

Sex And Gender Education (Australia) response to the proposed Gender Recognition Bill (to make provision for and in connection with change of gender) that had its first reading approved by the House of Lords, United Kingdom on 27 November 2003 and was ordered to be printed by Lord Falconer of Thoroton

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SAGE is a lobbying, campaigning and educational organisation run for and on behalf of sex and gender diverse people in Australia to help recognise personal, social and legal issues and human rights for persons who are sex and gender diverse. Many of its members are British citizens who live in Australia, therefore SAGE concerns itself with the possibility of this draft Bill being made law by the British government.

This draft GRB has been a process of evolution and development with the British government co-ordinating with representatives of the sex and gender diverse community and professionals in the medical, psychological and legal professions aiming to address the lack of human rights for people who are sex and gender diverse. Due to the stage at which the Bill is at and the need for public comment and support for the Bill, as well as criticisms of parts of the Bill, SAGE has decided to release its views on the current form of this Bill. It seeks in this discussion paper to explain some of the realities that SAGE's members have, do and will encounter as a result of the formation of this Bill and lack of rights that will result from the Bill.

In order to come in line with the directives of the European Court of Human Rights and international law, the government must implement such a bill. Non-compliance by the government will mean that it will continue to contravene human rights in this area according the European perspectives of human rights and equivalent laws in other European countries.

We at SAGE fully support the passing of a bill to give sex and gender diverse people equal rights. We would also like to see a bill passed through parliament within the laid down timescale that is now before the House of Lords and Commons. SAGE, however, after duly considering the recently reported first reading of this Bill before the House of Lords sees many problems with the proposed Bill and difficulties that will arise from it should it be passed in its present form. It is our considered duty to publicly draw attention to these incongruities.

One of the problems that has dogged this Bill since its inception is its opposition by right wing religious groups. The government should not take these groups seriously. Whilst the UK is predominantly a Christian based society, the diversity of belief systems now held

by European citizens is immensely broad. The intervention of government revising the human rights of sex and gender diverse people should not be subject to the fanaticism of religious extremists. The government should guard against such interference of the progress of this Bill through both houses.

Sex and Gender Recognition Bill – The sex of a person is defined by certain anatomical, biological and psychological concomitants, none of which governments are qualified to define. The sciences have come to recognise that gonads, chromosomes, or reproductive status do not solely define a person's sex. The sciences of biology, medicine, and psychology have firmly stated that people also develop their sex after birth as well as at the time of birth or pre-natally. If a government is seeking to accommodate what appears to be a gender shift in a person's identity, then it is logical that they also need to recognise that for some people this will also mean a shift in their sex identity, and that needs to be clear in the Bill.

To recognise only a shift in gender can leave transitioned sex and gender diverse people with a legal anomaly that will exclude them from a legal system that generally sees gender as being in line with a person's sex.

Transsexual Bill - It seems on reading through the Bill that although its proposed title is the Gender Recognition Bill, it is in fact a Bill of a different nature. The Bill particularly focuses on people experiencing transsexualism, who may undergo certain medical treatments to change their gender presentation and physical sex to represent the opposite to what they were registered at birth. In other words, the main beneficiaries of this Bill are classic transsexuals who clearly want to move from male to female or female to male identities in the public arena and with regards to their legal and personal documentation.

What the Bill does not do is recognise that many people who have physiological sex diversity or diverse gender expression may not in fact fit into a strictly male or female identity. In other words, this Bill is a re-enforcement of patriarchal views of male and female identities and it seeks only to allow people to legally and socially have either of those roles in society. In its current form, this proposed Bill is oppressive and requires people to swear on oath that once they have transitioned from one stereotypical sex and gender presentation to the next, that they will never return to their sex or gender identification at birth origin. This is an impractical and unnatural undertaking seeking to extract a ridiculous oath from a human being who is attempting to explore their own sex and gender identity and resolve what for them may be a sense of sex and gender dysphoria.

The Bill Seeks Only To Pathologise - There is a large presupposition in the structure of this Bill that people who have sex and gender diversity issues are those who are diagnosed with a mental illness known as gender dysphoria in accordance with the Diagnostic & Statistical Manual (DSM) 4. There is no categorical evidence in the medical or psychological world that can definitively diagnose transsexualism or prove that people identifying as sex and gender diverse suffer from a medical or psychological pathology. It is acknowledged that some people do experience sex and gender dysphoria

ie a discomfort with their sex and gender identity and for those people the adjustment of their identity to represent another sex and gender, different to their original registered birth sex, gives them a sense of relief and ability to live their life as a sex and gender identity that suits them. However, it is foolhardy and scientifically incorrect to presume that all people who wish to express sex and gender diversity are suffering from a pathology and it is an untenable scientific presupposition and hypothesis unsupported by evidence.

