

**Evidence to the British Government in Consideration of the Draft Gender Recognition Bill Concerning the Human Rights of People who are Recognised as Transsexual or Transgendered on behalf of SAGE (Sex and Gender Education, Australia).**

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**Abstract**

This paper considers problem areas that may be addressed concerning the exploration, debate and introduction of the British Government's proposed Gender bill. The problem areas that SAGE has concerns over include matters of inclusion of differing sex and gender diversities, the government panel for gender recognition, previous marriage before transition, British government pensions and rights to privacy.

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I am a specialist in the field of sex, gender and sexuality and for over 25 years have worked with people who have sex and gender diversity issues including transsexuals, transgendered, androgynous, intersex and people with no sex and gender identification. Before moving to Australia, where I run a clinic specialising in this area, I ran a similar clinic from the London Medical Centre in Harley Street in the UK for several years. I am a clinical member of the Harry Benjamin International Gender Dysphoria Association (HBIGDA) and have sat on its ethics committee. I am also a member of Counselling and Psychotherapists Association of New South Wales (CAPA), and a registered clinician with Psychotherapists and Counselling Federation of Australia (PACFA). I am the author of two books on the subject of transsexualism and sex and gender diversity (Trans-X-U-All: The Naked Difference, published 1997 and Sex, Gender and Sexuality: 21<sup>st</sup> Century Transformations, published 1999 and the co-editor of an anthology, Finding the Real Me: True Tales of Sex and Gender Diversity, published 2003, as well as author of many papers and articles in this field. In short I can be considered an expert in this field with an internationally respected reputation. This paper is a sole presentation on behalf of myself as a specialist in the field of sex and gender diversity and Sex And Gender Education (SAGE), Australia, an association of sex and gender diverse people lobbying for their human rights, many of whom are British citizens ([www.sage-australia.org](http://www.sage-australia.org) )

**Background**

**The Bill:** The proposed bill that is being drafted and explored by the British Government is to change the legal circumstances of people who are currently deprived of their personal human rights of identification as male or female when they have undergone some kind of social transition from one sex and gender to another. I and we at SAGE commend this bill in its direction and ethos in trying to improve the human rights of those

who are sex and gender diverse. Because of confusion over terminology I shall define some descriptive words to be used in this paper.

**Transsexual** - A person who chooses or feels compelled to change their sex or gender identification to another sex or gender identification. In its ordinary meaning a person who is transsexual may seek to become and be recognised as male if their natal sex and birth certificate stated female or vice versa. This is likely, but not always, to include medical procedures to alter their bodies to reflect what they believe is living in their true identity.

**Transgendered** – These are individuals who are born with one sex and may choose to socially live as another sex but whose core sex identity remains their original birth sex even though they appear socially as a different sex and gender. This may also include the alteration of the body. The word transgender has also often been used to describe the whole of the sex and gender diverse community but that is extremely inaccurate and offensive to many people who do not believe that they are transgendered.

**Sex and Gender Ambiguous** - There are those who do not identify as male or female and may choose to have no sex or gender mentioned on their official documents.

I believe that the bill currently being drafted for consideration is to deal with the human rights of people who are identifying as transsexual although in doing so its composition needs to be careful to include those who have other sex and gender diversity issues. Failure to do this will unwittingly and ultimately result in the bill being little more than the replacement of one lot of legal precedents with poor legislation that discriminates against a group of people who will fail to meet a certain narrow stereotypical criteria for transsexualism. This will ultimately result in further court cases being brought against the British government in the European Court of Human rights. A bill that has broader, more inclusive concepts of what sex and gender diversity might be would be a better form of legislation that would bring the British Government more in line with present day recognised human rights issues and prevent a stream of further court cases being brought against it in the future by people who are sex and gender diverse.

### **Issues and Areas of Concern**

**Inclusion** – This proposed bill in its present form is far too narrow in its description of people who are sex and gender diverse, focusing too narrowly on those who identify as classically transsexual wanting to change from male to female and vice versa. Whilst classical transsexuals have a genuine need to change their birth certificates during transition to reflect their new status and to be afforded all the normal rights associated with their destination sex and gender, the issues surrounding the diversity of sex and gender transitions are far more complex. There are individuals who do not self-identify as strictly male or female and to force these individuals to have to do that in law would do harm to their psychological, physical, social and legal wellbeing. It cannot be the job of the state to dictate the sex of individuals. Instead the state should protect an individual's right to self-identify as they need, choose or wish. The protection of a person's right to self-define their sex and gender must come alongside the right of an individual's right to practise belief systems according to their own ideas such as religion, political views and freedom of speech without recourse from the state, groups or individuals causing harm to

them. Thus it can be the founding principle of a free democracy that values the human rights of every individual to individuation.

