certificate amended to reflect their Identity Certificate, the records will nonetheless be linked in the Registry, to ensure consistent and accurate Government records. In this case, we would propose that the original birth certificate be notated to indicate that although it is an accurate record of the details of the birth, it is no longer a valid identification document.

We would expect an Identity Certificate System to take account of the most up-to-date anti-identity theft technology. We do not believe that the benefits of an Identity Certificate System would be outweighed by concerns regarding the potential for identity theft. In this context, we make the following observations:

- Existing provisions allow an individual to change their name by deed poll. These provisions carry no less risk of fraud than provisions, such as an Identity Certificate process, which would allow an individual to change their sex.

- Allowing individuals to obtain an Identity Certificate would create an official record linking their name and gender identity. In practice, this would promote consistent recognition of sex and gender diverse individuals and provide Government with much more accurate identity records. This contrasts with the current situation where individuals who can't change their sex on their birth certificate may have:
    - a gendered name that doesn't match their sex as recorded on their birth certificate; and
    - a range of inconsistent identity documents which variously recognise their acquired gender identity, name, name change and sex at birth.

  In this way, a national Identity Certificate would promote uniformity and, in fact, *reduce* the likelihood of inconsistency and opportunity for identity fraud.

- Some jurisdictions currently provide for a legal change of name on the basis of 'common usage' with no requirement for registration. The law in these cases carries no less risk of identify fraud than provisions that would allow an individual to be issued with an Identity Certificate.

- We understand that married persons have the legal right to use their original surname, their partner's surname or a hyphenated surname. We understand these name changes are not required to be registered, and individuals are not required to consistently use one name or the other. If this is the case, the law in this area again carries no less risk of fraud than provisions that would allow an individual to be issued with an Identity Certificate.

Overall, we do not believe that a national system which allows individuals to obtain legal recognition of their acquired gender will pose any greater identity-theft risks than existing procedures relating to change of name.

***Recommendation One:***
**Registration of Sex/Gender at Birth**

a) allow the registration of births without requiring a specification of sex.

b) specify that sex can be recorded in the register as 'male' 'female' or 'undisclosed'.

c) specify that the record of name and/or sex as recorded at birth can be altered to accord with an "Identity Certificate" issued at a later date.

***Recommendation Two:***
**Amendment of Registered Sex/Gender**

a) adopt nationally consistent standards for recording a change of name and/or sex that do not rely on surgical intervention or medical declarations, for example, by way of an Identity Certificate System administered through the Births, Deaths and Marriages Registry in each State and Territory.

b) specify that conclusive evidence of an individual's legal sex can be provided via either an original birth certificate OR a more recently dated "Identity Certificate".

c) specify that sex can be altered via the granting of an identify certificate to 'male', 'female' or 'undisclosed'

***Recommendation Three:***
**Consistent Recognition of Altered Sex/Gender**

a) adopt nationally consistent standards that make it mandatory for government, private and community agencies to accept a birth certificate *or* an Identity Certificate as conclusive proof of the individuals' legal name and sex for all purposes, including the issuing of passports, Medicare records and bank accounts.

## Legislative References to Sex/Gender

Legally there is no consistent definition of sex, yet there are legislative references to "*sex*", "*the same sex*", and "*the opposite sex".*

Any legislation that requires an individual to be "*male*", "*female*", "*the same sex*" or "*the opposite sex*" relies on making an identification of the individual's sex, or their partner's sex, according to a binary definition.

Many people take these terms to be self explanatory. However, for others, including transsexuals and intersex people, there are conflicting indicators that may allow them to be categorised as "male" and "female", or "the same" and "the opposite" sex by different people for different purposes. **This leads to inconsistency and confusion about how and when the rights or obligations set out in a particular law will apply to the individual**.

Such confusion may arise when:

- a person's legally recognised sex differs from their self-identified gender or socially recognised gender (regardless of whether they consider themselves transgendered or intersex); or
- a person's legally recognised sex differs in whole or in part from the biological sex of their body (regardless of whether they consider themselves transgendered or intersex); or
- a person's legally recognised sex varies depending on which State or Territory they reside in or were born in; or
- a person does not identify as being either exclusively male or female.

***Recommendation Four***
**Legislative References to Sex/Gender**

a) ensure that all legislation applies to people regardless of their sex, not because of it.

b) remove unnecessarily gendered terms from legislation and other government documents.

## Administrative References to Sex/Gender

People are regularly asked to state their sex in an administrative context when completing forms. In most instances, this is unnecessary. For people whose legally recognised sex does not correspond to their presentation or identity, it is difficult to determine the most appropriate answer to such enquiries.

It is not appropriate to request this information without good reason, given that where an individual:

- records their legal sex that does not align with their gender presentation; or
- records the sex they identify with rather than the sex recorded on their birth certificate,

they place their personal safety at risk, and leave themselves open to allegations that they have been misleading or fraudulent.

