

Intersex, Sex and/or Gender Diverse (ISGD) Antidiscrimination Inclusion

Presented by Sex and Gender Education (SAGE) Australia, and Australian Health and Education Centre (AHEC)

This paper is presented on behalf of both of the above bodies.

Prepared by Tracie O’Keefe on behalf of SAGE & AHEC

Response to Australian Human Rights Commission (AHRC) Consultation on proposed changes to federal anti-discrimination laws concerning Intersex, Sex and/or Gender Diverse (ISGD) people. AHRC document name: ‘Protection from discrimination on the basis of sexual orientation and/or sex and/or gender identity: Discussion paper, 2010’.

SAGE campaigns for the human and legal rights of people who are intersex, transexed, transsexual, transgendered, cross-dressers, androgynous, without sex and/or gender identity, and people with sex and gender culturally specific differences.

AHEC houses a Sex, Gender and Sexuality Clinic run by Dr Tracie O’Keefe, ND, DCH (sexologist) in Sydney and has seen over 150 consultations a years for the past 10 years for people who are intersex, sex and/or gender diverse. Those people come from throughout Australia and outside Australia. In over 40 years Dr O’Keefe has seen more than 3000 intersex, sex and/or gender diverse people, is the co-author of *Trans-X-U-all– The Naked Difference* (1997), author of *Sex, Gender & Sexuality – 21st Century Transformations* (1999), co-editor of *Finding the Real Me: True Tales of Sex and Gender Diversity* (2003), co-editor of *Trans People in Love* (2008), author of many articles and papers, is a researcher in the field of sex, gender and sexuality, a clinical member of the World Professional Association for Transgender Health (WPATH), and the Australian Society of Sex Educators, Researchers and Therapists (ASSERT).

November, 2010

The Commission proposes changes in the federal anti-discrimination laws to cover discrimination on the grounds of sex, gender or sexuality. It proposes to tender a report to the Federal Attorney General’s office regarding the findings of a public consultation process. SAGE campaigns for the rights of ISGD people and will be addressing discrimination against this populous; AHEC will be doing the same.

Intersex, sex and/or gender diverse (ISGD) is a meta-phrase that encompasses all groups of people with sex and/or gender differences. No one person can be ISGD.

Sex has a historical biological perspective based on the reproductive process that involves the breeding of males and females. Over the past 100 years, however, it has become increasingly scientifically clear that many people do not meet those stereotypically male and female physiological phenotypes and their sex is diversely other than strictly male or female. They can be said to be **Sex Diverse**.

Intersex people have physical characteristics that denote they are a mixture of male and female. Those features may be obviously present or they may be subtle and not discovered until later in life or at death.

Gender is the social construct and presentation or interpretation of masculine, feminine or the adoption of neuter roles. It is other than sex (the two should not be confused) and it is a performance of self-expression. Some people do gender expression that is other than stereotypically masculine or feminine or other than their biological sex. These people may be referred to as **Gender Diverse**.

Some people may be sex diverse, others gender diverse and still further people may be both sex and gender diverse. So people who are not stereotypically male or female, masculine or feminine may belong to different groups and those groups may be a range of **Intersex, Sex, and/or Gender Diverse (ISGD)** people. In its *Sex Files Report* (2009) the AHRC used the phrase sex and/or gender diverse but for the purposes of anti-discrimination law we are adding intersex on the front of the phrase.

To include all of those groups together in this paper we use the acronym ISGD. A single person cannot be ISGD as it is simply an overview of varying groups.

Intersex, sex and/or gender diverse (ISGD) people are made up from many differing groups including people who are intersex, transexed, transsexual, transgendered, androgynous, gender queer, cross-dressers, without sex and/or gender identity, and people with sex and gender culturally specific differences. The sub labels become extensive and are beyond the scope of this paper but all must be included under any such legislation by using a neutral generic meta-phrase. They are people who experience variations in physical presentation and social behaviour that is other than stereotypically male or female. Each group may have its own physical, psychological, social, legal and political issues that may not necessarily relate to any of the other groups.

SAGE and AHEC will be addressing issues of discrimination on the grounds of being intersex, sex and/or gender diverse in this paper, and not on the grounds of sexuality.

Background

Australia is currently often a hostile and bigoted country for many intersex, sex and/or gender diverse people (ISGD). There is unquestionably a high level of sexism and genderism that exists in the general culture. Transphobia and ignorance about intersex people and other sex and/or gender diverse people is part of everyday life. Unquestionably both the federal and state governments are, without doubt, the greatest oppressors of intersex, sex and/or gender diverse people in not permitting many of them to have legal documents that reflect their true sex and/or gender established identities. Many anti-discrimination laws do not protect those who are biologically diverse in their sex nor expressed genders that are other than strictly stereotypically bipolar male or female.

The colonial history of Australia means that it is still heavily invested in post-colonisation Victorian social concepts of anything other than male or female heterosexual being socially

intolerable. This means that persecution, social exclusion and violence against intersex, sex and/or gender diverse people is socially permissible and common place.

Comments on the AHRC discussion paper – Protection from discrimination on the basis of sexual orientation and sex and/or gender identity (2010)

The discussion paper (p.1) proposes that the federal law offers no protection in Australia against the discrimination on the grounds of sexual orientation and sex and/or gender identity. This is not strictly true. When an intersex, transexed or transsexual person in Australia changes their birth certificate, identity documents and is recognised absolutely, in law, as that sex, then they are protected by the Sex Discrimination Act (1984). Their sex identity is recognised by society as absolutely that sex, without exception, and should they be discriminated against for being that sex they can bring an action for discrimination against a respondent as that sex.

The AHRC paper proposes that those transitioned people are some kind of people other than ordinary folk but in law that is not the case and inaccurate.

There are, however, many ISGD people who cannot presently change their identity documents to match their identity and this causes discrimination problem loopholes because they become unrecognised or incongruently recognised. These people are marginalised, socially, ostracised, de-legitimised, ghettoised and in some cases criminalised just because of their differences of sex and/or gender presentation or identities. People who fall under the ISGD umbrella may also be gay or lesbian, just as they may be Jewish or Asian, and heterosexual. This paper concerns itself not with sexual orientation but with sex and/or gender diversity.

Different campaigners from ISGD groups have voices of their own and do not want gay people trying to speak for them, taking their funding under a GLBTI umbrella, and endangering funding specifically focused to ISGD groups.

The discussion paper (p.1) fails to understand that GLBTI is a political movement and not a description of the ISGD population. It is a trendy acronym that is insulting to many intersex, sex and/or gender diverse people who do not identify with it. It implies that being intersex, sex and/or gender diverse is somehow related to being gay, which is not the case.

The attempt to gather those groups together is largely an attempt by gay organisations to increase their funding applications and political power. Those gay organisations do not understand the complexity of ISGD groups and try and speak out in their name and generally get the issues wrong.

The research on which the AHRC consultation paper is based is markedly incomplete and bereft of an overview of the ISGD population, many of whom seem obviously invisible to the author of the AHRC paper. The large majority of intersex, transexed and transsexual people who have transitioned have lived their lives stealth and the public do not know about their backgrounds. They have nothing to do with the GLB or the GLBTI movement and live and identify as ordinary men and women.

