

## **Sex and Gender Education: Australia (SAGE)**

**A political lobbying group for the rights of:  
Sex and gender diverse people in Australia**

**Equality Policy Guidance Documents for the Federal Government  
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SAGE is an organisation that lobbies for the rights of people who are sex and gender diverse. This includes people who are intersex, transsexual, transsexed, transgender, androgynous and who are neuter, being without sex and gender identity.

Please note that in this document we do not refer to people we represent as transgender because only some of those people we represent are. To refer to the whole group of people we represent as transgender would be insulting because it is inaccurate, just as calling all non-caucasian people black is denying their diversity. We specifically use the more inclusive phrase **sex and gender diverse people** and would encourage politicians to do the same.

This document is to advise the new government what are the legal and social difficulties facing the sex and gender diverse communities and citizens, and what the Australian government needs to do to bring forth equal legal and social rights in that area to protect this sector of the population.

Many of the public, government departments, employers and law makers are unaware that around 1% of the population is born with varying forms of sex and gender diversity. These people may have physical, genetic or psychological profiles that are other than strictly male or female. This means that those people often have legal difficulties when dealing with government authoritative bodies, employers and medical companies when their sex and gender is not strictly definable as male or female. Also when they may need to transition from male to female, female to male or alter their sex and gender identity, these people encounter very stressful unnecessary bureaucratic anomalies that make their life very difficult and even dangerous at times.

This group of people may identify as:

**Intersex** – Physical manifestations of both male and female characteristics or neither.

**Transsexual** – A person born and registered as one natal sex but then transitioned through medical alteration to physically represent another sex and gender.

**Transsexed** – This is basically the same as transsexual but also a person with intersex characteristics either physically, mentally or both.

**Transgender** – A person who is genitally one sex but may live in society as another gender. This term is also used as an umbrella term for all people in the trans spectrum but many of those people find the term offensive when applied to them because it does not correctly describe their own experience.

**Androgynous** – Someone who chooses to present themselves as more than one sex.

**Sinandrogyn** – A neuter identity where the person chooses to present themselves as having no sex or gender identity.

**Sex Dysphoria** – An unhappiness and unease with one’s physical sex manifestations to the point of distress.

**Gender Dysphoria** – An unhappiness and unease with the way one presents one’s gender performance in public or private to a level of extreme distress.

### **Definitions of Sex and Gender**

It is important in a document like this to delineate the difference between sex and gender identity. One’s sex is the sum total of primary and secondary physical sex characteristics and genetics.

**Primary sex characteristics** are whether you have male or female genitals and reproductive organs or whether these organs are somewhere in between male and female.

**Secondary sex characteristics** include the shape of your body including breast tissue, facial characteristics, hair distribution, and secondary reproductive connective tissue.

**Genetic sex** is usually XY for males and XX chromosomes for females; however, many individuals have variations on the genetic themes and other people may have a genetic combinations clearly defining them as neither one sex nor the other.

**Gender identity** is how a person presents themselves in society and that may be typically female, male, both or neither.

There are now more than 300 different kinds of intersex conditions medically recognised and if one adds together all those conditions and sex and gender variances in society, it comes in at around 1% of the population (O’Keefe, 1999).

### **What the Government Needs to Change**

#### **Medicare Rebates**

People who discover they are intersexed, transsexed, transsexual, transgendered or androgyne may need to undergo certain medical procedures and medications to ensure both their physical and mental health. For those who can afford private medicine and care there is no problem but by far the majority of such people will be dependent upon the Medicare health rebate system. In Australia at the moment the government does not properly rebate the cost of gender realignment genital surgery, ancillary cosmetic procedures, facial reconstruction, chest reconstruction, breast augmentation, vocal surgery, speech therapy, or hormones. Nor does it sufficiently support the need for such people to have proper access to counselling or psychotherapy at times in their lives when they need such care the most. The occurrence of sex and gender dysphoria frequently emerges at a time in a person’s life when they may be economically disadvantaged and unable to afford such treatments and there are thousands of people in Australia experiencing sex and gender dysphoria. When sex and gender dysphoria is severe, the effects upon the person’s ability to cope is devastating (Brown & Rounsley, 1996).

The consequences of this lack of proper funding means that many people remain untreated, suffering long-term mental health problems, depression and may even commit suicide. Some of those problems arise because they are unable to access hormones and surgical treatments to take them towards sex and gender alteration. For others they are unable to get sufficient expert counselling to help them decide whether they should be undergoing those procedures or not and how to cope afterwards. In some cases they may undergo physical treatment but be unable to afford the proper supporting psychotherapy and they may also commit suicide when they are unable to

cope with life after transition. The suicide rate in this community is far higher than the national average. When people do get the correct treatment, they are more likely to recover and become functioning, contributing, tax-paying members of society. Treatment is very effective and rehabilitates more than 90% of those suffering from sex and gender dysphoria (Lev, 2004).

