

Intersex, Sex and/or Gender Diverse (ISGD) People's Submission to New South Wales Human (NSW) Rights Bill, 2010, Australia, Discussion Draft Paper

By Sex and Gender Education (SAGE (Australia) January 2011

Response to The Greens (political party)

**Proposed NSW Human Rights Bill 2010 –
Discussion Draft**

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SAGE campaigns for the human and legal rights of people who are intersex, transexed, transsexual, transgendered, cross-dressers, androgynous, without sex and/or gender identity, and people with sex and gender culturally specific differences.

Firstly SAGE would like to commend the Greens NSW for using the phrase *intersex, sex and/or gender diverse (ISGD)* people in their proposed NSW human rights bill. This phrase inclusively does cover all people who are other than strictly male or female physiologically or have varying gender expression other than stereotypically masculine or feminine. It includes people who are intersex, transexed, transsexual, transgendered, androgynous, without sex and gender identity, cross-dressers and people with sex and gender culturally specific differences. It is an inclusive phrase and excludes no one who may be sex and/or gender diverse in any way.

Suggested additions to the bill:

Children's sex and/or gender rights

The proposed bill does not sufficiently protect the rights of children. A child should have the right to live their formative years with physical, mental and social wellbeing.

Many children who are from ISGD groups are unable to do this. Intersex children who are not born with stereotypical genitalia are frequently subject to surgeries in order to change their genitals to look like the average culturally-produced idea of what male or female genitals should look like. The reality is, however, that genitals come in all shapes and sizes and that does not necessarily make them wrong, just different.

These surgical alterations are made to the child without their permission or consultation early in life. Later in life this can prove very distressing to many of those people as they grow up with parts of their genitals missing (Bennett, 2010). The genitals can end up without proper sensation and the person can be anorgasmic or infertile due to those involuntary surgeries (Domurat Dreger, 1998 & 1999).

If this surgery were foisted upon an adult without consultation the person would have the right under the law to sue for assault and medical malpractice. In NSW and Australia, however, at the moment, protection for children in this area does not exist. Catchphrases such as ‘Changing the genitals to avoid being different’ are bandied around by doctors to excuse their assault upon such children, and it is sexual assault. Parents are misinformed about the real consequences of such surgery for some of those children when they grow up to be adults who may be unhappy and sometimes commit suicide.

Many children who have not had such surgeries are happy with their natural genital outcomes (Mitchell, 2001).

Children need to be protected against assaults upon their bodies by adults of any kind. It is good practice to leave those genitalia alone, unless there is a life threatening situation, which there frequently is not, until the informed children can be part of the decision-making process.

There is no academic evidence that such early intervention surgeries give better outcomes for those children but there is evidence that many of those children suffer later in life (Domurat Dreger, 1999). A child needs to have the right to have an informed say about what happens to their bodies.

The same situation occurs when children undergo enforced hormone treatment, against their will, that is intended to turn them into stereotypically male or female body types. In Lady Colin Campbell's autobiography (Campbell, 1997) she talks about how, as an intersex child, she was mistreated. She had testosterone injections forced upon her against her will to masculinise her. This had devastating effects on her since she did not identify as male.

This non-consensual early medical intervention must be prohibited in a NSW Bill of Rights as it is forced on children. This must also extend to the practice of circumcision. At the moment in Australia female circumcision is against the law but male circumcision is not, which is sexism. For some ethnic or religious groups the practice of child male circumcision is seen as normal and governments can be afraid of confronting those practices for fear of upsetting voters. Many males are unhappy with male circumcision outcomes thrust upon them as children, which can lead to suicide. It is unquestionably violence (Gollaher, 2000) and can lead to suicide (Colapinto, 1997). There is no proven medical benefit to circumcision in children unless pathology is present.

The child’s right to medical intervention

For many children who may be from one of the ISGD groups there is also an issue with withholding of medical treatment happening in Australia. Many sex and/or gender diverse children are presently unable to get hormones and surgery in Australia without the express permission of the courts until they are eighteen. This is prejudice against ISGD children. It is an unfounded presupposition that those children do not know their own minds and are somehow medically and psychologically defective, and in moral danger.

In other continents such as America and many European countries such children can get hormones and surgery under the directions of their doctors and healthcare professionals without interference by the courts (Bill & Pepper, 2008). This happens as early as pre-pubescence. To have to apply to the courts for this treatment can be devastating and disempowering for those children and their families. So much so that many families do not bother and those children become at risk of developmental delay, depression and suicide. Furthermore many become runaways and are forced to buy illegal hormones without any clinical supervision.

The physical growth pattern that happens in those teenage years can be devastating to those children who may not identify as their birth-registered sex.

