



TransGender Victoria Inc

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29 May 2008

HREOC
Attention: Sarah Winter
GPO Box 5218
Sydney NSW 2001

Dear Sarah

Thank you for the letter of 9 May 2008 inviting submissions on the Sex and Gender Diversity Issues Paper.

TransGender Victoria is pleased to offer the following response in conjunction with the following organisations:

Gay and Lesbian Health Victoria
Seahorse Club of Victoria
The ALSO Foundation
Victorian Gay and Lesbian Rights Lobby (VGLRL)

What are the options for HREOC's sex and gender diversity project

We believe these the following critical issues are of equal importance:

1. Lack of Federal Equal Opportunity Law protection for sex and gender diverse (SGD) people
2. Discriminatory treatment in health
3. Discriminatory treatment in documents of identity

We can only be quite frank when we say when we want action and protection via legal recognition of our existence at a Federal level. We do not want more reports, discussion papers or more enquiries. The Spindler (Sexuality and Gender Identity) Bill, which would have addressed point 1 above and given us a "door to open other doors" on points 2, 3 and any other issue, has sat on the Parliamentary notice paper for nearly 10 years. The Senate enquiry that followed from the introduction of the bill supported it being established as law. Every state and territory has this law in some form. We want it on the statute books at the national level too.

How you can be involved in developing HREOC's sex and gender diversity project?

What does your organisation do?

TransGender Victoria was established in 1998 and has achieved the following:

- major contributor to the addition of the attribute of gender identity to the Equal Opportunity Act Victoria:
- major contributor to amendments to the Birth, Deaths and Marriages Act to enable



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transsexuals to change their birth certificates, albeit on the basis of “sex reassignment surgery” based on genital surgery;

- worked with Seahorse Club of Victoria and the Victorian Chamber of Commerce and Industry (VECCI) to establish “Practical Transitioning Guidelines for Employers:”
- members of the following groups:

Ministerial Advisory Committee to the (Victorian) Attorney-General on Gay, Lesbian, Bisexual, Transgender and Intersex (GLBTI) issues;

Ministerial Advisory Committee to the (Victorian) Health Minister on Gay, Lesbian, Bisexual, Transgender and Intersex (GLBTI) Health and Wellbeing; Policy Working Group on GLBTI Issues;

- present to a diverse range of groups, e.g, community health centres, employers, youth groups, counselling services on SGD issues;
- involved in situations where an employee affirms their gender identity in the same employment role;
- provides referral for people seeking assistance on transgender issues (both SGD people and those connected to them e.g. family, social workers).

Do you or your organisation have any case studies and stories that might be useful to our research or project?

The level of stigma faced by SGD people remains unacceptably high. 19% of respondents to the Transnation report, released in December 2007, had experienced physical violence. This figure was unchanged from the VGLRL’s “Enough is Enough” report of 2000. An example of this comes from a situation dealt with by TransGender Victoria:

“We received a call from transgender person in a small town in rural Victoria. Rumours had circulated there was a paedophile living in the town. The conclusion was “paedophiles are weird, trannies are weird, so the tranny must be the paedophile.” The transgender person’s business suffered and rocks were thrown through the windows of her (and her partner’s) house. TransGender Victoria was then unable to contact this person for 3 days and we become extremely worried. When contact was made again, response was “sorry I haven’t been in touch. I spent 3 days in the [local] base hospital after I tried to overdose.”

This story alone is evidence enough of the stigma faced by SGD people. Any law that recognises trans people and sends a message that such extreme vilification and violence are unwarranted is a good measure.

What do you think is the most pressing human rights issue for people who are sex and gender diverse? What do you think should be the focus and outcome of HREOC’s sex and gender diversity project?

We emphasise again:

Lack of Federal Equal Opportunity Law protection for sex and gender diverse (SGD) people

Discriminatory treatment in health

Discriminatory treatment in documents of identity

We reject that only one issue should be the focus. If 105 issues can be dealt with for gays and lesbians, we see no reason to limit SGD people to only one.

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What specific international human rights are relevant to people who are sex and gender diverse?

We agree all articles quoted are relevant

- freedom of expression; the right to non-discrimination; the right to recognition before the law – these are virtually self-explanatory
- freedom of movement and travel. That passport laws currently state transgender persons are “undesirable” and may only receive a document of identity is grossly offensive and restricts freedom of movement in that many countries will only accept a passport.
- the right to privacy. That documentation is issued listing previous names and therefore a previous gender identity is clearly a breach of privacy. Laws that define identity based on surgical status breach privacy by resulting in transgender people having to disclose their medical history.
- the right to protection from torture, cruel, inhuman or degrading treatment or punishment. The example of violence above shows this right is breached. It is also cruel to make people undergo surgery to enable change of documentation.

What are some of the human rights issues concerning sex and gender diversity?