In many countries, such as Britain, Italy, Germany, Holland, France, Israel, and even Iran the government fully funds such patient care or offers patients long-term interest-free loans to pay for treatment. This means those people can get the care they need, at the time in their lives when they need such care the most, and then go on to take their rightful place in society as contributing, tax-paying citizens. Unfortunately in Australia at the moment many people, who are sex and gender dysphoric find themselves in the position where they are unable to get sufficient Medicare refunds and remain untreated, and often unemployable. Surgeons and healthcare professionals find themselves having to claim alternative item numbers for their patients in order to carry out the treatments. Many such patients therefore do not get the correct or sufficient care and end up living long term on welfare hand-outs from the state as a consequence of long-term mental health issues.

There are also problems for people who have transitioned and require particular medical procedures – such as someone who has transitioned to female but still retains a prostate. Later in life they may suffer from prostatitis or prostate cancer, and in order to have treatment under the Medicare system they must access a certain item number; however when someone registered as female applies for Medicare for prostate issues they may be unable to access funds. The adverse situation also arises where someone who has transitioned to male may still have ovaries or a uterus and they may need gynaecological care which means as a registered male they are unable to fulfill Medicare requirements for rebates for gynaecological care.

(World Association of Sexology, Sexual Health for the Millennium Declaration, 2007)

(World Professional Association of Transgender Care (formally Harry Benjamin International Gender dysphoria Association), **Standards of Care**, 2001.

[http://www.wpath.org/publications\\_standards.cfm](http://www.wpath.org/publications_standards.cfm))

**We ask the government to provide full Medicare refunds for sex and gender dysphoria related Medicare expenses including hormone treatment, genital reconstruction, hysterectomy, and all relevant urological and gynaecological care, chest surgery, breast augmentation, voice surgery, psychiatry, psychology, sexology, counselling and psychotherapy, laser treatment, electrolysis and the services of a social worker. All of the treatments would be in line with the accepted standards of care necessary for such patients as set down by the World Professional Association of Transgender Health (WPATH, 2008). The referral to a specialist would be made through the family physician as is the case in all other medical, psychological, and social work services.**

***Document Recognition for Sex and Gender Diverse People***

Many people in society who are sex and gender diverse are unable to undergo surgery and hormone treatment for medical or psychological reasons in order to live in their necessary sex and gender identity. Other people who are sex and gender diverse do not want to be forced into having to undergo particular medical procedures in order to pass in society as their self-defined sex and gender. In no other case in society does a government force individuals to undergo medical treatment against their will, and from a medical perspective it is unethical to force such treatment upon citizens in any way whatsoever.

In Britain and Spain a person may live as their desired sex and gender for two years and then apply for legal recognition as their new sex and gender including all changes of documents, regardless of any treatment they may or may not have undergone.

(Basque News and Information, Spain Passes Transsexuals' Name and Gender Law, 2007.

[http://www.eitb24.com/new/en/B24\\_37351/life/OPPOSED-BY-POPULAR-PARTY-Spain-passes-transsexuals-name-and/](http://www.eitb24.com/new/en/B24_37351/life/OPPOSED-BY-POPULAR-PARTY-Spain-passes-transsexuals-name-and/))

(United Nations, UN Universal Declaration Of Human Rights, 1998.)

(Office Of Public Sector Information UK, Gender Recognition Act 2004)

**We ask that the government remove all legal restrictions on only allowing people who have undergone surgical reconstruction or are living as a particular sex and gender to change their documents. We ask that the government put in place a law where people may apply for a change of sex and gender on all legal documents when they live as their new sex and gender verified by a letter from their family physician.**

### **Federal and State Government Employees Policy Towards Sex and Gender Diverse People**

One of the major problems faced by sex and gender diverse people is that they are often regularly treated quite poorly by government employees. This includes being addressed with the wrong gender pronoun when they present to government officers. Anti-discrimination guidelines, which are patchy, are frequently breached by government employees as they treat sex and gender diverse people as second-class citizens using derogatory tones of voice, failing to use the correct pronouns and failing to assist those people (Couch, Pitts, Mulcarr, Croy, Mitchell, Patell, 2007).

(Sex And Gender Education, Sex and Gender Identity Guidance Document For Government Employees, 2004.

<http://www.sageaustralia.org/docs/Sex%20and%20Gender%20%20Identity%20Guidance%20Document%20For%20Australian%20%20.pdf>)

**We ask that the government implement a set of legal policy guidelines for government employees to guide them on how to treat sex and gender diverse people respectfully. There also needs to be procedures in place for members of the public to complain and have their complaints heard if they do not receive such respectful treatment.**

### **Federal Anti-Discrimination Policy**

Sex and gender diverse people or people having sex and gender dysphoria regularly get discriminated against in society and within the workplace. This is plain to see from the fact that many sex and gender diverse people are often unemployed, particularly in the lower socio-economic groups. At times these people never get past the interview stage when applying for jobs, even though Australia has had recorded levels of low unemployment. Many employers do not want to employ people who are openly or obviously sex and gender diverse. The large disparity between the unemployment figures for the general populous and this sector of society clearly shows discrimination taking place and a sub-group of disadvantaged members of society (Couch et al, 2007).