***Recommendation Four***
**Administrative References to Sex/Gender**

a) that a document audit be undertaken across all Federal, State and Territory departments to identify and remove requests for information about a person's sex except where there is reasonable case as to why it is required. If a case is made out, the form should clearly specify why the information is being sought (as this may change someone's answer) and the form should accept "male" female" or "undisclosed".

# MEDICAL ISSUES

## Medical Issues Related to Children

### *Genital Surgery Performed on Intersex Children*

It is not uncommon for irreversible and medically unnecessary surgery to be performed on intersex children, often as new born infants, and almost always without their consent. Usually this surgery is justified on the basis of predicted social outcomes such as "if we don't change the child's genitals then they will get teased at school". This is not a reasonable basis for irreversible surgery to be performed on a non-consenting infant/child.

***Recommendation Five:***
***Requirements for Genital Surgery on infants and children***

a) amend State, Territory and Federal legislation to prohibit surgery to 'normalise' or change the appearance or function of a child's genitals where that child does not have the legal capacity to consent (based on the Gillick principle[3]), or does not consent, to the surgery. The only exception to this prohibition is cases where such an operation is demonstrated to be medically necessary to relieve the child of current painful or otherwise physically harmful symptoms.

### *Medical Intervention for Transgender Children*

Although the medical establishment seems intent on "fixing" biological 'anomalies' in new born infants and children, it seems completely unprepared to provide treatment to much older children/young adults with gender identity conditions.

Where a child is requesting treatment to change their physical characteristics in order to align them to their acquired gender identity, these requests should be assessed (like any adult) on the basis of the individual's ability to properly consent to the treatments being requested[4].

By definition, a request for surgical or irreversible hormonal treatment is generally only made by older (post-pubescent) adolescents. Younger children, who are perhaps less likely to provide full and free consent, have no need to request such irreversible treatments because they are generally unnecessary before pubertal body changes have taken place.

Where pre-pubescent children have gender identity issues and express a desire to live as another sex, "puberty blockers" should be prescribed as a matter of course until the individual has reached a stage where they have fully explored their options and can truly consent to their preferred treatment plan.

Advantages of providing "puberty blocking" treatment at the very start of puberty are:

- the individual gets to enjoy their adolescence instead of being pushed into the closet;

[3] For further information about the 'Gillick principle' and a child's ability to consent to medical procedures, see the United Kingdom House of Lord's Case: Gillick v West Norfolk and Wisbech Area Health Authority [1986] 1 AC 112. The so-called 'Gillick principle' was endorsed by the High Court of Australia in 1992 in 'Marion's Case' [*Secretary, Department of Health and Community Services v JWB and SMB*]. Marion's Case dealt specifically with the sterilisation of a young disabled woman. However, the judgement contains important guidance regarding the best interests of children in relation to medical treatment.

[4] See footnote 3

- the individual is provided with some 'space' in which they can fully and properly explore their gender identity issues without feeling unnecessarily pressured by the impending onset of puberty;
- the individual faces less discrimination, because their appearance matches societal gender norms more easily, especially if they begin hormone treatment before their bones stop growing;
- by bypassing gender-inappropriate puberty, the individual may be able to avoid expensive and painful chest reconstruction, hair removal, or other cosmetic procedures; and
- the treatment is completely reversible – the onset of puberty is not removed – but is simply 'put on hold' until the individual can make a fully informed decision about what outcome is best for them.

Given the substantially improved outcomes for those individuals who do ultimately decide to transition, in combination with the minor side-effect of a delayed, but otherwise normal puberty for those individuals who ultimately decide not to transition, it is our view that the immediate prescription of puberty blockers should be the standard response of any medical professionals presented with a pre-pubescent child with gender identity issues. The recent Family Court case of 'Re Brodie'[5] highlights the importance of allowing a child with gender identity issues to access appropriate medical intervention before puberty.

***Recommendation Six:***

***Requirements for Medical Intervention Regarding Consenting Children***

a) where a child is able to legally consent[6] to hormonal or surgical alterations related to their gender identity, they should be permitted to access relevant medical treatment.

b) discrimination law should protect children in instances where a medical professional refuses to treat a child who is undertaking hormonal or surgical alterations related to their gender identity.

## Medical Issues Related to Adults

### *Consent in Relation to Adult Sex Affirmation Surgery*

At present, the only way that individuals can apply to have their sex changed in some Australian jurisdictions is for that individual to 'consent' to medically unnecessary surgery. The quality of such 'consent' must surely be questioned when surgery is a blanket requirement for the individual concerned to be legally recognised in a way that reflects their true identity.

> *"I saw a medical specialist just last week and he asked me when I was going to have a hysterectomy. When I asked him why I should have one he said "so that you can get a male passport and change your birth certificate". When I asked him if there were any medical reasons for me to have a hysterectomy he said "no"."*

[5] Re Brodie (Special Medical Procedure) [2008] FamCA 334, available at: http://familycourt.gov.au/wps/wcm/connect/FCOA/home/judgments/newjudgments/First+Instance+Judgments/FCOA_judge_fijudgements_2008_FamCA_334.

