**Submission to the Human Rights Commission regarding federal protection from discrimination on the basis of sexual orientation and sex and/or gender identity.**

This submission focuses on the issues associated with the inappropriate use of terminology and the association of various subgroups under common umbrella terms. It also looks at the complications of mixing sexuality with biological sex and/or gender.

It then looks at a range of discriminations primarily experienced by transsexual people and the impact of marital status on transsexual persons who have completed sex reassignment. However, it is acknowledged that there are many common issues with other subgroups.

The writer is a 57 year old MtF transsexual who has completed sex reassignment in 2010 and lives full time in the gender role of a woman. She has been married to her female partner for the last 9 years and intends to remain married. Her experiences have informed the issues raised in this submission.

**Sex and/or Gender Diversity**

Earlier this year the HRC looked at alternatives to the use of ‘Transgender’ as an umbrella term to cover the various subgroups: Transsexual, Intersex, Transgender as well as androgynous, agender, cross dresser, drag queen, genderfluid, genderqueer, intergender, neutrois, pansexual, pan-gendered, third gender and third sex.

The HRC was unable to find a label that reflected consensus across the spectrum and as elected to use he term ‘SeX and/or Gender Diverse’. It is also noted that the HRC still sees value in the use of GLBTI where the label ’Transgender’ or a derivative is used to cover the subgroups identified under ‘Sex and/or Gender Diverse. This highlights the challenges of moving to more appropriate terminology. The writer does not identify with the term ‘Transgender’ because of its miss use and multiple definitions and interpretations in common use.

More recently there has been a move for the adoption of ‘Intersex, Sex and/or Gender Diverse’ rather than ‘Sex and/or Gender Diverse’ from some sections of the community. If Intersex does not come under ‘Sex’ in ‘Sex and/or Gender Diverse’ then surely ‘Transsexual’ would also not be covered. The inclusion of Intersex in any umbrella label is in itself discriminatory against the other subgroups that the umbrella label is attempting to cover.

It is the view of the writer that the inclusion of a term that identifies a specific subgroup undermines the effectiveness of the umbrella term. It further creates conflict between the subgroups that fall under the umbrella label. It would the same as naming a national motor vehicle association ‘Ford, Other Vehicle and Truck Manufacturers Association’. This would clearly identify this association with Ford. Likewise to include Intersex in an umbrella label would also imply that it is focused primarily around the Intersex community. Intersex people make up only a part of the spectrum that seeks to be covered under the umbrella label ’Sex and/or Gender Diverse’

If we look at the common definitions for Intersex and contrast them against Transsexualism it will highlight the problem of incorporating Intersex into the umbrella term.

**Transsexualism is not considered to be Intersex**

**Intersex** in [humans](http://en.wikipedia.org/wiki/Human) refers to intermediate or atypical combinations of physical features that usually distinguish [female](http://en.wikipedia.org/wiki/Female) from [male](http://en.wikipedia.org/wiki/Male). (<http://en.wikipedia.org/wiki/Intersex>)

**Transsexualism** is when an individual [identifies](http://en.wikipedia.org/wiki/Gender_identity) with a [gender](http://en.wikipedia.org/wiki/Gender) that is different from their [biological sex](http://en.wikipedia.org/wiki/Biological_sex). (<http://en.wikipedia.org/wiki/Transsexualism>)

The great majority of people identifying as Transsexuals are not Intersex because their biological sex is not ambiguous which is necessary to be classified as Intersex. On the other hand where an Intersex person assumes or has assigned a sex and this later becomes identified as in conflict with their gender they would also be Transsexual.

Therefore any use of Intersex in the umbrella label would create major issues for many transsexual people. This is also confirmed by the organisations in Australia that represent Intersex people which clearly do not include Transsexual people in their community unless a person is Intersex to start.

**The Organisation of Intersex International Australia** has a clear statement of what they consider to be Intersex and **why they do not include Transsexuals**. (<http://oiiaustralia.com/about/intersex/> ) This page has a very detailed overview of ‘What is Intersex” and includes significant discussion on why Transsexual are not part of Intersex.

