

**Sex And Gender Education (SAGE (Australia) & the Australian Health and Education Centre (AHEC) response to consultation on Sex and/or Gender status in the Australian census by the Australian Bureau of Statistics (ABS), REVIEW OF THE SEX STANDARD / POTENTIAL NEW GENDER STANDARD, February, 2013.**

**Male, Female, 'X' or 'other' Options for the Australian Senses Form**

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Sex and Gender Education (Australia) is a campaigning group for the rights of sex and/or gender diverse people.

Sex and/or gender diverse (SGD) people are made up from many differing groups including people who are intersex, transexed, transsexual, transgendered, androgynous, without sex and gender identity, cross-dressers and people with sex and gender culturally specific differences. 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.

**AHEC** houses a Sex, Gender and Sexuality Clinic run by Dr Tracie O'Keefe, ND, BHSc, DCH (sexologist) in Sydney and has seen over 150 consultations a years for the past 10 years for people who are 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 3,000 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).

**Introduction**

This paper considers the review of sex standard classification in the Australian Census collection processes and the recording of people's sex and gender status by the ABS.

**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**.

**Gender** is the social construct and presentation of 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 a 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** (O'Keefe, 1999).

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 across a full spectrum of **sex and/or gender diverse (SGD)** people. In its *Sex Files Report* (2009) the Australian Human Rights Commission (AHRC) used the phrase **sex and/or gender diverse**.

The ABS refers to:

“The Sex Standard provides:

- a conceptual basis for recognising the distinction between males and females based on biological differences in sexual characteristics. In some situations an additional category - 'Intersex or Indeterminate' - may be used to categorise people, who because of a genetic condition, were born with reproductive organs or sex chromosomes that are not exclusively male or female,
- a framework for the collection of sex information in statistical surveys, and
- Standard output categories for statistical collections.”(Australian Bureau of Statistics, 2013)

*For data classification the ABS Census studies have been recording sex as male or female solely on biological classifications.*

*This however does not correlate with the practices of Births, Deaths and Marriages (BDM) data which allows for children born with obvious intersex features not to have male or female noted on their birth certificate if the parents desire; but for it to be left blank. (New South Wales (NSW), Attorney General's Office made this declaration in open court in the NSW High Court in the Norrie May-Welby vs. NSW Attorney General's Office, 2013)*

*BDM also allows, in all six states, for the sex of an individual to be changed on their birth certificates. Antidiscrimination laws throughout Australia also recognise that many people cannot be recognised as strictly male or females physically or socially.*

*The new proposed Federal Antidiscrimination Laws, suggested by the Federal Attorney General's Office, state they will cover all sex and gender diverse people who do not identify as male or female (Australian Federal Attorney General's Department, (2012).*

*The Australian Passport Office presently gives the public three options to denote their sex on passports: male, female or X.(Australian Passport Office, Department of Trade and Foreign Affairs, 2013)*

*The AHRC's Sex Files Report (2009), recommends that government departments offer the public more options than male or female when recording personal and official data.*

## Background

Since the arrival of European culture in Australia the country has mainly operated under a Christian based culture. In the Victorian era concepts of biological sex and gender became very polarised into rigidly separated male and female in line with late Christian philosophy of the time. Late Christian, being the operated perspective here, as in early Pagan culture such polarities were not so entrenched.

The Victorian era was the beginning of mass publishing which led to a higher level of public education; however, medical knowledge around sex was cosseted by the medical profession and kept from the public. Only within the past sixty years have the public had access to many medical books, around sex, that used to be restricted within education and public libraries.

With the onset of the internet in the 1990s there has become more public awareness that up to 1% of the population may experience some kind of sex and/or gender diversity (O'Keefe, 1999).

## Sex Differentiation

Most people are largely male or female for reproductive purposes. They have sets of organs, genetics, endocrinology, biological, physical and mental features associated with either male or female. This, however, is not exclusive and always open to cultural interpretation that changes from country to country and even language to language. These features are recognised and legally noted at birth with the registration of children as male or female. This also affords that individual certain social and legal rights.