[6] For further information about the 'Gillick principle' and a child's ability to consent to medical procedures, see the United Kingdom House of Lord's Case: Gillick v West Norfolk and Wisbech Area Health Authority [1986] 1 AC 112. The so-called 'Gillick principle' was endorsed by the High Court of Australia in 1992 in 'Marion's Case' [*Secretary, Department of Health and Community Services v JWB and SMB*]. Marion's Case dealt specifically with the sterilisation of a young disabled woman. However, the judgement contains important guidance regarding the best interests of children in relation to medical treatment.

## *Availability of Sex Affirmation Surgery*

The notion of "Sex Reassignment Surgery" originally comes from the field of psychiatry. The surgery is recognised as being a 'cure' for the psychiatric condition of "Gender Identity Disorder". In its medical context, the definition of Sex Reassignment Surgery is quite different to the legal definition used in Australia. The law in Australia defines 'sex reassignment surgery' as the destruction of reproductive capacity. In contrast, the medical definition is defined on the basis of the surgical alteration of genitals and the removal or enlargement of breasts. Although "top" surgery can be relatively easily undertaken within Australia, "bottom" surgery is more difficult. We believe that there are only a handful (perhaps as few as two) surgeons who perform this surgery for women who were born male. Consequently, the vast majority of women who undergo 'bottom surgery' travel overseas, away from family and friends for the surgery itself and the lengthy recuperation period (minimum time, 6 weeks). No Medicare rebate can be claimed in these circumstances, despite the fact that such surgery forms part of the medical treatment of a diagnosed psychiatric condition. This is at odds with other countries such as the UK who do offer such surgery on the National Health Service.

To the best of our knowledge, there are no practicing surgeons in Australia who perform sex affirmation surgery for men who were born female. The cost for full lower surgery overseas ranges from $50,000 to $100,000 AUD. No Medicare rebate can be claimed in these circumstances, despite the fact that such surgery forms part of the medical treatment of a diagnosed psychiatric condition.

We cannot think of any other circumstances where the recognised medical treatment for an appropriately diagnosed condition is not available in Australia. We have been advised by a GP that on the rare occasion where this has occurred in relation to non- transgender medical conditions, patients have received a Medicare rebate as well as a significant contribution to the travel costs involved in their overseas treatment.

## *Sex/Gender Specific Contact with Medical Profession*

Transgender people necessarily come into contact with health professionals regarding *transgender specific* health issues. However, most health professionals are not only unaware of the social context for transgender patients, but are also unaware of the medical issues.

It is extremely common for sex and gender diverse people to spend most of their medical appointments explaining to the Doctor what the treatments and side-effects are.

> *"I always feel resentful when I see my GP because it always takes so long for me to explain to her what she should be doing. If ever I actually have a question for her about a particular drug or side-effect her usual response is to tell me to look it up on the internet and then let her know so that she can tell other patients. Then I leave, and I get charged $150 for a long consultation! I've started just not raising any issues with her – after 10 years I figure that she is not going to know the answers and I am completely over-paying long consultation fees so that I can educate her!"*
>
> *"One medical professional told me I should get my chromosomes tested because, in his words, I "might be a hermaphrodite, and only hermaphrodites can get hormone therapy."*
>
> *"I decided not to commence hormone therapy because my GP had told me that I would need to take a full day off work every fortnight to go to Sydney so that the hormones could be administered to me. A year or so later I found out from a friend that any nurse can administer the hormones, and that heaps of people actually inject themselves".*

*"I was told by my GP that if I started hormone treatment that I would be placing myself at a great risk of liver failure, increased risk of cervical/uterine and ovarian cancers, as well as dangerously low bone density. I've been on these hormones for over ten years now, and I have just been told by an endocrinologist that there is no increased risk of liver damage nor of any cancers, and in fact I have a reduced risk of suffering from bone-density issues than if I wasn't taking the hormones!"*

***Recommendation Seven:***
**The medical profession and basic health needs of sex and gender diverse individuals**

That funds be allocated for an initial research project which focuses on the basic health needs of people with different gender identities and/or expressions, and the most efficient way for these needs to be met by the public health system.

## *Issues Arising from General Contact with Medical Profession*

Major, disturbing issues often arise from the general treatment of sex/gender diverse individuals by the medical profession. Some examples are:

- A transsexual had their date for unrelated surgery pushed back because the scheduled anaesthetist was not prepared to treat them.
- IVF services were refused on the basis that one member of the couple identified as being transsexual.
- A transsexual man undergoing a hysterectomy was placed in a ward with pregnant women. This was distressing for him (and presumably also for the pregnant women!). When he raised his concerns he was told that he had no choice but to be in the obstetrics ward because 'that's where hysterectomy patients always go'.
- Letters of referral were written from a general practitioner unnecessarily disclosing the patient's status as transsexual.
- A transsexual patient failed to attend Accident and Emergency because they were concerned that their transsexual status would be discovered and not dealt with respectfully.
- A transsexual woman attended hospital with a skin growth and was placed in a semi-public area and asked to remove her blouse while a series of staff and trainees were brought through the room to 'diagnose' her.
- A general practitioner refused to provide a pap smear to a female to male transsexual.
- A transsexual had surgery delayed because an anaesthetist refused treatment. That transsexual did not wish to make a complaint because the expected mediated outcome would have been to make the particular anaesthetist provide the treatment. The patient did not consider that this would be a safe outcome.