The AIS clearly states “**the AIS Support Group Australia** also aware of a small number of people with Transsexualism who claim that Transsexualism is an intersex condition. **This is, quite simply, incorrect**.” ([http://home.vicnet.net.au/%7Eaissg/transgender.htm](http://home.vicnet.net.au/~aissg/transgender.htm)) This page also includes a very good overview of other legal and medical discussions of the differences between Intersex and Transsexualism.

Recommendation: The simple use of ‘Sex and/or Gender Diverse’ is the most appropriate label and with a common understanding of what it means it can become a powerful umbrella label applicable in the public arena as well as in Legislation.

**Sexuality should be a secondary issue for Sex and/or Gender Diverse People**

The use of ‘Sex and/or Gender Diverse’ should also allow for a break from the past where issues of sexuality and gender have been mixed and confused. It is assumed that the use of the word ‘sex’ in this label refers to biological sex not sexuality. Therefore, this label will not cover people who identify a gay, lesbian and bisexual sexuality.

For an Intersex or Transsexual person issues relating to one’s preferred Gender have little to do with one’s sexuality. However, for a gay, lesbian or bisexual person it is all about their sexuality. In reality these worlds are significantly different.

And for too long issues relating primarily to individuals who are primarily either Intersex or Transsexual have been lost in the causes taken up by the Gay, Lesbian and Bisexual communities and advocacy groups. Unfortunately, specific medical issues including the application of the specific sections of the DSM IV (Diagnostic and Statistical Manual of Mental Disorders) which cover the diagnosis and treatment of Gender Identity Dysphoria (GID)are not relevant to most members of the gay, lesbian and bisexual communities. However, it is in the specifics of the diagnosis and treatment of GID where most Transsexuals begin to confront the significant discriminations and marginalisations that are quite unique to this minority. Transsexual people are a seriously miss-understood minority and are discrimination by the Australian Health System and specifically the provision of recommended medical services under the Medicare System. These issues are not experiences by other groups that are classified as being sexuality based.

Discrimination: The needs of Intersex, Transsexual and other Sex and/or Gender Diverse Communities need to be addressed separately from those of the Gay, Lesbian and Bisexual communities by Government and other agencies. Any Governmental body, agency or committees established to look into issues affecting Sex and/or Gender Diverse People must include representatives from the Intersex, Transsexual and other sub groups and not simply representatives from the GLB Communities.

**Marriage Equality**

There is a unique discrimination that married Transsexual people suffer as a consequence of Federal and State Legislations that deny same sex couples the right to marriage equality across Australia. The discrimination is that where a married Transsexual person completes a Sex Reassignment and the sex change cannot be recognised with the issuing of a new Birth Certificate reflecting the person’s correct identity and sex.

The Legislation requires that an individual is required to be single.

This is simply discrimination on the basis of marital status and in denying this basic right such individuals are subjected to a host of other discriminations because their sex change is not legally recognised.

For example, a married ‘post op’ transsexual person is unable to be registered in NSW as a Transgendered person and is therefore denied the protections that are provided under the NSW Anti Discrimination Laws:

*All people who are counted as transgender under NSW anti-discrimination law must be treated fairly in employment, when getting goods or services, and so on, as described on the previous page.*

*However under NSW law only some people who are transgender are legally regarded as being the gender they identify with gender rather than their birth gender. You are legally your identified gender if you are what the law calls a “recognised transgender person”.*

*Under NSW anti-discrimination law, you are a recognised transgender person if ONE of the following applies to you:*

* *you have a new birth certificate issued by the NSW Births, Deaths and Marriages Registry that states the gender you identify with; or*
* *you have an amended birth certificate or an equivalent document known as an “interstate recognition certificate” issued by another Australian State or other Australian jurisdiction.*