The courts operating in this way is in fact a form of oppression and forcing children into heterosexist, unrealistic normative bodies that are unrealistic to them in nature.

All children need to have their right to access medical intervention, under the care of their clinicians, when their sex and/or gender identity is misaligned, protected in law without having to go to court.

Child protection to independent medical choices

In cases where the parents disagree with the child on such medical intervention the child needs to have the right to apply to the court to obtain a court-appointed guardian to help them access that care.

The body

This is a proposed concept to be included in the NSW Bill of Rights. We commend its inclusion but will restrict our comments to issues of biological sex and sex identity (a person's relationship to their sex-related morphology). For the average common person their sex identity is in line with their manifestation of being male or female, although from a true biological perspective no one is entirely male or female, for we are all a varying mix of the two (O'Keefe, 1999).

For some people, however, they cannot be categorised as either male or female and it is impossible to categorise their sex with any certainty. It is necessary for any bill of rights to determine three social and official spaces: *male*, *female* and *sex not specified*, in accordance with the Australian Human Rights Commission's *Sex Files Report* recommendations (AHRC, 2009).

There also needs to be protection in a bill of rights to sanctify the individual's rights to their body, the right to alter it and the right to not suffer interference by the state or federal authorities with regard to their physical sex.

Gender

There also needs to be inclusion of the concept of gender, which is the way a person interprets their femininity, masculinity or neutrality in society. Sex should not be confused with gender for they are two different things.

Gender performance works on a socially sliding collage of culturally relevant perspectives. What may be considered masculine in one culture may be considered feminine in other cultures. In reality masculinity and femininity are extreme illusions of the human condition. There are people who have varying mixes of masculinity and femininity about themselves and those people need to be included in a fair and civilised society.

For those people who do not identify as strictly masculine or feminine in society there must also be an opportunity to adopt an identity that is non-specific. The voluntary right to identify freely in this category must be enshrined in any bill of rights.

The right to healthcare

Australia is a wealthy first-world country. Its healthcare system provides a Medicare safety net facility for the average person to have some of their medical expenses funded. This is a government mechanism that is presently becoming a federally operated and controlled system, but there are still state-controlled mechanisms for operating Medicare. There are also state Departments of Health.

Since many people who are from the ISGD groups may live on the poverty line, or be economically disadvantaged they are unable to afford medical treatment. At the moment even those who are means tested and live on welfare are still unable to get the correct medical procedures they need to facilitate their wellbeing. This is sex and sometimes gender discrimination.

When we parallel other medical situations we can see that Medicare treatments for cancer, infectious diseases, cardiovascular disease and pregnancy are funded to the full degree. A bill of rights needs to protect ISGD people's right to access government-provided medical intervention when they are unable to afford private care, assessed by means testing comparative to standard medical situations.

Incarceration for intersex, sex and/or gender diverse people.

The average person when incarcerated in penal institutions or holding facilities is incarcerated in male or female appropriate facilities. For some people it is dangerous when they are incarcerated in sex and/or gender inappropriate facilities. In 2009 Veronica Baxter (Evans, 2010), a young transgender woman, registered male at birth, and arrested in Sydney, was put into men's prison. Two days later she was found hanging in her cells. She had lived as a woman for a number of years and asked not to be put in a men's prison but her request was ignored, which cost her life.

People who are intersex, sex and/or gender diverse should have the right to be incarcerated in a prison that is congruent with their social presentation, or special facilities where they can be kept safe from danger.

Recommended inclusions

1. In cases where the sex of a child is indeterminate the child should have a right to be involved in any medical intervention decisions that determines the child's sex characteristics.
2. All children should have the right to seek medical assistance in realigning their sex when their sex is out of line with their sex identity, under the care of their doctors, without having to go to court.
3. Children should have the right to determine their own gender identity unfettered by the state, federal government or authoritative figures.
4. Children should have the right to seek a court-appointed guardian should medical intervention be denied them, who will help them gain the medical assistance they need.
5. The individual has the right to identify as male, female or not specified on official documents when socially living in that role.
6. The person has the right to seek full Medicare assistance for sex alteration should they not have the financial means to pay for their own medical care.
7. People who are intersex, sex and/or gender diverse should have the right to be incarcerated in a prison or holding facility that is congruent with their social presentation, or special facilities where they can be kept safe from danger.
8. Involuntary circumcision of any kind needs to be criminal offense unless there is a medical emergency.
9. Any bill reading needs to include that intersex, sex and/or gender diverse people includes people who are intersex, transsexed, transsexual, transgendered, crossdressers, androgynous, without sex and/or gender identity, and people with sex and/or gender specific differences, in other words all human beings.
10. The denial of basic human rights should never be based on the grounds of sex and/or gender differences.

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