The document (p.3) talks about how GLBTI people are discriminated against and is oblivious to the fact that discrimination extends far beyond the GLBTI label. Its author continues to be unaware of that populous.

Whilst the document (p.3) talks about combating discrimination against GLBTI people it fails to recognise that the document itself discriminates against people who are intersex, sex and/or gender diverse but do not identify with the GLBTI movement.

The document (p.5.) notes the UN document in 2008 put before the General Assembly endorsing protection for people on the ground of sexual orientation and gender identity. The UN resolution was driven mainly by the gay and transgendered people and ignores that intersex and quasi-intersex people are not covered by this resolution. Many people are transexed or transsexual because of their physical differences relating to their sex, and that physical anomaly prohibits them living as their birth registered sex. For these people gender presentation was not part of the equation of their transition. They do not identify as transgendered but transexed or transsexual. They might not meet an official International Classification of Diseases (WHO, 2010) classification of intersex but that does not mean their issues are about gender presentation. They are about their sex.

In November 2001 (Singer, 2001) the UN however proposed a removal of a reference to GBLT and sexual orientation from a resolution that protects people from arbitrary executions. In its place it voted for 'discriminatory reasons on any basis'. A paranoia of headlines ensued by the mainly gay lead press that proposed it would lead to a greater number of killing of GBLTQ people; but they failed to recognised how their own nominalisation of identities excluded many ISGD people who do not identify with their exclusive labelling.

SAGE & AHEC do not propose the blank removal of all identity markers in antidiscrimination legislation because Australia is not ready for such a move and in rural areas prejudice can be inherent. The removal of GBLT or GLBTI is certainly recommended.

The document talks about (p.5) the Yogyakarta Principles (O'Flaherty, 2007). Again that document suffers from the same tautological deficit. It was driven by those who obsessively identify as transgender and it fails to recognise that many ISGD groups do not get included in documents solely using terms like 'gender identity'.

As the AHRC document continues it is plain to see its bias towards the GLBTI political lobby. The schizophrenic nature of the writing leads to it using the phrase sex and/or gender diverse in one sentence, then in the next it uses GLBTI. The obvious jump between the two descriptors shows lack of understanding of the issues and populations involved.

The document (p.6) talks about how a change in federal law to provide new anti-discrimination amendments or an Act could contribute to significant cultural change. It compares laws based on race, sex or disability yet fails to understand that those laws are based on anti-discrimination principles not reductionist populations that labels like GLBTI create. Those laws do not talk about discrimination against black or yellow or blue people, they talk about discrimination on the basis of 'race'.

The document (p.7) talks about the Sex Discrimination Act 1984. To propose that someone is discriminated against because of their gender identity would not be covered by this Act is quite correct. Transitioned intersex, transsexed and transsexual people do not change their legal gender identity in Australia. What is changed at Births Deaths and Marriages is a change of sex status. So if someone is discriminated against because of their sex then they would be covered under this Act. The Act does not identify male and female as the only qualifying people unlike like the present marriage Act (Comlaw, 1984).

The document (p.7) talks about some amendments to the Marriage Act to include same-sex couples. This would exclude people who do not have a same or opposite sex and any amendments to that Act needs to talk about marriage between two adults, without stating the sex of those adults. The Commission, in supporting same-sex marriage amendments and not marriage equality for all Australians, is being sexist and genderist.

The document (p.9) begins to talk about what other things can be done to assist human rights for GLBTI people but the dialogue is both sexist and genderist. It is failing to recognise all sex and/or gender diverse people. The dialogue that continues (p.10), whilst being noble, fails to recognise that all these sentiments are a complete waste of time until the government begins to implement the recommendations of the *Sex Files Report*. Many of these people, because their identities are outside the male/female bipolar paradigm, do not actually have legal identities in the first place at the moment so how can they be protected by any laws, since they do not legally exist?

The document (pp.10-11) talked about what laws exist in Australia with regard to various sex and/or gender diverse people. All these laws at the moment are in fact sexist and genderist because they do not recognise the principles of sex and/or gender diversity but nominalise and objectify people into unrealistic labels such as transsexual or transgender, and many sex and/or gender diverse people cannot qualify for these labels and are therefore marginalised and left out of the system. It would be like using disability discrimination law to say only blind or deaf people are protected under disability anti-discrimination laws.

Intersex, transsexed and some transsexual people have not changed their gender but have adjusted their sex. Transgender people, however, technically do not change their sex but their gender presentation. So it is important that anti-discrimination laws cover both sex and gender, not just unrealistically gender.

The phrases sex reassignment and gender reassignment are no longer used. As medicine moves towards a more personal-centred approach the phrase 'sex affirmation' is used for those who undergo medical procedures.

Responding to questions:

In responding to this discussion paper and answering the questions that it poses SAGE and AHEC wishes to state that it found the paper confused. In the AHRC *Sex Files Report*, 2009 the report stated:

“Despite this lack of consensus over the exact meaning of definitions, sex and/or gender is an important part of a person’s identity. Sex and/or gender identifies a person’s sense of self and positions them in a social and political context. Every person has the right for their sex and/or gender identity to be recognised and respected.” (p.5)

The *Sex Files Report* clearly delineated between a person’s senses of sex and/or gender identity as being different from a person’s sexuality. The report does not deal with sexuality yet the Commission seems lately to be driven by referring to intersex, sex and/or gender diverse groups of people as part of a GLBTI spectrum. SAGE does not campaign for groups on the basis of sexuality, only on intersex, sex and /or gender diverse issues. To many of the people we represent GLBTI is insulting.

For many, the use of the GLBTI acronym with regard to intersex, sex and/or gender diverse people is not only insulting but also detracts from their issues. For many people who have differences in sex, to use TI and put it on the end of GLB is a form of sex and/or gender discrimination. This has been pointed out to the Commission over the past six months time and time again yet the Commission still continues to insult us. The GLBTI political movement is driven 99% by gay people campaigning for gay marriage in Australia at the moment. Gay campaigners who try to speak out for ISGD people in public frequently get their issues wrong so they use the power of their our name yet the ISGD people end up with very little and a misrepresentation of themselves in public. So what happens if the same-sex marriage campaign succeeds? Simple – people who are neither male nor female will then have to spend another 30 years fighting for the right to marry.

Many transitioned people, with legally established new identities, do not indentify as trans anymore but simply men and women with differences, which is legally what they are. They do not see GLBTI as having anything at all to do with them. Many gay organisations are trying to add T and I on to their acronym and claim funding for such groups. So we progressively have more and more gay-led white collar workers talking about TI issues using up increasing funds whilst ISGD people themselves still cannot get proper funding for surgery or hormones.

In the AHRC UN Universal Periodical Review 2010 GBL people are separate from ISGD people and SAGE and AHEC request that the AHRC, in recommending the formation of anti-discrimination legislation for the future, continues to follow that line. Failure to do so will result in the public beginning to think that being a member of an ISGD group is just an extension of being gay. For 40 years since the Corbett vs Corbett case (Ormrod, 1971) in the UK, campaigners in the different ISGD movements have fought to dispel the idea that ISGD people are a form of disaffected homosexual, which they are not. In its clumsiness and ignorance the AHRC is presently perpetuating that myth.