## *Lack of "early intervention" or Health Promotion by Healthcare Professionals*

Healthcare professionals are in the 'front line' for diagnosing and referring patients in various 'high risk' groups for treatment and support that is not necessarily linked to the condition which the patient has articulated as requiring treatment. For example, GP's play an active role in encouraging immunisation of children, healthy diets and exercise routines, referrals in the case of suspected domestic violence, etc. GPs and nurses often identify and

address these issues, even if they are not raised by the patient themselves. There is much anecdotal evidence to suggest that these roles are not adequately being filled in the case of sex/gender diverse communities.

> *"Well I never actually presented to a Dr saying that I wanted to be a man I guess, but I had been trying to get a hysterectomy for the last ten years for no medical reason, and I'd also been talking generally about not feeling like a woman. No-one ever suggested to me that I might be transsexual in fact it was only in the last 12 months that I discovered on the internet that there was even such a thing as a female to male transsexual!. Now I'm educating my Dr about it!."*

## *Gatekeeper Dynamic in Provision of Medical Care*

The very structure of the diagnoses of transsexualism places medical specialists in a position of having, quite literally, control over an individual's destiny. In order to proceed with treatment, individuals have to pass whatever 'tests' are put before them. There are no nationally agreed standards of care. Rather, individual GPs and specialists independently determine what criteria they will subject patients to, before they will provide treatment. For example:

- some surgeons require hormone treatment to have occurred for a set period of time before surgery can take place;
- some endocrinologists will not prescribe hormones until after a psychiatrist has made a diagnosis of transsexualism; and
- some psychiatrists will not diagnose transsexualism until after the person has lived in their preferred gender for 6 months, 1 year or 18 months.

Consequently, a dynamic is established whereby the medical professional is the only thing standing between the patient and the treatment that they want and need. Understandably, this does not form the basis of a healthy or constructive relationship between patient and health professional. Nor does it promote consistent access to treatment for sex and gender diverse communities.

> *"I went to my endocrinologist and he said that I should take all my clothes off for a physical exam and so I stripped and got up on the bed thing and then he just kind of looked at me and poked my tummy a bit and said OK, you can get dressed. Afterwards I thought about it and thought that that was so unlike me – normally I would have wanted to know why I needed to get undressed and exactly what the examination would involve and why I had to have it. And I thought – the only reason that I was so compliant was cause I wanted the script."*

> *"The patient is very strongly encouraged to pander to the professional's gender and trans stereotypes (many trans people have this problem, but queer and gender nonconforming trans people find it particularly difficult to get treatment without lying; doctors who would knowingly treat a butch trans dyke, for example, are rare) and to convince the professional that they will definitely not have regrets, rather than to be honest about their gender and to indicate their awareness that there is some chance (however small) that they may have regrets. Without patient honesty, informed consent cannot reliably be established, as would be required by a high standard of medical ethics. A consent-based treatment model such as the ICTLEP SoC ( http://www.transgendercare.com/guidance/resources/ictlep_soc.htm ), if more widely followed, would bypass this problem, put the trust back in the doctor/patient relationship and make treatment more accessible to queer and gender-nonconforming trans people".*

***Recommendation Eight:***
**Sex and Gender Diverse Communities and Relationships with the Medical Profession:**

a) Develop national guidelines outlining consistent consent-based Standards of Care for treatment and support of Sex/Gender diverse individuals (ie NOT WPATH or HBIGDA).

b) Add education regarding Sex/Gender diversity to standard medical university degrees.

c) Provide ongoing education for currently practicing Drs (that is, GPs and relevant specialists) about Sex and Gender diversity and best-practice in treating/supporting Sex and Gender diverse patients.

d) Establish a government-funded national body to provide widely available support, information and advice on health issues to sex and gender diverse communities, including information about:
- different kinds of medical procedures;
- the location of General Practitioners, surgeons and other medical professionals who specialize in the treatment of Sex and Gender diverse patients in each State and Territory;
- what options patients can access if they are not satisfied with the services provided to them by a medical professional and the application of discrimination law in this context; and
- the Medicare rebates available in relation to specific forms of treatment.

## Medicare, Private Insurance and PBS Issues

### *Access to Medical Treatment*

To the extent that intersex/transsexualism are recognised medical conditions, the Federal Government has an obligation to ensure that individuals diagnosed with such conditions can access necessary medical treatment which is subsidised on an equal basis to other medical treatments.