Official and identity documents

Rigid ideas about gender create situations re documentation that violate the international human rights, equal opportunity laws that are actually in place and basic human dignity of SGD people. Examples include:

1. The issuing of a document of identity to transgender people rather than a passport violates the right to travel under Article 13 of the UN declaration of Human Rights (as evidenced by the complaint to HREOC at the time of writing by Stephanie Imbruglia)
2. The abolition by the Federal government in 2007 of issuing a temporary passport a transgender person's affirmed gender for the purposes of undergoing surgery was a backward and illogical step. This leaves (for example) a trans woman in the position of travelling overseas on a passport with an "M" and facing harassment during that travel, even more so after surgery. It also creates financial discrimination when on return, the person has to re-apply for another passport and pay another fee. We note the Grace Abrams case in September 2007 highlighted this absurdity and negated the ideas that the State and Federal records must always match. We fully recommend immediate reversal of the actions of 2007 and a return to the situation before these actions.
3. The boxing in of transgender people as “undesirable persons” as per http://www.comlaw.gov.au/ComLaw/Legislation/LegislativeInstrument1.nsf/bo-dylodgmentattachments/5681A7871644AF20CA25702200251B7F?OpenDocument#_Toc106091961 is frankly disgraceful and in the practical sense of the word, vilification. Transgender persons have just as much right to receive a passport as other Australians. We doubt we would see any law saying (for example) that people of an ethnicity were “undesirable,” so why people sharing the attribute of

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gender identity? This law needs to be changed immediately and transgender persons removed from this act.

4. We note there are a range of alternatives to a rigid gender binary based on surgery:
 - The United Kingdom and Spain change documents, including passports, based on affirmed gender identity i.e. the person's sense of self and how they present and surgery is not required;
 - New Zealand, rather than only using M or F, offers the alternative of a "-";
 - Supplementary documentation explaining the person's situation, presented only when needed, with the full equivalent backing of the passport (arguably more complex).
5. The societal emphasis on surgery to "change" sex or gender creates ridiculous situations where often (for example) a person living as female but with an "M" on a birth certificate receives mail addressed to "Mr Mary Smith." This happened to a woman in Melbourne with her bank despite her citing the likely breach of the gender identity attribute of the Victorian Equal Opportunity Act. Table 13 of the Transnation report identifies that of the respondents who had surgery 88.9% had attempted to amend documentation to reflect their current gender. However of the respondents who had not completed surgery (60.6% of total respondents), 74.3% had not attempted to alter their documentation. This shows the extensive lack of faith in the various institutions and government agencies that transgender people will be supported when approaching those agencies on these deeply personal matters
6. We question whether there is any law that requires Mr to be linked with "M" in any record or "F" with Ms/Mrs/Miss.
7. Some transgender people have actually ticked boxes for titles such as Reverend or Doctor rather than gender specific titles to avoid the discrimination faced by SGD people. While we do not support fraud, it is sad and frustrating people are forced into this situation in the first place.
8. We note the Australian Taxation Office has found that it is not a necessary requirement of the Income Tax Assessment Act to ask for a mailing title (Mr/Mrs/etc) and that asking is a therefore breach of privacy. We believe that all situations need to allow for the option of not having to give a mailing title at all. At least one transgender person has achieved this with their bank.
9. In all cases, the question needs to be asked whether sex or gender needs to be recorded on a form at all.

For paper-based forms, the most appropriate position is to have a box labelled gender (or possibly sex) and leave a blank space next to it. Every person can then fill in what is appropriate.

For electronic forms and surveys, the third option needs to be "other/neither - please feel free to add further information if desired."

Health policy and services

We point out that the Androgen Insensitivity Social and Support Group of Australia represent people experiencing intersex issues. We strongly as a matter of principle support the ending of any discrimination against people experiencing intersex issues; however, we will not be commenting specifically on intersex issues.

1. Reforms are needed in the health area in relation to Medicare. One transgender man had completed his transition and changed his birth

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certificate to male. He then discovered a health issue on a female-only body part. He was told that to have such an operation as a male would be "Medicare fraud." He was told to either change his birth certificate back to female or either not receive a Medicare rebate. This is both financial and human discrimination. We recommend Federal equal opportunity law, appropriate changes to Medicare processes and training of Medicare personnel to prevent a repetition of such a callous situation.

2. We totally support full funding of hormonal and surgical procedures. The Transnation report noted that SGD people earn lower than average income and have an unemployment rate double the national average. The Transgender Needs Assessment of the 1990's found nearly 2 in 3 transgender people had been on welfare benefits (excluding the age pension). Given the necessity of the medical processes and the combination of low income such a move is justifiable.
3. We would welcome communication with a range of health professionals to increase knowledge of and sensitivity towards SGD issues. This includes specialised care e.g. surgery for transsexuals.