The bill needs to include a third identification providing for an individual not to be forced to state their sex or gender if they do not choose to do so. Science has now shown that sex and gender diversity is far greater than simply male or female and that many individuals are born with sex and gender performance characteristics attributed to both male and female. So to speak only in male or female terms is simply ignorant and unrealistic. Whilst it would be impractical for the bill to include all the differing kinds of sex and gender diversity that are varying forms of transgender, the accommodation of a third category of human beings who have the right not to be forced to declare their sex or gender would afford every one their human rights in this field. A third category of non-declaration of sex and gender has recently been used in Australia (Western Australian newspaper, Perth 11 January 2003: X Marks the Spot for Intersex Alex) where an intersex person has been given the right to have X indicated as their sex and gender instead of M or F for male and female respectively.

**The Government Panel for Gender Recognition** – Should such a panel be set up to facilitate the bureaucratic need to assist the government in helping individuals in sex and gender transitions to change paperwork, for example birth certificates, driving licenses, passports and so on, then that body should have no veto to an individual self-defining their own sex and gender identification accompanied by appropriate referrals from a specialist in the field of sex and gender diversity. It must be a panel that simply requires evidence that the person concerned now lives as their chosen sex and/or gender identification, that can be male, female or as the third category of non-declaration. Evidence could be a letter from a specialist in the field of sex and gender identity such as a medical, psychological, psychotherapeutic or social work practitioner as would be in line with The HBIQDA's Standards of Care.

There are concerns in the sex and gender diverse community that the panel may rely heavily on medical evidence but that would be unbalanced because there is currently no definitive medical evidence available that can test for sex or gender diversity or transsexualism. Because of the kinds of diversity that occur in sex and gender identification, no scientific instrument can be devised to measure a person's sex or gender identification because it would be socially and experimentally biased and inaccurate. The internationally accepted assessment criteria, however, are clearly recommended by HBIQDA as being observation over a three-month period by the aforementioned kinds of professionals specialising in the field, which clearly rely on self-reporting.

**Previous Marriage Before Transition** – Marriage for British citizens can be both a religious and/or a civil ceremony, each having equal status before the law. Marriage protects the rights and privileges of spouses in relation to inheritance, insurance claims, child access, and pensions. The suggested proposal that marriages should be dissolved before a person is allowed to change their birth certificates would be a contravention of human rights. From a religious and legal perspective it would be regarded as an intrusion by the state to split up a state of holy matrimony and legal marriage completely against

the wills of the individuals involved, therefore a breach of human rights, and could be a class action in the European Court of Human Rights. Furthermore the children of such a marriage would also be the victims of the state attempting to destabilise their family unit.

Many individuals do not choose to be sex and gender diverse but find themselves at some time in their life needing to transition to a destination sex or gender identity that is other than their birth sex in order to save their life. The added pressure of being forced to dissolve what might be a good stable relationship would be detrimental to their own and their families' well being. A parallel can be drawn directly from the history of the treatment of transsexualism. It used to be considered necessary for those transitioning to be divorced before surgery would be recommended by clinicians; however it was found that for many people this caused a rift between family members that caused a deterioration of that person's wellbeing as well and their ability to facilitate relationships. It is now not considered necessary by professionals in the field for individuals to get divorced before they can have surgery. In a professional capacity I have had many cases where a person going through transition has suffered severely because of the enforced dissolution of their previous marriage in order to be accepted for treatment. In short, such a clause in the bill would leave the British government open to litigation and is surely antidemocratic.

A bill that required people with previous marriages to be divorced before applying for a new birth certificate would be of little use to many transsexual people as they would be faced with a choice of dissolving their partner's future pension and inheritance needs in order for them to gain that new birth certificate and this would be unacceptable.

**British Government Pensions** – Any bill would need to take into account that people who had transitioned before the age of retirement should be entitled to the state pension at the age of retirement appropriate to their destination sex.

**Rights to Privacy** – All public records as to the person's previous identity within the state system should be sealed to afford the individual the right to privacy after transition.

In conclusion this bill can and must to include all of the diverse issues concerned with people who are transsexual, transgendered and who have other sex and gender identities other than male or female. SAGE remains open to consultation and with the British Government on behalf of its members who are British citizens.