### *Access to Medical Practitioners*

We know that access to medical practitioners, including GP's endocrinologists, psychologists and surgeons, who are prepared to treat sex/gender diverse people and their partners is severely limited.

> *"I have to travel from Canberra to Sydney to see any specialist because my GP has told me that no specialist in Canberra is willing to see me. This means that every time I have hormone levels reviewed for example, I have to take one day off work and pay airline and taxi costs as well as the actual cost of the Dr. The doctors fee is claimable on Medicare, but the other costs I incur aren't – all up my last trip to Sydney cost about $650 and I got $38 back from Medicare".*

> *"We've got nothing. Not in Canberra, now that Dr X isn't seeing new patients. I'm struggling to find a doctor. Some of my friends are starting T now, and they had to go to Sydney to get treatment. So if there were some way to address the shortage of good doctors - perhaps by educating more doctors on trans care - that'd be great".*

## *Access to Medicare and Private Health Fund Subsidies*

Many treatment item numbers are linked to a patient's legally recorded 'sex' in Medicare records. This causes unnecessary complications for sex and gender diverse individuals who wish to make a Medicare claim. For example, someone listed as male is not entitled to any subsidy if they require treatment for cervical or ovarian cancer, but they are covered for testicular or prostate cancer even though they do not have testicles or a prostate.

> *"I got a pathology bill from the processing of my last pap smear and I took it into Medicare to get my subsidy. There was all of this hooh hah in the office when I made the claim because they have my sex recorded as male and they were saying that they were not going to pay the claim because it was IMPOSSIBLE that the pathology lab had processed a pap smear for me. After talking really loudly in the office about this in front of other members of the public, I finally convinced them that it was possible. They took all the paperwork from me, said that it would take over a week to process because it had to go to head office where the only way they could pay the claim was by changing my sex to female, processing the claim and then changing it back to male. Consequently the claim took two weeks to process and got sent to me as a cheque rather than paid over the counter as cash."*

For people diagnosed with Gender Identity Disorder, there are a range of quasi-medical items directly related to their transition that are not covered by Medicare. These items include electrolysis and laser hair removal. The approximate normal cost of this treatment is in the range of $8,000 to $14,000. If such items are required as part of a specific treatment plan for a medical condition then it is our view that they should be fully covered by Medicare.

## *Access to PBS Medications*

Access to a PBS subsidy is also linked to a patient's legal sex as recorded by Medicare. For example, the provision of testosterone to people whose sex is recorded as male is covered by PBS, but if the individual's sex is recorded as female, then no subsidy is provided. We understand that for at least some female hormones, a subsidy is only provided to people registered as 'male' with Medicare if they first 'voluntarily' agree to add their names to an official "Sex Offenders List".

For any transgender person who seeks hormone treatment, none of their treatment is subsidised under the PBS until they surgically destroy their reproductive capacity and can be legally recognised in their acquired sex.

Further, some individuals require a mixture of both female and male sex hormones in order to obtain a viable hormone balance. In such cases, either the female or the male hormones may be subsidised, but not both at the same time.

> *"To get the right mix of hormones for me, I am prescribed female sex hormones as well as small levels of testosterone. Before I had my surgery, the testosterone was covered but my female hormones were not. Once I had surgery, and Medicare agreed to list me as female, my female hormones were suddenly covered by PBS, but I have to pay for the testosterone."*

Regardless of whether a PBS subsidy is obtained, it can still be problematic for individuals to get hold of their scripts.

> *"I had a script for injectable hormones and I went to a chemist to buy the relevant syringe and needle and they refused to sell it to me. They said that it was because they thought I was going to use them to 'use drugs' but that's crap – I had my script there and they are completely different needles for an intramuscular injection than for putting drugs into a vein".*
>
> *"I went to my GP and asked for a nurse to give me an injection of hormones and the receptionist asked what I wanted injected. When I showed it to her she said in the middle of the waiting room 'that's not for you! Do you know what that will do to you?' She demanded that I give her my medication (which I refused to do) and she said that the nurse would not give me the injection and that I had to see a Dr instead. She said that the first appointment I could get was two weeks away and not with my regular Dr. I rang back later and got another receptionist who booked me in for an appointment with my regular Dr within a few days. It is bizarre to think that this is the response I get when it was that very GP at that very surgery who authorised the script that I was wanting injected in the first place!."*
>
> *"I live in a rural area but I do travel a lot and when I first moved to the area and filled my first fortnightly hormone script the pharmacist refused to give the script back to me. They said that it was a 'restricted substance' and that I could only go to them to have it filled. They will only fill it within a day or two of the due administration date and so if I'm travelling for more than two weeks, which happens frequently, I can't get the hormones I need to continue the treatment as prescribed by my Dr".*

***Recommendation Nine:***
**Linking of Medicare item numbers and a binary sex definition**

Remove all links between Medicare item numbers and 'male' or 'female', thereby allowing all Australian citizens to claim a healthcare and pharmaceutical subsidy for the medical treatments that they need.