We do know that some people who identify as transsexual may in fact have developed mentally different brain structures and this may be a contributing factor to their cross-sex and gender identification. It is unlikely, however, that all people who express a sense of sex and gender diversity can physiologically be said to be the same. There are currently no physiological test mechanisms that can identify transsexualism and no psychological tools that can do this; therefore for a person to experience transsexualism a matter of self-diagnosis and identification.

There are those people who do not wish to be seen as strictly male or female and do not wish to be categorised in society as such. We are in an age where the population is panicked by the propaganda that identification must be male or female to avoid acts of terrorism or social injustice; however, the pushing of people into either male or female only roles is unnatural. Sociologists throughout the last century have seen that in different cultures people have more diverse sex and gender identification that extends beyond the roles of strictly male or female. The law, which is to serve the people, needs to reflect and give space to individuals, not only to identify as male or female if they wish, but also to have a status of non-declaration if that would be right for them. This Bill does not provide for such people.

In Australia recently a person had X put on their passport where M or F would normally be. For them they did not wish to declare that they were male or female so this has allowed them to live their life and be identified in a way that suits them. Undoubtedly this is a Bill that supports patriarchal sexism, accepting that people may be only male or female. In its inception, this Bill has tried to adhere closely to medical identification of sex and gender diversity, forcing on people physical examinations and medical judgements for states of identity that may also be partly sociological.

An individual should have the right to declare what they need to be with regard to their own sex or gender identity. A person's sex or gender identity is made up from many components which do not always correlate to the mass populace. In many ways this Bill seeks to offer an ultimatum to those who wish to be sex or gender diverse or transition the sex and gender divide: be pathologised or to lose access to human rights.

The government takes the stance that there needs to be a degree of certainty about a person's sex and gender identity. It ignores the fact that in many cultures there are more than two genders, so under the proposed GRB those outside the male and female stereotypes will be ghettoised and even criminalised by society and the law.

Two Years of Not Being a Legitimate Citizen - The Bill further seeks to force individuals to live in an acquired sex or gender identity for two years before they may be reissued with a gender recognition certificate in the form of a new birth certificate. We are at a loss to understand why two years may make a difference to anyone, for if a person needs, through sex or gender dysphoria or choice, to live in the role of their opposite birth registered sex, then it is simply cruelty to force them to have the wrong papers to support them doing that for a period of two years. Change of papers need to be issued upon supporting evidence being presented that a person wishes or needs to live as a required sex or gender.

Unrealistic Oath - It is ridiculous to ask a person to give an undertaking that they will live in the required sex or gender until death. The questions begs – what if they do not decide to do so? Will the state throw them into prison, or refuse to offer them a new set of documents if they decide that journey was not right for them and they wish to return to their original registered sex? This is a ridiculous clause that is a capitulation of prejudice against anyone who is not strictly male or female and a reactive clause against people who may span the divide of male and female and appear somewhere neither/nor or either/or.

Unnecessary Gender Panel - The Bill proposes to convene a gender panel before which an individual has to present information to receive adjudication as to whether they may be allowed to change their legal status and be issued with a new certificate. This is an abuse of human rights. Do all other human beings have to appear before a board to be confirmed as male or female? Do intersex people have to appear before a board to change their legal status? Do gay people have to appear before a board before they are allowed to be gay? It is a farcical situation that once again is an attempt by society to divest itself of the guilt and shame that it places upon sex and gender diversity and in itself is a manifestation of transphobia. The gender panel itself is an attempt by the government to prevent what it sees as perversity, completely misunderstanding sex and gender diversity and attempting to give other people the right to refuse a person the identity to which they think they truly belong.

The changing of sex registration documents is both a personal and private matter that can be handled bureaucratically as can the changing of a name, address, or social security details. This board is unnecessary and deeply offensive to a group of people in society who already often find it difficult to live their daily lives.

The Transsexual Register – The creation of a register, whether confidential or not, to record those persons who have undergone some form of sex or gender transformation is nothing less than segregation and apartheid. To separate people from the mass populous by the nature of their sex and gender identification is absurd and a form of sex discrimination in itself.

In other countries such as Australia and New Zealand new birth certificates have been reissued without the need to form a register and no problems have arisen. The proposed register is an affront to privacy and serves no real purpose. To say it would guard against

fraud is absurd as people who perpetrate fraud do not do so by changing their sex and gender and may use far more sophisticated ways of achieving false identities.

Too Narrow a View of Professional Expertise - The GRB as it is proposed does not meet the Harry Benjamin International Gender Dysphoria Association's Standards of Care. In the SOC it says that those who are able to treat and help individuals who may be experiencing a sense of sex or gender dysphoria are medical specialists, psychologists, psychotherapists, counsellors and social workers. The reason that such a broad scope was given at the SOC inception is that not all individuals who experience sex and gender variance consider that they have a pathology, even though they may need medical access to change their physiological appearance. Psychotherapists, counsellors and social workers often do not pathologise in the ways that medical and psychological practitioners do. Therefore someone who takes in the wide range of prospective treatments should not be forced to supply evidence of their transition by only psychologists or medical practitioners, but the larger group of professionals recommended by the HBIGDA SOC.