Most people who transition from male to female or female to male have absolutely no connection with the gay community during their lives and object to gay people speaking for them on their behalf.

SAGE and AHEC support the rights of GLB people unreservedly; however, we do not want members of that community to speak on behalf of ISGD people. At the Sydney consultation meeting a representative from the Gender Centre, Sydney, categorically stated how difficult it became when GLBTI is used when trying to negotiate for the rights of ISGD people. There was also a unanimous consensus in the consultation that a more generic term like intersex, sex and/or gender diverse term is used in any legislation.

Response to consultation questions:

1. The benefits of federal anti-discrimination law would be that it could end the confusion that presently exists around government policies or anti-discrimination laws to protect ISGD groups of people.
2. Prohibiting vilification against ISGD groups of people needs a co-ordinated approach so that states, within two years of federal anti-discrimination laws being passed, must adopt those national standards.
3. Australia has signed a series of international human rights treaties as a country; however, many of the laws pertaining specifically to different individual states do not comply with those treaties. For instance the UN Declaration of Human Rights (states that people should not be discriminated against on the grounds of their sex (UN, 1948). Every state at the moment, however, discriminates against sex diverse people who may not be strictly male or female by not allowing them to have documents that are other than those two unrealistic concepts. These states also discriminate because they do not allow many people to change their birth certificates and identity documents to match their everyday lives.
4. We gathered the experiences of people for this section of the paper.

“I am a woman of a transsexual background. Not a transsexual but a woman who once had a transsexual experience. I started taking feminising hormones when I was 18 years old 20 years ago and underwent surgery two years later. I never mixed in the gay community and have never had any dealing with it. My husband and my therapist are the only people who know my background as I consider this a private matter. I never use the same GP twice. My birth certificate was changed from male to female and I got married legally in another country. We adopted two boys who are now 14 and 12 and they do not know my history. I am a nurse who works on a maternity ward and am presently studying to be a midwife. I decided never to come out because I heard about of all the hassles that separatist lesbians gave trans women in the 1990s trying to exclude them from women’s spaces. A colleague of mine at work who was a doctor came out as a trans woman and it got so bad for her she had to the leave the hospital. I know there are no laws to protect me if anyone at work finds out about my background but there ought to be. There should be no exceptions in the law and I should be covered by sex discrimination laws. I am a woman, wife, mother and soon to be midwife and that’s the way it is.”

- Mary.

“I am a trans man, live as a male and am 21. I bind my chest but there is not much of it anyway. I work in a warehouse and my colleagues treat me as one of the boys. I even had a girlfriend lately. I always felt I was male and wanted to be a man but have familial hypercholesterolemia and hemochromatosis so taking testosterone would be risky for me. I’m saving for chest surgery and don’t really know if I am transsexual or transgender but I do know I want to be treated as male. Genital surgery for trans men is not very good and I know some guys for whom it went wrong and one who died from complications so I don’t want to take the risk. I’ve had a lot of trouble with my girlfriend’s brothers because they don’t want her to go out with me. They came to our house and started abusing me by shouting through the windows and screens that I was a ‘f...ing tranny’. My mum was in tears. I talked to the police and a solicitor but they said I had no protection under the law and that they could call me what they like in public because I was officially not a real transgender under the law. How is that right? If they stood in the street calling me a ‘yid’ because I’m Jewish I could take them to court for racial discrimination but because I’m trans the law does not apply to my case. That’s wrong.”

- Trent.

“Mostly I don’t go out. I wait until it is dark before I do any shopping. I’m on a pension because every time I try to get a job I have the wrong paperwork. Legally I’m still a girl but I inject testosterone. My parents paid for chest surgery, and I pass as a man. No one in the town I moved to knows my history. If I try to get a job here they will know because I can’t change my birth certificate because I have not had genital surgery. It seems I’m stuck in a halfway world, neither one thing nor the other. I don’t want it that way but the government forces me not to be able to work as a man because I don’t have the paperwork and I obviously can’t and won’t work as a woman. I’m not like those people in the city who march up and down with flags announcing what they are. I just want to get on with my life in private but I cannot afford to be discovered because it is a small town and I’m afraid what might happen. If I had the right paperwork as a man I could try and get on with my life. The government is so unfair and defiantly discriminates against us trans men.’

- Joe

“It is obvious to everyone that I’m a new woman, as I call it. I underwent transition late in life due to family circumstances and commitments. I don’t pass that well as a woman and I know that, but it is one of the consequences of late transition that I knew I would have to put up with. Unexpectedly last year I was set upon by some youths at a railway station. By chance one of the station staff knew one of them and gave the police his name. They gave him a caution. I wanted them to charge him with a hate crime but they said no such laws existed. I had to go to hospital and the police implied that because of my gender presentation I had provoked them but I had never even

engaged with them before they attacked me. The statute books need to facilitate for cases being brought for hate crimes against people who attack sex and/or gender diverse people regardless of their presentation.”

- Kay.

“I’m 22 and only just found out I have androgyne insensitivity syndrome, which is a form of intersex. I’m devastated as apparently I can’t have children. I wondered why I never had a period. My boyfriend left me. I’m at a Christian university and the counsellor who I told said I should tell the other students. I told her absolutely not but she told my tutor anyway who told another tutor who told some of my class mates and now everyone knows. I feel totally betrayed and went to the Dean to complain but he said it was for the best and students had a right to know. I felt it all got out of control and took some pills and ended up in hospital in the psychiatric ward. Everyone thinks I had a sex change and I’m not even sure how to explain to them what I am. I had never even heard of it before. A couple of students harassed me and said I should leave. Why are there no laws to protect intersex people like me?”

- Suzanne

‘My son is 14. He was born my daughter. When we came to this country I thought it would be freedom but the lawyer says we must go to court to get him medication to stop female hormones. My wife takes him to my country and they give him medication. When he is 16 they start him on testosterone. Why would I take my son to court? He has enough to deal with. Crazy. Why are they so horrible to children in Australia when they have this condition? He is my son and you think I’m going to put him through the courts? What did he do wrong? The government is just as oppressive as places they invade and not a free country after all.’

- Hu

“I am 16 now but I was 15 when I ran away from home. I am living on property with a bloke I met. I’m only 20 miles away from my parents but they do not know where I am. They are very religious and my dad would rather kill me than let me transition to be a woman so I left. I phoned my mum once who begged me to come home and see a doctor to get help but I know they want to make me a normal boy. The bloke I’m with says he will pay for my surgery in couple of years and he is ok but we have unprotected sex and I’m not sure if he sees someone else when he goes away, sometimes for a week. I don’t go to school and no one knows I’m here because it’s quite isolated but I feel safer than I did at home.”

- Fran

“I am discriminated in living and experiencing my life as a male in this country because my birth certificate is female and it is seen as a cardinal document. I am on testosterone, had chest surgery and live as a male. I can never marry the woman I love as it will be seen as a same-sex marriage, nor am I able to marry a male in that my passport is male and that will be seen as a same-sex marriage. My Medicare will remain female and if I change my driving licence that will give rise to whole new set of problems. For me emotionally the document changes are the last pieces of the puzzle, and what the state requires, due to my health, I am unable to fulfil, so I am discriminated against due to my various medical disabilities.”