## Prisons

We are not aware of the treatment provided for sex/gender diverse individuals in prisons elsewhere is Australia, but under ACT legislation, we believe that prisoners in the new ACT Prison—the 'Alexander Maconochie Centre'—will theoretically have a right to be held in a gender-appropriate facility, to have independent housing or housing with other sex/gender diverse prisoners and access to required treatment such as hormones.

However, based on the experience of prisoners in other jurisdictions, we are concerned that sex and gender diverse prisoners will only be able to enforce these rights if they have the chief warden and medical staff 'onside.' We are particularly concerned that trans prisoners are unlikely to be able to access treatment from the one or two general practitioners who are 'willing' to treat trans patients in Canberra.

We are aware of cases in New South Wales where transgendered inmates in prison have been denied access to information regarding hormone treatment. In a particular case, a

transgendered woman was prevented from accessing the internet, or hard copy reading material about treatment options. When she approached the Doctor and nursing staff they did not know and were not willing to find out the answers to her medical questions.

We are also aware of a case where a transgendered inmate managed to make a special arrangement for an endocrinologist to visit her. However, before the visit took place, the prison reversed their decision, placed her in segregation and transferred her to a prison some 400 kilometers away. Once transferred, she had to apply to be placed in a female prison, a process which she was told would take between 3 and 6 months. The individual experienced ongoing sexual harassment and personal threats from other inmates and staff during her time in prison.

These stories leave us with significant concerns about the treatment of Sex and Gender Diverse prisoners in the new ACT prison.

***Recommendation Ten:***
**Prisons and the Sex and Gender Diverse Community**

a) Develop national guidelines to ensure that the medical needs of sex and gender diverse individuals are fully met whilst in detention.

b) Ensure the personal safety of sex and gender diverse individuals in detention by initially detaining individuals who identify as sex or gender diverse in the sex-segregated facility of their choice. A formal assessment of this placement should only be undertaken if the individual exhibits behaviour that threatens the personal safety or security of other detainees.

## DISCRIMINATION ISSUES

### Education Discrimination

Anecdotal evidence suggests that sex and gender diverse individuals experience extremely high rates of employment discrimination. We understand that some research reports unemployment rates as high as 50% in the sex and gender diverse population[7]. The recent TranzNation report on the health and wellbeing of transgender people states that, although the sex and gender diverse respondents were more highly educated than the general population (35% with university degrees compared to only 18% of the general population), only 15% of respondents earned more than $60,000 and 35% earnt less than $20,000[8].

> *I was working in a local retailer when I first began my social transition. I cut my hair very short, and started using my current name. The general manager of the company sent a photograph of me, and my new name in an email to all the managers in the group. I wasn't comfortable with this, but he said that the rest of the group needed to know who they were talking to over the phone and email. I had been hired for an assistant manager position, so that made sense. I was horrified a few weeks later when I was told that I was not only being demoted from the position I was hired for, but being made a casual staff member (with no rostered shifts) because I wasn't 'fit for full time work'. I protested, and he said: 'face it, you aren't the **girl** we hired.'*

### *Protection under State/Territory Based Discrimination Acts*

### Legal Protection of Gender Identity and Expression

Currently, the Commonwealth offers no legislative protection or acknowledgement of an individual's right to express and identify their gender as they choose. There are many people who choose to express their gender differently and who experience discrimination and violence based on their gender presentation.

[7] Gender Centre, assorted reports and publications. Contact point: Elizabeth Riley (02)9569 2366.
[8] Tranznation – a report on the health and wellbeing of transgender people in Australia and New Zealand Australian Research Centre in Sex, Health and Society, Melbourne, 2007.

## *Protection under State/Territory Based Discrimination Acts*

State/Territory based discrimination legislation currently offers some protection to people who are treated unfairly as a direct result of their self identified or socially identified gender, but only if they meet specific, narrow definitions of 'transsexual'. Problematic legislation across a broad range of areas also distinguishes between transsexuals who have had sexual affirmation surgery and those that have not – whereby those who have had surgery are accorded more rights and protections than those who have not.

Many people who choose to express their gender differently experience discrimination as a result of this gender presentation, but do not meet the criteria of "transsexual" or "recognised transsexual" under State or Territory Law. In addition, Intersex people, who may or may not express their gender differently, are offered no direct protection under any existing discrimination laws.

We believe that introducing legislation to protect an individual from unfavourable treatment based on their "sex or gender diversity" would assist a larger proportion of sex/gender diverse individuals. Models for such broad-based anti-discrimination provisions appear in other international jurisdictions, for example the New York City Human Rights Law (amended 2002)[9].

The New York City Human Rights Law (amended 2002) prohibits discrimination on the basis of gender, and defines "gender" as including:

> *"actual or perceived sex and… also…a person's gender identity, self image, appearance, behaviour or expression,* ***whether or not*** *that gender identity, self image, appearance, behaviour or expression is different from that traditionally associated with the legal sex assigned to that person at birth."*[10]

Prohibiting discrimination on the basis of gender, or sex or gender diversity, would provide much-needed legal protection in situations such as the following:

- A woman is denied employment because her boss doesn't think she 'looks enough like a woman'.
- A boy is bashed at school because he is assumed to be gay on the basis of how he portrays his masculinity.
- A man is harassed by other colleagues because he's not 'aggressive/assertive enough'.
- A person is denied services because someone 'finds out' that they cross dress.