This cannot be said for the whole populous, however, as some children are born with biological features that might not be typically male or female and they are labeled intersex at birth. This is usually recognised when child's genitals are atypical male or female.

This group of intersex people, however, is much larger than just those individuals. Many people do not discover that they come under the intersex description until later in life due to under or over masculinisation, under or over feminisation, genetic testing, infertility, surgery or development of physiological features.

There are also people who may actually become intersex during their lives through organ over stimulation, under stimulation or physical trauma. Their physiological masculine or feminine body may alter and they find themselves other than stereotypically male or female.

Intersex is not an exclusive club of those recognised at birth and is an expression of people's physical status that may be other than atypically male and female. The reality is that for some people their sex status may not be static their wholes lives and may change.

Most intersex people identify as male or female and seek medical treatment to help them define themselves as such. There are individuals, however, who do not identify as male or female but as intersex; not only is it their physical reality but they may also seem to personally identify with being intersex.

The majority of people who are intersex do not know that until later in life. If the national Census seeks to record the reality of the Australian population, then it must provide an option for those people who are and identify as other than male or female.

### **Gender Differentiation**

A person's gender may or may not be in line with their biological sex presentation. For the average person, their gender presentation is in line with their biological sex. For some people, however, that may not be the case as their gender presentation may be different from the biological sex. They may be happy with being biological male or female but be atypically masculine or feminine. Historically this group of people have been demeaned in Australian society and have suffered a history of physical, mental, social and legal abuse by other members of society.

They have been seen as 'other than normal', 'weird', 'improper', 'socially unacceptable', 'illegal' and at times suffered profound persecution by a number of religions. In any society there will be those who are gender diverse. That is the reality of life from ancient Greece, through to modern Thailand and in Australian society, from coast to coast.

### **The purpose of the Census**

The purpose the Census is to record historical fact and to provide information to the government so it may see the state of society as a whole in order to facilitate rule, law, order, budgeting, welfare and medical care. The validity of such a study requires that the person filling out their Census form is able to fill it in as accurately as humanely possible. The Census is an instrument of social observation, not social engineering.

The Census must indeed record the everyday realities of the citizens of Australia in order for it to be of any use to any government. If it records inaccuracies, then government cannot rule and facilitate its population because it is operating on false and unrealistic statistics.

### **Three categories required in the Census**

It is plain to see that bipolar categorisation of human beings squarely into just male and female is unrealistic. There are clearly a variety of people who are other than stereotypically male or female, whether that is by sex and/or gender classification.

The profusion of categories of people who are other than male or female is too many to be practically recorded in the Census data collection. The answer then is very simple: there must be a third option for the public to tick when filling out their Census form that simply declares that they are neither male nor female.

A caveat here is that the third option must never be compulsory and only a voluntary self-declaration. Neither should such data be used to deny or restrict access to social or legal privilege for those who opt out of male or female categories.

We suggest one possibility is the designation **X**, for the third option, as used on Australian passports to denote a person who self-selects to be recognised as other than male or female.

We must remember once again that the job of the Census is to record the populous, not police sex or gender, which of course is an impossible thing to do and against human rights principles. In a society that is heteronormative-focused it is a very big decision for people to identify as other than male or female. Such people do not make such decisions lightly, out of frivolity or deception. The job of the Census is to record the self-reporting real-life experiences of all the Australian population, including those who are other than stereotypically male or female.

In forming the new Census form there may also be a legal predicament in waiting if the categories are restricted to only male or female. Since other government departments are now moving to embrace third sex and/or gender classification; then the Census office will find itself out of line with public policy unless it now embraces that third option for members of the public, adopted by other government departments.