- Conor

5. With regard to legislation and the law applying to discrimination on the grounds of sexuality the wordage needs to be generic: ‘Discrimination on the grounds of sexuality’, and should not just be about GLB people, because that would discrimination.
6. All the problems with updating laws concerning intersex, sex and/or gender diverse people lead back to the same linguistic problems, which is the use of reductionist language. Man, woman, transsexual or transgender etc. Biological, social and legal concepts of sex and/or gender are constantly changing and minimalistic terms reflect fashionable concepts, not enduring human rights principles.

What we have learnt about genetics over the past 15 years has blown apart the myth that there are only XX females XY males because there are plainly common sex chromatic reversals. To make law that pertains solely to GLBTI people would be very short-sighted because many people do not fit into those categories and more law changes will be needed later.

In drafting anti-discrimination legislation great attention needs to be paid to grammatical interpretation. It is now clear that terms like transgender or transsexual would be disastrous as overview phrases (O’Keefe, 2010). If we look at past legislation internationally which used these terms we can see that it quickly became outdated and marginalised other groups of people who were also sex and/or gender diverse. Such legislation was designed to protect special groups but in retrospect it is easy to see that the usage of such restrictive terms is cumbersome, troublesome, and quickly becomes problematic and prejudicial in their own right.

The Gender Recognition ACT (2004) in the UK has quickly been seen to be highly restrictive and socially exclusionary for many sex and/or gender diverse people after only five years. It was meant to facilitate transsexual people only. People in the UK such as Christie Elan-Cane (Elan-Cane, 2010), who is a non-gender person, is still not able to get identity documents that reflect their true identity. In Australia SAGE is presently running the Norrie May-Welby case to enable Norrie to have ‘Sex not specified’ on their documents because it is impossible to determine Norrie’s sex (Tranter, 2010).

In Pakistan the law has been changed to allow three genders: male female and other. The danger with such legislation is that for some people the 'other' may end up compulsory which would be unrealistic (Reuters, 2009).

In India in some regions they are also using three categories – male, female, other (Lerum, 2009).

Using the phrase 'gender identity' gives an impression that such an identity is a permanent fixture. For some people that is not the case and their gender presentation may fluctuate as they experiment with what gender may be right for them. To criminalise them is an abuse of human rights.

Chosen gender is also misleading because it gives the impression that everyone has a choice. For many gender diverse people they have no choice. There compulsion to have gender presentation other than male or female is part of other personality traits over which they have no conscious control.

A recognised transgender person is a phrase that can never fulfil the demands of its own grammar. The term 'transgender' is an Americanism that is highly controversial and means many different things to many different people. Recognised by who? What is the qualification? How does one police that? It is a phrase that was used in Australian law to protect heterosexist identities meaning that official recognition of someone who has joined the male or female club. Transgender, however, means between or crossing the genders so 'recognised transgender' is an oxymoron.

Gender history is import in that people may be discriminated against because of their past histories so it would be import to include the term gender history as part of an Act. Gender diverse people are often discriminated against because of who they used to be or how they used to present.

Gender-reassigned person is a ridiculous phrase and outdated in medicine. Even Western allopathic medicine is moving towards a personal-centred respectful model. Gender is a performance of social presentation and no one can reassign another person's 'social presentation'. It also reinforces the concept that only post-genital operative transsexuals, who have undergone psychiatric evaluation, are genuine people for such laws to defend because the phrase was used for that group in the past.

Sex affirmation surgery is a phrase that is used today in place of gender reassignment. It gives the patient back power and dignity with the right to make their own decision unencumbered by outdated pathologisation. This phrase should, however, never be used as a turnstile qualification for someone being considered male or female. In many countries people who have not undergone genital surgery can change their documents to reflect their sense of identity without genital surgery as is recommended by the World Professional Association of Transgender Health (WPATH, 2001) and the Yogyakarta Principles (O'Flaherty, 2007).

Transsexuality as a word certainly has legal connotations in Australia in that post-operative transsexuals have been the ones who are permitted, post-genital surgery, to change their birth certificates and official document to their destination sex, and get married. In the Kevin case transsexualism was recognised as an intersex condition and in medicine is also now more and more recognised as a form of intersex (Ireland, 2002). The word is problematic in that its conception in the 1940s was used in its origins to describe psycho-pathopathological sexual deviancy. This is now no longer considered the case and transsexualism is seen as a form of intersex identity. It is not to be confused with transgender which is not the same. Many older people who previously transitioned refer to themselves as transsexuals as with older literature. People with this identity tend to talk more about transition and affirming their sex today. Confusion gets worse, however, when some people with transsexual or transexed experiences refer to themselves as transgendered.

The AHRC consultation document is very confused about the difference between gender and sex.

7. Scientifically our concepts of what constitutes intersex is also moving. It is no longer possible to use medical male/female only absolutism or pretend intersex people do not exist. Medically how intersex someone is a matter of shades of grey, plus we are increasingly discovering more types of intersex people as every year progresses. Some transsexuals, transexed and transgendered people are also now medically considered a form of intersex along with congenital adrenal hyperplasia, Klinefelter's syndrome, androgynous insensitivity syndrome and other intersex manifestation. Such occurrences can produce medical issues that may not necessarily produce obvious intersex features. So in medical terms the phrase intersex is adjustable and pliable.

Sociologically there are people with obvious intersex physical features who identify as intersex. Also ordinary men and women with such physiological manifestations may not show any outward signs of being intersex and may not identify as intersex. What is certain is that there is almost no protection for people who might be intersex, have intersex features or social identities being protected in law from discrimination.

The phrase Disorders of Sexual Development (DSD) has been used recently in medicine but intersex people refute the validity of the phrase as it denotes by virtue of their existence there is something wrong with them. Many intersex people are happy to be intersex and do not see that they have a disorder.

For the very unusual situation that there is virtually no protection for intersex people SAGE believes that there is a need for any anti-discrimination legislation to include the word **Intersex** even though it cannot be exactly defined.

8. Special measures for specific groups are difficult to enforce in law. Certainly with regard to intersex, sex and/or gender diverse people restrictions on access to social spaces can be a problem. Some people who may not appear to be a particular sex are sometimes abused and assaulted for, or prohibited from, using toilets associated with

their sex. That can prove difficult when the only toilets available are male or female. Perhaps new public buildings could also offer non-sexed toilets as a third option just as they now have non-sexed disabled toilets.

With regard to workplace issues it needs to be incumbent upon employers to be aware of anti-discrimination laws around intersex, sex, and/or gender diverse people. Also it is important that workplaces implement staff training in such areas.

Social spaces are also dangerous places for ISGD people when they are excluded and singled out as other than human beings, exposed to public humiliation and harassments.

What prejudices people display in private gatherings can never be monitored by the law but as soon as the public are invited into spaces there is a need for ISGD anti-discrimination to come into play without exception.

Whilst society needs to protect the concepts of single-sex spaces someone who presents and identifies as that sex full-time needs to have access to such spaces. To exclude would be discrimination.