The people in these examples may be able to utilise the provisions in existing legislation that prohibit discrimination on the basis of 'sex' or 'sexual orientation'. However, it would be far more straightforward if they could argue that they had been discriminated against because of their gender identity, or *because of the way they portrayed themselves* as a man or a woman.

***Recommendation Eleven:***
**Changes to Discrimination Law**

a) Amend Commonwealth, State and Territory discrimination laws to provide consistent protection to individuals who suffer discrimination on the basis of their sex and gender diversity, or their gender presentation or expression.

[9] Title 8 of the Administrative Code of the City of New York
[10] Subdivision 23, Section 8-102 of chapter one of title eight of the administrative code of the City of New York (Added by amendment 30th April 2002)

b) In the upcoming discussion on a Federal Bill of Rights, the Government should specifically consider the inclusion of a right for all Australian citizens to identify and freely express their sex and/or gender.

c) Expand the provisions of the *Sex Discrimination Act* (Commonwealth) to protect individuals from discrimination on the grounds that they fail to disclose their sex in a situation where there is no reasonable justification for requiring such a disclosure.

## *Recognising a Broader Range of Discriminatory Acts*

Existing Federal, State and Territory discrimination laws only protect people from discrimination in limited circumstances. Namely, a potential sex and gender diverse complainant must firstly substantiate that they meet the criteria of 'transsexual' as specified in a particular Act, before substantiating that the unfavorable treatment was suffered ***because*** of their status as transsexual. In many cases where an 'everyday person' would identify acts as discriminatory, it is not possible to substantiate the link between the discriminatory action and the complainant's status.

> *"I changed my name more than ten years ago, but the trade certificate that I obtained was in my previous (female) name. I contacted the institution and asked that they re-issue the document in my new (male) name but they refused to do so. When I contacted the NSW Anti Discrimination Board I was advised that because the provision of a certificate was not the provision of a service, that there was nothing I could do. This has meant that the only way that I can verify that I've got any qualifications for a new job is to 'out' myself at the interview."*

It has been reported to us that a GP refused to provide a referral to a particular specialist because the GP assumed that the specialist "wouldn't be OK with you being transsexual". Although the potential complainant had clearly been treated differently on the basis of their transgender status, they were offered no protection because it is arguably not 'unfavourable' treatment for the GP to refuse to make a referral to a specialist who will not provide the required treatment.

***Recommendation Eleven:***
**Changes to Discrimination Law (cont.)**

Amend Commonwealth, State and Territory discrimination laws to recognise discrimination in a broader range of situations and reduce the onus on the complainant to prove a direct causal link between their relevant attribute and the unfavourable treatment they experienced.

## *Participation in Sport (Discrimination)*

In several jurisdictions, an individual can be legally denied the right to participate in their chosen sport on the basis of the sex shown on their birth certificate. Where the sex on an individual's birth certificate is not the person's self-identified gender, it becomes extremely difficult for them to participate in even social or amateur sporting activities.

For example, there is no legal protection for the female-to male transsexual who is refused a place on the men's team because his birth certificate says he is a woman, and who is also refused a place on the women's team because "he looks like and lives as a man."

Feedback we have received indicates that transsexuals, intersex and gender diverse people often feel that they are able to participate in sporting activities due to the difficulties involved.

***Recommendation Twelve:***
**Sport and Discrimination**

Ensure that amateur sports are not exempt from Federal, State and Territory discrimination provisions.

## EDUCATION AND INFORMATION

# Defining and Mapping "At Risk" Communities

Informal studies done in NSW suggest that transsexuals have rates of unemployment in excess of 50%, very high levels of homelessness, poor health and low participation in education and training.[11]

However overall, Australia lacks accurate statistical information about sex and gender diverse communities. This only increases the difficulties faced by individuals and organisations who are working to support such communities. For example, statistics are not available on basic issues as:

- How many sex and gender diverse people are there in Australia?
- How does the general health of sex and gender diverse communities compare to that of the general population?
- How does the employment participation rate of sex and gender diverse individuals compare to the national rate for the rest of the population?
- How does the income and earning capacity of sex and gender diverse communities compare to that of the general population?

## *Data Collection in Government Agencies*

At the last census, the ABS stated in a press release that gender and sex diverse individuals were free to answer the sex question in a way that was not specified on the form. For example, by recording their sex as 'intersex'.

However, the ABS spokesperson disappointingly stated that anyone who completed the form in such a way would be randomly assigned a sex of either male or female, using a computer program designed especially for this purpose. We believe that rather than investing in a program to randomly assign a fictitious sex to sex and gender diverse people, the ABS should be taking steps to actively and correctly record basic demographic information about sex and gender diverse communities.