*You can only get a new birth certificate in NSW if ALL of the following apply to you and your birth was originally registered in NSW;*

* *you are over 18 (or your parent or guardian agrees if you are under 18);*
* *you have had sex reassignment (gender affirmation) surgery — any surgical alteration to your reproductive organs such as your womb or genital area; and*
* *you are not currently married*

Discrimination: Marital status should not deny the basic right of a Transsexual persons to have their Sex Reassignment legally recognised through the issuing of a new Birth Certificate reflecting correctly their identity and sex. A new Birth Certificate is already available to all unmarried transsexuals who complete a sex reassignment. Failure to provide this primary identity document results in married ‘Post Op’ transsexual people being subjected to a host of other discriminations because their sex change is not able to be legally recognised.

**Divorce is not an appropriate or in many cases a valid option**

Some suggest that married ‘Post Op’ Transsexual individuals should divorce their legal partner to be able to obtain a new Birth Certificate recognising their identity and sex changes.

The first significant issue with this suggestion is that an application for divorce in Australia can only be made where the relationship has irreversibly broken down for a period greater than 12 months and that there is clear evidence that this situation is not expected to change. Surely, no one is suggesting that to obtain a divorce a couple that includes a ‘Post Op’ Transsexual person should perjure themselves in the Family Court.

Discrimination: Married Transsexual persons should not be required to divorce to obtain a Birth Certificate showing their new identity and reassigned sex.

**Requirement for Surgery**

It should not be necessary for an individual to have to have sex reassignment surgery to have their new identity and preferred sex to be recognised legally by the issue of a new Birth Certificate. The requirement for surgery is being recognised around the world as being an unreasonable requirement for identity recognition.

The WPATH press release of 16 June 2010 stated:

*The Board of Directors of the World Professional Association for Transgender Health (WPATH), in the interest of the health and well-being of transgender and transsexual people world-wide, issued today, 16 June 2010, the following identity recognition statement:*

*No person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person's lived gender, regardless of reproductive capacity.*

*The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.*

There are many reasons why an individual may not wish to or be even able to have sex reassignment surgery. It is discriminatory to deny such individuals the right to have their new identity and preferred sex legally recognised. It denies such individuals even the basic protections under the current anti discrimination laws.

Discrimination: The requirement for an individual to have had Sex Reassignment Surgery to have their identity and sex legally recognised either through the issuing of a new birth certificate or other identity document discriminates against those individuals who are unwilling or unable to undertake such surgery.

**The Australian Health System**

There is a need for the medical system to stop discriminating in the delivery of its services based on one’s biological sex. It is acknowledge that there are biological differences between the two sexes that need to be identified as part of the provision of medical services and these may and do have impacts on diagnosis and treatment. For example, Pathology test may need to be compared to standard ranges for either males or females on the one hand or may need to be compared to the preferred sex for a Transsexual person, ie in looking at Hormone levels in a MtF transsexual these should be compared to the female range not the male range. Currently this is not possible due to the biological sex being used despite an individual having had sex reassignment surgery.

It also means that an individual who has had a Sex Change has this unnecessarily and automatically disclosed to most health care workers regardless of whether this information is necessary for the treatment or the service being provided.

Discrimination: The fact that an individual has had a sex change should not be automatically disclosed within the health system unless there is medical reasons that go to the immediate health of the individual.

The provision of medical services under the Universal Health System and particularly the Medicare Rebate System are structured on whether the service is applicable to both males and females or only males or only females. It is where a service is only applicable to a male or a female person that causes issues for a person who is in the process of transition from one sex to the other or has already completed a sex reassignment.

For example there are Gynaecological procedures that are only provided for females but are relevant to MtF transsexuals who have had sex reassignment surgery. There are also procedures such as those involving the Prostate that are scheduled only for males whereas a MtF transsexual who has had sex reassignment surgery and identifies as female may have difficulty accessing these procedures and the associated Medicare Rebates.

Discrimination: Individuals should be entitled to have their medical records updated to reflect their new identity, sex or preferred sex without challenge from within the health system.