9. SAGE (2009) has given a reply to the AHRC *Sex Files Report 2009* that needs to be read in co-ordination with this document as it states what the government needs to do with regards to those recommendations.

Medicare

There is a medical situation in Australia that is discriminatory with regard to access to Medicare refunds and supply of treatment for ISGD people. Many intersex, transexed, transsexual and transgendered people are often unable to access services.

A trans person who was registered male at birth and then transitioned legally to female will still have a prostate. However, Medicare only allows men to access services to do with prostate issues. Therefore those people cannot gain prostate screening or be entitled to surgery or treatment with regard to benign prostate hyperplasia or prostate cancer.

In the case of trans men who were registered female at birth they may keep their ovaries as a medical necessity. Trans men with ovaries are less likely to suffer osteoporosis later in life. Although due to testosterone treatment they may not ovulate anymore, they are still susceptible to ovarian cancer, even cervical, uterine or vaginal cancer. Medicare items for these conditions only pertain to women so these now legally recognised men may have these conditions but are excluded from seeking Medicare treatment.

Whilst restrictions on sex-specific Medicare items are designed to reduce Medicare fraud, what they are actually doing in this case is limiting medical treatment and excluding these people from national healthcare services. What this may do is cost the country more money

as these people become very ill and need palliative care at great expense. The law needs to be changed to allow exceptions to sex-specific Medicare items to cater for this population.

Hormone replacement therapy for this population is not a drug of choice but a medical necessity so it needs to be available through the Medicare system on a par with insulin and other life-sustaining drugs.

There is a problem with the PBS recording of the drug Androcur (Cyproterone acetate) which suppresses the action of testosterone and dihydrotestosterone on tissue and is used on people who transition to female or need to suppress virilisation. The drug is licensed for limited use in Australia but is one of the most commonly used medications in inhibiting testosterone and its metabolites in people transitioning to female. Since it is a prescription-only drug its use is registered in Canberra as being used to reduce sexual deviancy in males. This is upsetting and disingenuous to intersex and trans people who are legally or socially female. The recording of the use of this drug needs to be changed to allow its use with people without classifying them as male or sexual deviants. Medicine does not see transition as sexual deviancy so the recording is inaccurate.

Trans people can now have children and nothing the law does can stop this development. Trans men who save their eggs cryogenically can still become mothers by surrogating their eggs after transition and genital surgery. Trans women can still become fathers after transition by freezing their sperm and using assisted reproductive technology to impregnate women. The pretence that legal men cannot become mothers and legal females cannot become fathers is over but the government holds on to the outdated concepts of conservatism that are no longer realistic as an objection to allowing sex and/or gender diverse people to be recognised by the law unless they have genital surgery.

Language used in a federal anti-discrimination Act needs to include the phrase **‘Discrimination against intersex, sex and/or gender diverse people’**, as an overview.

Child abuse of ISGD children

Any anti-discrimination legislation must extend to children. Children who are intersex, sex, and/or gender diverse are not presently legally protected. They may be harassed or bullied at school and often withdraw from education as soon as possible. Schools have poorly defined policies towards protecting these children.

Intersex children often suffer discrimination when they are subject to medically unnecessary and non-life saving surgeries to alter their genitalia cosmetically to reflect the stereotypically male or female genitalia. The child is given no choice in this matter and such surgeries are carried out without the child’s informed consent. Such surgeries should only be carried out with the express permission of a more developed and informed child, allowing them to choose their body and an identity that is right for them, whether that be male, female or other. This also applies to circumstances of enforced hormonal medication against the will of the child and child circumcision.

These treatments are to ‘normalise and the child’ but those children, when they become adults, have no redress about what was done to them without their permission and often against their will. Federal anti-discrimination law needs to allow both those children and the adults they become to retrospectively bring cases against parents and medical professionals for those unnecessary treatments.

There is also legal transphobia operating against trans children at the moment in that they can only be treated by permission of the court until they are 18 years old. Presently many professionals will not work with children in this area for fear of being sued. This causes terrible distress to those children and their families. The average person is not equipped to deal with complicated legal cases and neither can the average family afford tens and sometimes hundreds of thousands of thousands of dollars to bring such a case to court.

For teenagers who are at odds with their parents and whose parents are against their transition, this leads to depression and often suicide. Federal anti-discrimination laws need to provide a mechanism for teenage emancipation from parents who are hostile to intersex and trans teenagers’ transition, allowing them to undergo needed medical and sociological changes without obtuse legal obstacles that traumatise them even further. Such laws also need to give legal remedy against a state or federal government that interferes or seeks to interfere with minors’ rights to access treatment when necessary, just as the government has no rights to interfere with teenagers’ rights to contraception.

The education system at the moment in Australia presents a whole inaccurate picture of sex and gender rooted in stereotypical heterosexual, male/female only existence, and born out of ignorance and prejudice. Children are not taught about the occurrence of intersex births and neither are they taught about the occurrence of intersex, sex and/or gender diverse people. This ill-prepares children for the real world where they may encounter such people. Children themselves who are intersex, sex and/or gender diverse are marginalised in such circumstances and made to feel shame about the way they are. This ignorance also gives rise to bullying and social exclusion of those students who may not fit the stereotypically male/female model, causing them to abandon education for the sake of their own safety. It is in fact the ghettoisation of a whole group of school children and a breach of all children’s human rights. The law needs to require all schools to teach the full truth about sex education including intersex, sex and/or gender diverse information in their curriculum.

Legal right to redress

In forming new legislation one needs to consider to whom that legislation will be applicable. There is little doubt from the literature that many intersex, sex/and or gender diverse people are not only economically disadvantaged, because of public discrimination, but also may be unable to negotiate a complex legal system. Many of this populous may be long-term unemployed or suffer from adjunct anxiety issues due to their position in society. They may also be educationally disadvantaged because of prejudice that has marginalised them in the education system.

For these reasons any legal process for redress of discrimination needs to provide a no penalties system for persons bringing such a case. If the complainant loses their case they should not be saddled with costs because that would discourage the very people that this law would be designed to protect from bringing any such cases in the first place. Legal redress that pertains only to the wealthy is not human rights but simply protection of well-heeled, gated communities.

Extended liability

Discrimination is not just the result of interpersonal prejudice but also the result of employers' negligence, whether that is in the private or public sectors. Corporations, private employers and government departments should all have a duty of care to ensure client groups are treated with the utmost respect and not discriminated against because of their sex and/or gender status.

This must include the responsibility that these bodies and any establishment must undertake staff training to implement anti-discrimination workplace policies. Failure to do so and to police the execution of those policies must in any remedy lead to culpability of those employers and or public institutions where such discrimination took place.

The reference in the AHRC discussion paper (p.11) to proposed legislation before the US Senate, falls far short of understanding the needs of these people. It uses a proposed American solution that talks about 'gender-related identity'. It misunderstands that many people are sex diverse not just gender diverse, with some people being both. It buys into American romantic poor use of the popularisation of the term 'gender'. It misuses it to mean sex and that does not fit many ISGD groups of people.

The AHRC paper fails to understand the need for broad-spectrum semantics and claims the American proposal has advantages over the Australian wordage, but it does not. It confuses sexuality and gender identity as the only markers of identity, but the markers of identity include sex and gender for ISGD groups and should not be confused with sexuality.