## *Data Already Collected in the ACT*

In 2002-3, the ACT Government Department of Justice and Community Safety (JACS) conducted a series of small-group forums involving sex/gender diverse community members. At the time, this formed part of the consultation process leading up to a raft of legislative changes passed in the *Legislation (Gay, Lesbian and Transgender) Amendment Act 2003*. Although valuable data was collected as part of the consultation process, none of this information has been publicly released. Nor have any comprehensive amendments been made to remove discrimination against transgender people in the ACT. This is despite the ACT Government's 2002 motion to 'remove discrimination against all gay, lesbian, bisexual, transgender and intersex people in the ACT'.

[11] Gender Centre, assorted reports and publications. Contact point: Elizabeth Riley (02)9569 2366.

***Recommendation Thirteen:***
**Defining and mapping sex and gender diverse communities**
a) Allocate funds for an initial research project to identify the demographics of Australia's sex and gender diverse communities.

b) Call upon all jurisdictions to publicly release existing data on sex and gender diverse communities, to aid in the collection and analysis of future data.

## General Education Programs

The information set out above clearly illustrates the need for a comprehensive approach to public education regarding sex and gender diversity. We call upon the Federal Government to fund a public body to develop and undertake appropriate public education programs regarding sex and gender diversity. This body could also develop and oversee a range of training and education initiatives specifically targeting the groups discussed below.

### *Workers in the Health Profession*

A national body could work with the Australian Medical Association and other relevant bodies to develop fact sheets for health professionals which provide basic information about sex and gender diversity issues. Measures should also be taken to promote new 'standards of care' guidelines for treatment of sex and gender diverse patients (as discussed above).

### *Employers of Transitioning Staff*

We have heard an enormous number of stories from individuals who have lost their jobs when they decide to transition at work. Even employers who have a genuine desire to be supportive generally struggle to obtain the support and information they require to support their transitioning employee. A Federal body could develop publicly-available resources to inform and support employers and employees in this context.

### *Police and Prison Staff*

In the ACT, the AFP proactively educates its staff regarding the sex/gender diverse community. Because there are no co-ordinated education programs, they hold a panel discussion on an approximately annual basis. We recognise that such panel discussions play an important role in educating police officers. However, we believe better educational outcomes could be achieved if organisations like the AFP and Prisons had access to well-researched, professionally-developed training modules dealing with sex and gender diversity issues.

### *Journalists and Media*

Much of the media coverage relating to gender and sex diverse individuals is disrespectful and counter-productive to positive education of the broader community regarding sex and gender diversity. Media training is essential to ensure that journalists understand the importance of basic principles (such as using the correct pronouns) and the damage that can be done to individuals, and the community, when sex and gender diverse individuals are portrayed in a consistently negative light.

## *School Children – Anti Violence*

Whilst a range of education campaigns relating to bullying and homophobia have been introduced in schools around the country, campaigns relating to sex and gender diversity and "genderphobia" are largely absent or inadequate. In the absence of local research, US statistics indicate that genderphobic violence (including murder) is increasing, whilst the incidence of homophobic violence is reducing[12]. Such statistics, along with anecdotal evidence of social discrimination suffered by members of the sex/gender diverse community, highlight the need for targeted school education campaigns on sex and gender diversity.

## *School Children – Sex/Identity Education*

Statistics show that approximately 1 in 200 people are born with an intersex condition of some kind. We believe this is a high enough incidence to warrant discussion of intersex conditions in the context of sex education[13].

Many intersex people do not discover that they are intersex until puberty or until they undertake genetic testing later in life. It is critical that adolescents and their parents are aware of the possibility of variations in pubertal development, which may lead to the identification of an intersex condition. The early diagnosis of such conditions is crucial to ensuring that the young person concerned can access relevant support and information as quickly as possible.

Further, given the substantially better outcomes for transsexuals who are able to delay and/or avoid the onset of puberty via medical intervention, it is critical that young people are aware of the phenomenon of sex and gender diversity at the youngest possible age.

***Recommendation Fourteen***
**Public Education about Sex and Gender Diversity**

a) Add gender identity as a required element in all public education and health promotion campaigns and activities (much like the SunSmart focus in recent years).

b) HREOC and other human rights organisations should take all steps possible to promote gender diversity as a human rights issue.

c) Establish a government-funded national body to undertake research on sex and gender diversity and to provide schools and the wider community with information, support and public education on related issues.

[12] 1999 Study conducted by International Foundation for Gender and published in (Page 5, Polare Ed 34 2000) shows that in the US between 1997 and 1998: "anti-gay incidents" overall decreased 4% while Transgender victims of hate crimes increased by 49%

[13] Four Corners 27th July 2005 "The Gender Puzzle" stated that "one in 500 boys are born with a double XX as well as a Y" and this constitutes only a proportion of the possible variations in sex chromosomes. Transcript available at: www.abc.net.au/4corners/content/2005/s1422174.htm