Please tick one of the three:

**Male**

**Female**

**X**

### **The Census cannot only be a record of biological sex**

Biological sex is a medical classification and as times passes it has become clear that large parts of the population are indeed neither strictly male or female. Many of those people are unaware of their sex diverse status. Also sex classification is a biological and sociological manifestation and not the business of governments, except within the rule of law. Sex classification is highly difficult in some individuals and there is so much that we do not yet understand biologically or medically about sexation.

Under the new proposed federal antidiscrimination laws people who are gender diverse are as equally recognised and protected against discrimination in society as people who may have an official sex diverse status. If the ABS only allows a third option in the Census form, solely on biological sex, it will be contravening incoming federal antidiscrimination laws.

So the Census form must also allow the third option to include people who are gender diverse as well as people who are sex diverse. The standard must in fact be a **Sex and/or Gender Status**, not just a sex standard.

The classification of people solely on a bipolar male and female sex standard basis is old fashioned and completely out of date with academic learning and public awareness of sex and/or gender diverse people in society. In other words it is time for the proverbial ostrich to take its head out of the sand.

Also the word 'Standard' is archaic and suggests an exclusive right of passage that cannot be applied to sex and/or gender diverse people. By their very existence they fail any kind of unrealistic laid-down concrete parameters that standardise males and females.

The phrase 'Sex Standard' needs to be replaced with the '**Sex and/or Gender Status**'. Government policy that recognises people in one sector of the law or society, and does not in another, leads to great confusion in society and marginalises the very people that the new Census form seeks to include.

### **The replacement of 'X' with 'other'**

There is always the danger that in using a designation like **X** that one can by accident or design, create a class system, even when trying to eliminate an over constricting and unrealistic sex class system. The purpose of providing a third open, free option on the Census form is not to force people into stating that which they cannot truly be or identify as, therefore forcing them to lie, which of course would be illegal.

One way out of this would indeed be to just put '**Other**' as an open third open option. The AHRC has previously done this on some of their internal forms. The reason this paper has suggested **X** as an option is because that already exists within the passport system but in reality simply stating '**Other**' and leaving it at that would also suffice for the task of providing a further option than male or female.

The declaration of **X** or **Other** is a declaration of not being stereotypically male or female in one's sex and/or gender status, and not in of itself an identity. Neither must it ever be seen as an identity because it covers so many different kinds of people who are other than stereotypically male or female, masculine or feminine.

### **Bibliography**

**Sex Files: the legal recognition of sex in documents and government records. Concluding paper of the sex and gender diversity project.** Australian Human Rights Commission, March, 2009. ISBN 978-1-921449-10-9.

[http://humanrights.gov.au/genderdiversity/sex\\_files2009.html](http://humanrights.gov.au/genderdiversity/sex_files2009.html)

**Sex and Gender Diverse Passport Applicants**, Australian Passport Office, Department of Trade and Foreign affairs, Australia, February, 2013.

<https://www.passports.gov.au/web/sexgenderapplicants.aspx>

**Sex and Gender Education (SAGE)** Australia) campaigning group for the rights of sex and/or gender diverse people. <http://www.sageaustralia.org/>

**REVIEW OF THE SEX STANDARD / POTENTIAL NEW GENDER STANDARD**, Public consultation, Australian Bureau of Statistics, February, 2013.

<http://www.abs.gov.au/websitedbs/D3310114.nsf/home/Review+of+the+Sex+Standard>

**Consolidation of Commonwealth Anti-Discrimination Laws**, Exposure Draft Human Rights and Anti-Discrimination Bill 2012, Australian Federal Attorney General's Department, Australia, December 2012.

<http://www.ag.gov.au/Consultations/Pages/ConsolidationofCommonwealthanti-discriminationlaws.aspx>

**Sex Gender & Sexuality: 21<sup>st</sup> Century Transformations**, Tracie O'Keefe, Extraordinary People Press, London, England, 1999.

Norrie May-Welby vs NSW Attorney General's Office, NSW, High Court, 2012.