The AHRC paper talks about how no state in Australia except Tasmania, Northern Territory and Tasmania, has protection for intersex people. In NSW the Transgender (Anti-discrimination and other Acts Amendment) Act 1996 (NSW government, 1996) has provisions for protecting intersex people under the premise of indeterminate sex. The Act States

*'Part 3A
(c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex,'(p.4)*

It is often not that anti-discrimination laws do not cover ISGD people in Australia but the refusal of Attorney Generals and courts to enforce such law.

The Australian Human Rights Commission is not working

SAGE presently has four members with cases lodged at the AHRC. These cases have been a disaster and a waste of the complainants' time so far. Three of the cases are against the State and Federal Attorney Generals for failure to provide appropriate documentation for these people with regard to their sex status. The AHRC and the FAG office's relationships in dealing with these cases became compromised.

The AHRC reports to the FAG's office and ultimately is part of the FAG office. The aim of conciliation process is that the AHRC operates to get both parties to come to conciliation. However both the Federal and State AGs refuse to come to conciliation. The AHRC appears to be a dog without teeth that cannot clean its own rear end. It has no power to force parties (in this case its own department) to attend conciliation. Ultimately, in these cases, since it is technically calling itself to conciliation and refusing to attend, that makes its relationship compromised and biased.

The fourth case is against the AHRC itself for using the acronym GLBTI to refer to the member who does not identify with that label. GLBTI is political movement that does not apply to many ISGD people and many are offended by its use. They may not live in gay or genderqueer culture and may not identify as trans or intersex as an identity. The Commission received a complaint earlier this year and buried the complaint. The second time the complaint was lodged, the Commission dragged its feet in responding to it.

Of late the Commission has been frequently ignoring its own *Sex Files Report* which never used the GLBTI acronym in communications, knowing how offensive it is to many intersex, sex and/or gender diverse groups of people. The Commission seems to have been operating its own GLBTI philosophy and political agenda.

The previous AHRC Commissioner Graham Innes spoke out publicly calling on the government to implement the strategies for changes to the laws regarding legal inequalities for gay couples. He even rode in the Mardi Gras Parade. The present Commissioner has reservedly reframed from speaking out publicly in support of the *Sex Files Report* so the government has done nothing to implement its recommendations.

The present government continues to prove itself to be transphobic, homophobic and phobic about anyone who is other than stereotypically heterosexual male or female. Earlier this year under the Rudd Government, Minister Stephens, then the Minister for Social Inclusion, announced action and public consultation to consider the recommendations of the AHRC 2009 *Sex Files Report*, but no such process has or presently is likely to happen according to the bureaucrats in Canberra with whom SAGE has spoken. It seems the Gillard government is one of social exclusion not inclusion. Many intersex, sex and/or gender diverse people presently feel abandoned by the AHRC; did not attend the anti-discrimination consultation meeting because they used the acronym GLBTI; have a sense that the *Sex Files Report* has amounted to nothing; and they feel deeply betrayed by the AHRC since they gave their time and energies to making the *Sex Files Report* happen.

It is plain, as these four cases show, that the anti-discrimination system as it exists often does not work, even for the laws that we have. When the State and Federal AGs and the AHRC ignore such laws and guidelines for conciliation, when it suits them, the whole process becomes compromised. The AGs are presently behaving as if the law and guidelines do not apply to them and hide behind dogma. The Sex Discrimination Act 1984 offers mediation to parties but the AHRC is powerless to enforce that process. One must ask oneself how average, disadvantaged intersex, sex and/or gender diverse people have any chance whatsoever of gaining remedy under such circumstances?

After the consultation meeting SAGE listened to several comments by ISGD people and many of them were very negative and despondent.

“We had the Sex Files Report consultation two years ago. And tell me what exactly has happened since then? Has the government made any changes? No, nothing, Not one. Has the AHRC spoken out for us like Commissioner Innes did for the gays? No. I did not attend the anti-discrimination consultation. Why would I trust officials with fat salaries to write more papers, and then do nothing, when I can’t even pay my electric bill because no one will give me job because I’m trans.”

- Bill.

“I was at the Sydney sex and/or gender consultation. For me it was rubbish. The Commissioners themselves hardly spoke to anyone and did not join in. They employed someone who did not work at the Commission to run the consultation meeting as if it was bingo night.”

- Jane.

“What good did the Sex Files report do me? I still can’t get my birth certificate changed. The AHRC needs to finish one thing before starting another. Yes representatives from the Federal Attorney General’s office went as observers, I heard, but they won’t actually give us our rights at the moment. They won’t meet with us.”

- Gail.

“I did not go to the consultation. I don’t get involved in that political stuff. The government won’t recognise me as a woman because I have not had surgery. A bunch of do-gooders in their ivory towers making lots of money writing documents that the government does nothing about. Not actually listening to what we need. Tell me, is a trans person going to be writing the report? Unlikely! Is there a trans person that works at the Commission?”

- Joan.

We would like to record good comments about the consultation but no one made any to us.

Conclusion

In the workplace it is common for people who are openly or obviously intersex, sex and/or gender diverse to be excluded from short lists for jobs. Often these people may be the most qualified person for the position but they frequently get letters that tell them they are not exactly what the employers had in mind. Such covert discrimination is virtually impossible to prove, yet the fact that this sector of society has such high unemployment rates lends credence to these claims. We have heard from people that this is true both in the public and private sectors.

If someone has difficulty getting work then they are forced into the poverty trap, end up being funded by the welfare system, turning to drugs, crime and may well develop long-term mental health issues such as depression or personality disorders. This may lead to them becoming long-term unemployed with some living out the rest of their lives on an invalidity pension. When these people are not protected by anti-discrimination legislation that is practical, easily available and accessible to them, ultimately it costs the country money because instead of these people being tax payers they can become long-term welfare recipients and social outcasts. Every major city has small ads for 'preoperative transsexuals' offering sexual services in order to make the money for their surgery when they cannot get other jobs.

Existing anti-discrimination laws are frequently confusing and poorly facilitate legal protection for ISGD groups of people. For instance in New South Wales anti-discrimination laws purport to prevent discriminate against transgender people. However, the legislation only recognises genuine so-called 'recognised transgender people'; in other words transsexuals who have had genital surgery. Many transsexuals, however, do not identify as transgender and would not use such legislation. The Transgender Antidiscrimination Act, 1996, NSW shows that that the State Attorney General, at that time, pushed the Bill through intending it to cover all sex and/or gender diverse people and even intersex people. The present State Attorney General, however, refuses to comply with the act even though it is law.

Victoria and the ACT has adopted a Human Rights Charter (Victorian Equal Opportunity and Human Rights Commission, 2008) (ACT Human Rights Act, 2004), yet their Births, Death and Marriages Departments still refuses to change the birth certificates of people who have changed their sex and/or gender without them undergoing genital surgery. The same situation presently exists in other states in Australia. Some people cannot undergo such surgery for medical reasons, others cannot afford such surgery and still further many people do not want to undergo what is a life-threatening surgery simply to gain legal validation of their ordinary everyday lives.