Gay and Lesbian Health Victoria conducts training with health care and other services which might reasonably expect to have transgender clients from time to time. Depending on the audience we use different case studies to help practitioners explore issues in a familiar context. Two of the case studies we use are as follows:

1. You are in reception at your service, and Karen, a middle-aged woman who is a male to female transgender person of quite masculine appearance, is in the waiting room. While she is waiting she goes to the toilet at the same time as two teenage girls. A moment later the girls emerge raising the alarm, saying there is "a bloke in drag" in the ladies' toilets. Karen emerges later very distressed and everyone is staring at her. What should you do?
2. Jan, an employee in your organisation, has announced that she is about to begin gender transition and will be coming to work in a week or two presenting as John. Since this announcement some of Jan's colleagues are distancing themselves, and some male colleagues have expressed discomfort with John's use of the male toilets. How should this be resolved?

Either of these case studies regularly gives rise to more discussion and consternation than those case studies about gay and lesbian people. Service providers regularly indicate that they do not accept the change of gender as "real" or "legitimate" even though initially they say that they do. They also get stuck in a discussion about "rights" which defends the "right" of non-transgender people to protect themselves against alarm and outrage rather than to examine the heterosexism which is a genuine affront to the rights of transgender people. Nevertheless, with careful facilitation of such discussions education does take place and people begin to modify their attitudes. For this reason we would strongly support training for health professionals not just in health issues for transgender, transsexual and intersex people but also education to challenge and examine personal attitudes and values in relation to providing a service for this group.



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Protection from discrimination

1. We advocate as a matter of urgent priority the introduction of a bill, similar to the Sexuality and Gender Identity Bill (possibly still technically on the Parliamentary Notice paper) to enact Federal Anti-Discrimination law covering the attribute of gender identity.
2. Such an approach is clearly a long-term structural approach that is more effective than any short-term quick fix type solution.
3. We reject the idea that another enquiry into this issue is necessary simply because the Senate enquiry related to the bill mentioned above was 10 years ago. Since the enquiry, remaining states and territories have enacted coverage, the Olympics have recognised post-operative transsexuals as their affirmed gender, the Family Court recognised the validity of transgender identity at common law via Kevin's case and the passport laws regressed during 2007. We see no need to spend time revisiting old ground, rather we see the need for action.
4. While not the specific focus of this enquiry, we believe any such bill must also cover the attribute of sexual orientation. Without both, any perpetrators of discrimination have a loophole. Some perpetrators of discrimination have tried to use this loophole before. Further, many SGD diverse people are not heterosexual (however one is defining the sex or gender of the SGD person and their partner) and face a "double-whammy" of 2 forms of discrimination.
5. In relation to employment, we believe the Federal government (including statutory authorities) as one of the biggest employers in the country can do well by taking the lead re the principle of employment on a person's merits. We note that workplace fairness was a major focus of the election of the ALP government; surely equal opportunity is a basic tenet of workplace fairness. Currently 9.1% of transgender people are unemployed, double the national average. All evidence points to discrimination as the reason for this disadvantage.
6. We add that transgender people want to work and that getting people off welfare benefits into work saves governments at all levels at least \$15,000 per annum per person. Add in that the person becomes a taxpayer and the result has great financial benefits for the government, society and transgender people.
7. The Sexuality and Gender Identity Bill also added protection on the ground of inciting hatred. We believe this is a measure that prevents much violence against SGD people and needs to proceed. We are open to consideration of the exact language e.g. homophobic harassment to achieve this.
8. A further example of financial discrimination is that of a major telecommunications company. The company insisted that a SGD person who changed their name cancel the telephone service in their old name and create a new service in the new name. The person was charged both a disconnection fee and a reconnection fee respectively. We could not imagine this would happen for a woman who marries and changes her maiden name. We also add some same-sex couples cannot get the same company to address their bill as (say), "Mr Smith and Mr Jones."
9. Another person, dealing with a different telecommunications company, faced discrimination in that after identifying herself as the account holder,

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- was told she had too deep a voice to be a female and wasn't the account holder. The operator tried to blame his discrimination on the Privacy Act.
10. We support uniform laws across all governments with 2 conditions:
No existing laws are weakened to achieve this aim;
The aim of uniform laws does not stop progress to establishing some Federal law and progress eliminating discrimination at a Federal level.
We therefore place this aim as a lower priority.
 11. We support improving any current state and Territory law to increase coverage of the "spectrum" of SGD people. For example, Western Australian law only covers post-surgery transsexuals, a small percentage of the total SGD population. As discrimination occurs regardless of surgical status, and people are more vulnerable at the point of transition, coverage of all SGD people is vital. We will not under any circumstances "trade off" the rights of some of our community for others.

It is amazing that people who face difficulties not contemplated by most others can be "very happy" with their lives as reported in Transnation. Imagine how much more SGD people could offer without having to run obstacle course after obstacle course of discrimination.

We look forward to working with HREOC and the Federal Parliament to getting rid of obstacle courses.

Yours sincerely

SALLY GOLDNER
Spokesperson, TransGender Victoria