It is also extremely incongruent that a report supplied by someone who is not a specialist in the field of sex and gender diversity should be valid in any way whatsoever in supporting a person's claim to a sex or gender transition. It seems that many professionals who are experts in the field of sex and gender identity who could supply evidence to support an individual's claim of sex and gender transition or diversity status are being ignored and instead professionals who are inexperienced or unqualified in that field may be asked to give supporting evidence.

Much of the treatment of people who identify as sex and gender diverse is carried out outside the UK. Letters from the treating professionals from other countries must also be valid in supporting a person's claim to undergo a sex and gender shift of identity.

Many people who live outside the UK and are British passport holders will not be able to come to the United Kingdom to obtain the opinions of solely British professionals.

Previous Marriages - The Bill also seeks that individuals who are previously married before a manifestation of sex or gender dysphoria or diversity occurred are required to have their marriages annulled before they will be allowed to change their documents and receive a new gender recognition certificate in the form of what appears to be a new birth certificate. No government in the world can have the power to dissolve a marriage against the will of the individuals involved, unless a crime has been committed, and these marriages were wholly legal at the time they took place. Also within religion it is traditional in the UK that no religion has the right to force individuals apart against their will. This clause is untenable in accordance with international human rights and will undoubtedly be challenged in the European Court of Human Rights and it would be highly advisable for the government to abandon this clause in the Bill completely.

It has been suggested that the government may be introducing same sex partnership registration that could replace the marriage status but that would not compensate families who have been unnecessarily torn apart in order to correct what may be considered a

wrong diagnosis of sex and gender. Same sex partnerships will undoubtedly have a lower set of rights than marriage currently affords and it is inhuman to ask those families to surrender those rights and suffer hardship.

Exclusion from Marriage by Celebrants – the Bill seeks to allow religious orders to treat sex and gender diverse people differently when they apply to be married in their new sex or gender by refusing to marry them. This is nothing more than sanctioning sex and gender discrimination and no sector of society should be exempt from that crime.

The Loss of Pension Rights – Under the current draft, a person transitioning may lose rights of pensions due to them and this is unacceptable. There is a problem since at the moment there is a differential between male and female retirement ages in the UK, which will eventually equalise. If a government or company has had a pension agreement with an individual prior to transition, it is only fair that this agreement should be adhered to after transition so that the individual is not disadvantaged by the need to change their sex and gender identity.

Discrimination – the Bill itself does not sufficiently provide for changes in anti-discrimination laws regarding sex and gender diverse people. The law needs to criminalise sex and gender discrimination in all forms against males, females and people who may not necessarily fit into those stereotypical defined roles.

Conclusion

SAGE's point of view is that we support every individual's right to determine their own sex and gender identity that might not necessarily be stereotypically male or female. We also support the individual's right to be non-declarational in regard to their sex or gender identity and this is a matter of private self-identification and should not necessarily be determined by the state.

This Bill is undoubtedly a Transsexual Bill, not a Gender Recognition or Sex and Gender Recognition Bill. Unfortunately it is also a transsexual Bill that requires people who have transitioned from male to female or vice versa to adhere to strict stereotypical roles once they have done that. For many individuals who may not pass well as their destination sex or gender, it does not allow them the license to identify outside stereotypical roles by calling themselves transgender instead of transsexual or allowing them to identify as androgynous or as being without sex or gender identity.

The British legal system, if this Bill became law, would seek to push people into too narrow a sex or gender stereotypical role. Therefore the Bill itself misunderstands the concept of sex and gender diversity and the need for those people to be recognised, as well as recognising classic transsexuals who wish to have their new sex and gender status recognised.

Should this Bill become law it is likely that it would be used as a format for some other countries internationally. We have seen over the past 30 years how catastrophic

monumental decision of Judge Ormrod in the *Corbett v Corbett* case that prevented April Ashley being recognised as female after her sex and gender transition has been. This judgement was used by other governments to deny transsexuals and sex and gender diverse people their human rights. It is imperative that this Bill, in the window of opportunity it offers, be revised to truly reflect all the needs of all sex and gender diverse people.

The proposed Bill in itself and its timing is an important step forward in helping sex and gender diverse people attain equal rights. This draft, however, is hugely inadequate and over-complicated. It would be far simpler and effective to satisfy both the sex and gender diverse community and the government's need for bureaucracy to allow changes to documents, including the reissuing of birth certificates, to come about upon the applicant providing two supporting letters from specialists in the field of sex and gender dysphoria and diversity. These supporting letters could come from either medical practitioners, psychiatrists, psychologists, psychotherapists, counsellors or social workers – specialists in the field in line with HBGDA SOC, after which the applicant could be reissued with documents so they may be allowed to go about their lawful business in an ordinary and peaceful manner.

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