Of course so far we have often talked about those who have changed their status from male to female or vice versa but there are many people who have bodies that are not strictly male or female and those who have gender expressions that are other than stereotypical masculine or feminine. Some of these people presented themselves to the AHRC during the consultation

for the *Sex File Report* and again during the public meetings for this consultation. There is no public data on them because the Census only allows people to tick male or female so it renders them statistically invisible. Research shows (O’Keefe, 1999) that at least 1% of the world’s population is intersex, sex and/or gender diverse and other than strictly male or female. If this cannot be recorded in a public Census it renders these people invisible and powerless as society pretends they do not exist.

It has become clear over the past 20 years that many children born with genitals that are not strictly male or female are operated on to make their genitals look stereotypically male or female. Some of those people are not happy with those outcomes. However, many of these Australian children are given no choice about the surgery and their future, which is unquestionably child abuse. There is presently no remedy that would redress such mistakes. What is taking place here is prejudice against any child’s genitals that do not fit unrealistic expectations of what male and female might be. These surgeries can render children infertile, anorgasmic and insensate sexually. Such intersex or physiologically sex diverse children are not presently protected by laws

Children who are plainly sex and/or gender variant and may need to transition roles are abused by their families, schools and the government. The preventing of such children to undergo medical treatments at the hands of their doctors, which may be needed to allow them to live their life peacefully, is nothing less than child abuse. The courts should not be interfering with these children’s lives and demanding they go through the court system to gain medical help.

In 2009 the AHRC launched the *Sex Files Report*. It was one of the most seminal documents ever written in Australia on the legal rights of sex and/or gender diverse people. At the same time expert panel reviews of the rights of intersex people (Victorian, Department of Human Services, October 2009) has been a disaster, still leaving intersex children vulnerable to surgical abuse with no legal protection.

The *Sex Files Report* was buried by the Rudd government and is still buried by the Gillard government. The AHRC plays the part of the good little child to the FAG’s office and says little in public to support these groups’ needs and many of those people no longer trust the Commission. It can be seen by many of the comments we have collected that people are severely disillusioned with the AHRC’s performance on behalf of ISGD people.

In constructing any kind of anti-discrimination legislation to protect **Intersex, Sex and/or Gender Diverse** (ISGD) people, all the public need to be included in the legislation under this neutral umbrella term, not just special interest groups. At the reading stage of any Bill it needs to be emphasised that it includes protection from discrimination against anyone on the grounds of their sex or their gender presentation, no matter what they might be.

Heterosexual people can also be discriminated against for their gender presentation. Boys and men may be bullied for being too effeminate or girls and women can be deselected from opportunities for being too butch. Women can also be discriminated against for being hyper feminine. Some gay people who are atypically masculine or feminine are often discriminated

against because of other non-stereotypical gender presentation even though their sex may not be in question.

The labels war is unwinnable

Social analysis finds labelling of identities is a fashion of the time, and can quickly become demeaning, sexist and genderist, according to time and relative perspective. As Einstein said, everything is relative. Words like trans, transsexual, transgender, transvestite, queer, dyke, hermaphrodite, hermaphrodyke, pansy, tomboy are products of a social cultural era that change their meaning continuously. In an age of ever faster electronic communication, linguistic development and cross-cultural pragmatic hybridism means that the law can never keep up with fashion, particularly with regard to semantics. So if anti-discrimination laws are made using such labels as the basis of their foundation they are only temporally effective for a restricted period of society.

Interpretation of such labels is subjectively based and what the personal descriptive user intends to be communicated is invariably distorted in transmission to other parties. To call many intersex people and trans people those labels is insulting and sexist because they are legally and see themselves as ordinary men or women. It would be like walking up to an Indigenous Australian in the street and calling him 'Blackie'; it is objectification.

Principles of law, however, are enduring. In creating an Anti-discrimination Act to protect intersex, sex and/or gender diverse people it is important to construct such laws to be principle-based not label-based (We make intersex an exception for reasons stated earlier in this paper). Label-based laws become outdated very quickly and leave the very people they are intended to protect unprotected by the time of their inception.

SAGE and AHEC fully support the efforts of the AHRC in trying to bring about new anti-discrimination laws to protect ISGD people. We find, however, that the consultation process has been poorly handled. It was not properly advertised; many people felt very alienated and angry because nothing has happened with the *Sex Files Report* and that the AHRC has not sufficiently spoken out publicly in support of its recommendations; many people were offended by communications being addressed to GLBTI issues, which the *Sex Files Report* discouraged, there was insufficient ethnographic sourcing of the affected populous; additional contributions by email or internet was ableist; there was no public debate, and many now have little faith in the process of reporting to an FAG's office that is one of the oppressors of ISGD people in Australia.

Requirement for a future Bill covering anti-discrimination law protecting intersex, sex and/or gender diverse people

1. Such a Bill must protect all Australians not just special interest groups.
2. The Bill must include protection against discrimination on the grounds of being intersex, sex and/or gender diverse.
3. Protection must be extended to the workplace.
4. Protection must be extended to all public places without exception.

5. Only private dwellings should be exempt and anytime the public is invited in they are no longer deemed private.
6. The Bill needs to state that some people are physiologically intersex and intersex is determined by a person's personal physical experience. Some people have sex diverse features that they are other than stereotypically male or female although they may not have a medical diagnosis of intersex. Neither should be hierarchal .
7. The Bill needs to recognise that gender diverse presentation is a normal part of a multi-faceted healthy culture.
8. People need to be able to bring complaints for sex and/or gender discrimination.
9. The present system at the AHRC is little more than window dressing when Attorneys General refuse to attend conciliation and the AHRC exempts itself from its own guidelines. Any future system needs to compel government departments to attend conciliation; since Australian governments are presently by far the greatest discriminators against ISGD people and anything less would be a farce.
10. Complainants need to be able to bring cases against private individuals, hospitals, medics, corporate bodies, educational institutions, clubs, and government departments. In short, the whole of society.
11. Applicants need the ability to bring cases without the burden of costs should they lose otherwise it just becomes a rich man's law.
12. Cases for discrimination on the grounds of being intersex sex and/or gender should not be confused with sexuality.
13. The laws should not get into a redundant class system of labels of who is included under the Act because all Australians need to be protected from such discrimination.
14. Such a complaint involving violence should be treated as a hate crime.
15. For a person suffering discrimination as a child, their guardian needs to be able to bring a case on their behalf.
16. Adults need to have the ability to bring cases for the mistreatment they suffered as children including forced medical treatment administered against their interests and without their permission. The second arm of this clause also needs to be that adults can bring cases for medical treatment denied them as children including hormones and surgery for transitioning children. Children also need to be able to have a court-appointed guardian to help them access treatment when it is refused, including emancipation from their families.
17. Any appeals process needs to be presided over partly by members of the public. The present system is incestuous between government departments.
18. The applicant needs to have people from special interest groups on such an appeal panel who have a common understanding of the issues involved.
19. The present situation in Australia that allows butchering of intersex children, labelled as necessary surgery, singles intersex out as category needing positive discrimination measures.
20. We suggest that the Commission follows the thinking of the *Sex files Report* and use the phrase **sex and/or gender diverse** people, plus the word **intersex**. In total

protection against discrimination on the grounds of being **Intersex, Sex And/Or Gender Diverse**.

