



TRANSGENDER VICTORIA

Proud winner of Australian Human Rights Award 2014

6 February 2015

Sexual Orientation Gender Identity & Intersex Rights Snapshot Report Consultation
c/- Australian Human Rights Commission (AHRC)
Via email: sogii@humanrights.gov.au

Dear AHRC

Sexual Orientation Gender Identity & Intersex Rights Snapshot Report Consultation

Thank you for creating this consultation.

Transgender Victoria is an AHRC award-winning organisation with 15 years expertise in trans and gender diverse (T/GD) advocacy, awareness and education

As per our area of interest, our response is in relation to gender identity. We use the term trans and gender diverse and define this as people whose gender identity and/or expression differs from that largely expected of them by society given what was recorded at birth. We especially add gender diverse to emphasise those identifying as other than male or female, often called non-binary. We note the Australian research report From Blues to Rainbows (released September 2014) wherein 33% of the 14-to-25-year-old T/GD people surveyed identified as non-binary. This creates significant and immediate implications for law reform, policy and service provision.

We also define a cisgender person as someone whose sex recorded at birth meets expectations re gender identity and expression.

Finally, we note all issues below will have at least indirect impact on families of T/GD people.

1. How well GI rights are respected and protected in Australia.

We note protection given by the gender identity attribute included in the federal Sex Discrimination Act effective as of 1 August 2013. We believe this definition is comprehensive, simple and effective. We note this definition fills most gaps in existing state and territory protection.

Re laws regarding birth certificates, we note that the ACT provides the best protection in that changes for T/GD people are based on affirmed identity, there is provision for minors to change their marker and there are options beyond male or female. The other 8 states and territories offer some protections but only on a surgical basis and not always for minors.

The introduction of the federal sex and gender guidelines in July 2013 has begun to give protection across the federal jurisdiction re recording of identity.

2. Examples of legislation, policies and practices by government that unduly restrict SOGII rights.

a) Definitions of gender identity

We believe most current state/territory definitions are not best practice, especially in relation to

non-binary identities and this may lead to a lack of protection.

b) Religious exemptions

In most jurisdictions, exemptions are often used to discriminate against T/GD people. We note particularly the story of Isaac, a young trans man (recorded female at birth, identifying as male). Isaac's efforts to identify as male at his religious school resulted in him being locked in a room while in full view of others as "punishment." We believe this humiliation and imprisonment happened only because a religious organization could discriminate on the basis of gender identity due to these exemptions.

We also firmly hold the opinion that the current lack of transparency in relation to these exemptions creates difficulties regarding employment applications and provision of goods and services for all parties.

c) Sport

Exemptions re sport in most states/territories and federally could be used to discriminate against T/GD people. We note the release on 31 January of guidelines by the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/ea-practice-guidelines/item/1125-guideline-transgender-people-and-sport-complying-with-the-equal-opportunity-act-2010>. These guidelines discuss myths faced by T/GD people in sport, one being that trans women automatically have an unfair advantage. We believe this exemption reinforces stereotypes re sex, gender identity and gender expression. We note that when a cisgender male who is taller than his predecessors emerges in a particular sport there is no allegation of cheating and believe this exemption creates a double standard.

d) Health and medical care

We note in particular, issues including but not limited to:
the significant out-of-pocket costs faced by T/GD people due to lack of full Medicare coverage, which in turn largely derives from discriminatory attitudes;
the major lack of access to trans surgery and hormones in health systems in most parts of state/territory and federal health care;
attitudes, likely to be discriminatory, by endocrinologists who believe trans issues are still "experimental" and refuse to offer hormonal treatments, particularly in public systems;
the possibility some of the few health professionals currently treating T/GD people may be engaging in restrictive trade practices as per s (45)2 of the Trade Practices Act 1974.

e) Lack of funding for T/GD-specific services

We note the lack of funding in most states and territories for T/GD organizations (positive exceptions being the ACT and NSW). We note other minority groups e.g. indigenous, seniors, receive funding but not T/GD (and most of SOGII).

f) Other issues:

- i) Custody: lack of appropriate placement for T/GD people could be considered cruel and unsafe.
- ii) Schools as discussed in (b) above
- iii) a specific issue re marriage equality for T/GD is that of "forced trans divorce";
- iv) Local government service provision— while municipalities such as (but not limited to) Hobsons Bay (and others in Melbourne's west), Darebin, Port Phillip and Yarra have given very good leadership re T/GD (and all of SOGII) they are barely 10% of all municipalities in Victoria.

3. What is being done, and what more should be done, to promote a culture of respect for GI rights.

We note good projects such as the "What Makes an Ally?" project in Victoria (allyproject.org)
The commencement of training for workers in aging and aged care re LGBTI seniors

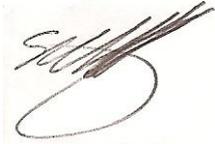
What more needs to be done (including but not limited to):

- the federal sex and gender guidelines (or equivalent) to be developed and implemented in all states/territories;
- birth certificates in all states/territories to be based on affirmed identity, allow changes for

minors, more options than male or female and no requirement re letter from a GP;
make the gender identity definition uniform across all states/territories;
urgently fund T/GD and allied e.g. families of T/GD organisations;
expand the seniors' training program;
End sport exemptions, following the lead set by Tasmania;
eliminate religious exemptions except for selection of religious officials.

Please contact me on 0407 946 242 or sally@transgendervictoria.com for further information

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sally Goldner', written over a light-colored rectangular background.

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