Discrimination: Individual who change their sex experience issues in obtaining medical rebates for services that are not covered for their biological or birth sex but are relevant to them post sex reassignment surgery.

Additionally, there are recognised therapeutic treatments necessary in dealing with Gender Identity Dysphoria as defined under the DSM IV that should be covered as legitimate medical procedures necessary in dealing with a recognised medical condition. This issue is further aggravated by medical procedures that for natal women are classified as cosmetic or elective and therefore not covered by Medicare Rebates. Whereas such procedures for a Male to Female Transsexual are necessary procedures to assist in the feminising the individual to help live successfully in their chosen gender role and as such should be covered under the Medicare Rebate System. The failure to do so cause significant psychological issues for many Transsexual people who come from a low socio economic background.

Discrimination: Legitimate medical interventions for individual’s in transition from one sex to the other should be covered by the Medicare System. There needs to be an end to the discrimination in universal access to recommended treatments for a declared medical condition.

**Uncontrolled disclosure of a person’s identity and/or sex change**

Organisations should not be permitted to disclose a person’s identity or sex change in the provision of their goods and/or services. Such information is in reality sensitive personal health information. The disclosure of sensitive medical information is normally subject to the Privacy Act. Why is this not the case of the disclosure of a person’s identity and sex change? Even where this occurs incidentally to the provision of goods and/or services by an organisation.

There are many examples where the provision of goods and/or services by a company, government department/agency or other organisation results in the disclosure of an individual identity, gender role and/or sex change. Where an individual is able to have a new birth certificate issued after completing sex reassignment it should only be the current name and reassigned sex of the individual that is disclosed as if these were those of the individual from the time of birth. If the official keepers of identity are not permitted to disclose previous names and sex, then why should other organisations be allowed to do this in the provision of their goods and/or services.

For example

1. ASIC: A Company Officer is required to list all previous names as part of the public record of Directorships, shareholding and other corporate related matters. This information can be accessed by a range of organisations including members of the general public and in the provision of this information ASIC discloses sensitive information about an individual’s changed identity, gender role and/or sex without the permission of the individual.
2. Credit Reporting Services: Currently, it is not possible to obtain a single credit report from either of the credit reporting agencies. It is necessary to obtain a separate report for one’s current name and one for each previous name or names. Where it is necessary to provide this information to an employer or other organisation for licensing etc the individual is therefore required to disclose their changed identity, gender role and/or sex.
3. Police Reports: If there are no previous convictions or pending court matters a Police Report in NSW is provided solely in the current name of an individual. However, where there are convictions etc these are shown in the name applicable at the time. Again disclosing an individual’s identity, gender role and/or sex change.

Discrimination: To prevent unnecessary consequential discrimination organisations both Government and non-government must not release information in the provision of their goods and/or services, which inadvertently discloses an individual’s identity, gender role and/or sex change.

**Conclusion**

This submission has tried to outline some of the very real discriminations that remain in Australia that effect the lives of Se and/or Gender diverse people and in particular Transsexual individuals. Transsexual people suffer some of the greatest discrimination issues due to their sex and gender role changes. Many in the wider community find it difficult to accept a Transsexual person and this results in increased levels of discrimination across employment, provision of CentreLink benefits, Medical services and Medicare Rebates to mention a few.

The area of most concern is the inadvertent disclosure of an individual’s identity, gender role and/or sex change. Such disclosure may completely unravel the life of a transsexual who has successfully transitioned in society and is accepted with out question in his or hers chosen gender role.

The discrimination that a married Transsexual person who completes a sex reassignment in not being able to have a new Birth Certificate reflecting their new identity and sex is horrendous in itself. However it has such significant consequential impact on the individual that it is one of the worst discrimination that currently exists. It is a discrimination simply based on marriage status that has nothing to do the individuals identity and sex change.

There is a lot to do and the work of the HRC is a step in the right direction.

Thank you