21. Government-funded educational institutions need to be compelled to teach about the whole spectrum of human sex and/or gender diverse identities,

Sample of word usage:

‘12. People who are intersex or sex and/or gender diverse: There is no federal law prohibiting discrimination on the grounds of sex or gender identity. ^[30] People who are sex and/or gender diverse face difficulties obtaining official documents that accurately reflect their status. ^[31] **The Commission recommends that sex or gender diversity be included as grounds of discrimination in federal laws, and that the Sex Files report be implemented.’**

- Submission by the Australian Human Rights Commission under the Universal Periodic Review process, 2010-2011

“We campaign for **the rights of ISGD people ...** intersex, transexed, transsexual, transgendered, crosses dressers, androgynous, without sex and gender identity, and people with sex and gender culturally specific differences.”

- SAGE website (www.sageaustralia.org)

“STILL FIERCE welcomes all **intersex, sex and/or gender diverse folk**, their friends and allies.”

- Still Fierce: Sydney Intersex, Sex and/or Gender Diverse Collective (<http://stillfierce.wordpress.com/>)

‘intersex, sex and/or gender diverse’

- Green’s NSW Draft Human Rights Bill.

‘intersex, sex and/or gender diverse people’

- Scarlet Alliance – Sex Workers Association

References

- ACT government. ACT Register, Human Rights Act, 2004, accessed, November, 2010. <http://www.legislation.act.gov.au/a/2004-5/default.asp>
- Australasian Legal Information Institute. Anti-Discrimination Act, New South Wales, 1977. Accessed November, 2010. http://www.austlii.edu.au/au/legis/nsw/consol_act/aa1977204/
- Australasian Legal Information Institute. Charter of Human Rights and Responsibilities Act 2006, accessed, November, 2010. http://www.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433/
- Australian Human Rights Commission. Protection from discrimination on the basis of sexual orientation and sex and/or gender identity: Discussion Paper, Australia, accessed October 2010. http://www.hreoc.gov.au/human_rights/lgbti/lgbticonsult/index.html
- Australian Human Rights Commission. Sex Files: the legal recognition of sex in documents and government records, 2009, accessed November 2010. http://www.hreoc.gov.au/genderdiversity/sex_files2009.html
- Australian Human Rights Commission. Submission under the Universal Periodic Review process, 2010-2011, accessed November, 2010. http://www.hreoc.gov.au/upr/upr_submission2010.html
- Comlaw. Australian Marriage Act, 1961, accessed November, 2010. <http://scaleplus.law.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/FBD98E84AEF32A27CA25719C0028D1A7?OpenDocument>
- Comlaw. Sex Discrimination Act, Australia, 1984, accessed November 2010. <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/4C45098436B15BCBCA2576C10009E24F?OpenDocument>
- Elan-Cane, C. Live Journal, accessed November, 2010. <http://elancane.livejournal.com/>
- Gender Recognition Act, UK, 2004, accessed November 2010. <http://www.legislation.gov.uk/ukpga/2004/7/contents>
- Green's (Political Party) NSW (Australia), Draft Human Rights Bill, November, 2010.
- Ireland, I. Transsexuals *Re Kevin* and the Validity of Marriage of a Transsexual. [Research Note 16 2001-02](#), Parliament of Australia, Parliamentary Library, accessed November, 2010. <http://www.aph.gov.au/library/pubs/rn/2001-02/02rn16.htm>
- Lerum, K. [India officially recognizes third sex/gender](#). The Society Pages, 13 November, 2009, accessed November, 2010. <http://thesocietypages.org/sexuality/2009/11/13/india-officially-recognizes-third-sexgender/>

NSW government. Transgender (Anti-discrimination and other Acts Amendment) Act, 1996, accessed November 2010.

[http://www.legislation.nsw.gov.au/sessionalview/sessional/TITLE/Transgender \(Anti-Discrimination and Other Acts Amendment\) Act 1996 No 22.pdf](http://www.legislation.nsw.gov.au/sessionalview/sessional/TITLE/Transgender+(Anti-Discrimination+and+Other+Acts+Amendment)+Act+1996+No+22.pdf)

O'Keefe, T. Don't call me Transgender. The Scavenger, accessed November, 2010.

<http://www.thescavenger.net/glbsgdq/dont-call-me-transgender.html>

O'Keefe, T. Intersex, Sex and/or Gender Diverse People and the Death of Transgender as an Umbrella Term. Paper presented at Health in Difference 2010: Doing Diversity: 7th National LGBTI Health Conference Sydney, Australia, 29 April -1 May 2010

http://www.tracieokeefe.com/Transgender_umbrella_death.htm

O'Keefe, T. Sex, Gender & Sexuality: 21st Century Transformations. Extraordinary People Press, London, UK, 1999.

O'Flaherty, M et al. Yogyakarta Principles, March 2007, accessed November, 2010..

<http://www.yogyakartaprinciples.org/>

Ormrod, J. Corbett vs Corbett (otherwise Ashley), 1971. Press For Change, accessed November 2010. <http://www.pfc.org.uk/node/319>

Reuters. Pakistan court oks third sex for identity cards; move an attempt to ensure transgendered's rights, 25 December, 2009, accessed, November, 2010.

http://www.nydailynews.com/news/world/2009/12/25/2009-12-25_pakistan_court_oks_third_sex_for_identity_cards_move_an_attempt_to_ensure_transg.html

Sex and Gender Education (SAGE) Australia). Website, accessed November 2010.

<http://www.sageaustralia.org/index.html>

Sex and Gender Education (SAGE) Australia. Response to AHRC's Sex Files Report, March 2009.

Singer, Mark, [United Nations vote will lead to more LGBT murders, activists claim](#), LGBTQ Nation, 22 November 2010, accessed November, 2010.

<http://www.lgbtqnation.com/2010/11/united-nations-vote-will-lead-to-more-lgbt-murders-activists-claim/comment-page-1/>

Still Fierce. Facebook page, accessed November 2010.

<http://www.facebook.com/group.php?gid=106911902661391>

Tranter, C. Norrie's ungendered status withdrawn. Sydney Morning Herald, 18 March 2010.

<http://news.smh.com.au/breaking-news-national/norries-ungendered-status-withdrawn-20100318-qhw5.html>

United Nations. Universal Declaration of Human Rights (Article 2), 1948, accessed November 2010. <http://www.un.org/en/documents/udhr/index.shtml#a1>

Victorian Equal Opportunity and Human Rights Commission. The Victorian Charter of Human Rights and Responsibilities, 2008, accessed, November 2010.

http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&layout=item&id=764&Itemid=515

Victorian, Department of Human Services, Expert Advisory Group To review treatment of children born with intersex conditions, DISCUSSION PAPER, October 2009 accessed, November, 2010. <http://www.health.vic.gov.au/glbtimeac/downloads/intersex.pdf>

WHO. International Classification of Diseases (ICD), 2010, accessed November 2010. <http://apps.who.int/classifications/apps/icd/icd10online/>

World Professional Association for Transgender Health (WPATH). Standards of Care. Sixth Version, February 2001, accessed November 2010. http://www.wpath.org/publications_standards.cfm