Such people can also be discriminated against in other areas of life because of their sex and gender diverse status. At the moment the anti-discrimination laws are state based and this leaves the public with great confusion as to whether they are being discriminated against or not. It can also be a disadvantage for sex and gender diverse people who may want to bring an anti-discrimination case federally to have to deal with the anomalies that occur on a state by state basis. This frequently discourages people from engaging in the legal process and many sex and gender diverse people do not bring rightful cases for fear of being embroiled in the disparity of the anti-discrimination laws.

At the moment the Human Rights and Equal Opportunity Commission (HREOC) tell enquirers that they do not accept complaints by people who are sex or gender diverse for sex discrimination. Although the federal laws do outlaw sex discrimination, the staff at HREOC interpret that to be *'only people who are strictly male or female'* with no biological deviation from the norm. In other words when people try to bring a federal case for discrimination on grounds of their sex or gender diversity HREOC then sees those complainants as non-human beings who by their nature are not entitled to legal protection from sex and gender discrimination under current sex discrimination laws.

This lack of protection also extends to adolescents and children who are sex and gender diverse who once again fall through the cracks in the laws that fail to protect their civil rights. While it is not legal to discriminate against a child because they are male or female, it is legal to discriminate against a child because they are sex and gender diverse, which is a contravention of the United Nations Declaration of Human Rights.

**We ask the government to bring in federal anti-discrimination laws to replace the state-based system, which would protect the equal rights of people who are sex and gender diverse.**

### **Optional Sex and Gender Status on Government Forms**

For some people who are sex and gender diverse they are unable to truthfully tick male or female on government forms. They may have an intersex condition/identity or an androgynous identity. This means when they are filling out government forms or

the census they have to lie by ticking one of only two boxes. It also means the government is recording the wrong information about them.

**We ask the government to bring in a third option on government forms so that people can tick ‘other’ rather than male or female because some people are neither or both.**

### **Making Unnecessary Surgery and Hormone Treatment on and Administered to Intersex and Other Children Illegal**

Each year many children are born with intersex features that may or may not include genitals that are neither strictly male nor female. Children who are also not showing classic signs of physical maleness or femaleness can be administered sex hormones against their will and without consulting them. This can have the effect of masculinising or feminising children in ways that they later find a problem. They may also be subjected to surgeries that cause them to lose the sensations in their genitals that will reduce sexual pleasure later in life, in order to make them fit into unnecessary stereotypes. They may also find that they are unhappy with the results of what has been done to them hormonally or surgically. These treatments, most of the time, are not medical emergencies and can be left until later in the child’s life when they can be consulted about what they want to happen to their bodies. This kind of physical assault includes female and male circumcision done for reasons other than medical reasons.

**We ask the government to bring in a law prohibiting doctors and surgeons carrying out sex and gender defining surgery and hormone treatment on children without their consent.**

### **Previous Marriage Rights**

When one member of a married couple discovers they are intersex, transsexed, transsexual or transgender and decides to change or affirm their sex and/or gender, they may already be in a legal marriage. That marriage may have legal entities tied into the union such as a shared pension, annuity, tax advantages, or joint family medical private health insurance, company benefits, inheritance rights or superannuation benefits. Those legal situations may depend upon the fact that the couple is married; and the children within the marriage may also be dependent upon those financial arrangements. At the moment people who need to transition sex and/or gender are trapped in a legal situation because that law requires them to get divorced before they may have their sex or gender changed on their legal documents such as a birth certificate to attain legal recognition of the sex and gender they have become.

This situation means that for those people who transition and are married, and wish to remain married, they are faced with a *fait accompli*. They either have to live as their new sex and gender without the correct birth certificate and accompanying legal documents or get divorced and the spouse and children lose those legal and financial protections. This is a terrible situation that such people find themselves in because it is a denial of basic human rights and destruction of a family unit. It is an ‘either/or’

situation and has no basis in a just set of equal rights within a civilised society. It is obvious that previous governments have constructed the legal situation this way for fear of being seen as condoning any form of gay marriage. Any government, however, does not have the right to force people to get divorced for what in these cases is nothing more than medical reasons. In fact no government has any right to force anyone to get divorced under any circumstances whatsoever under the United Nations Charter. These people need correct and non-conflicting documents to reflect their sex and gender presentation so that they are not in danger when interacting with society or travelling.

This also includes recognising marriages that were legally, under international law in countries with treaties on marriage with Australia, contracted abroad before immigrants came to Australia.

**We ask the government to redress and correct the law to allow people who are intersex, transsexual, transsexed and transgender to change their legal documents such as birth, death and other documents so they can live legally as their chosen sex and gender; without forcing them to get divorced from a previous marriage.**

#### **Passport Rights for Non-Operative Intersex and Transpeople**

Many people do not fit into the strictly male and female biological paradigm and under international law through the guidance of the United Nations they are able to have an X on their passport and other documents where sex is usually stated. For some intersex people, however, they are affirmed in their intersex identity and wish to have intersex stated on their passports and legal documents where sex is usually stated.

**We ask the government to allow intersex people to have ‘intersex’ stated on their documents if that is what they wish.**

Some people who have intersex or trans identities are unable to have genital surgery because of medical, psychological or financial reasons. However, they may have undergone medical procedures such as hormone treatment, and other surgeries. They may also live in society as their transitioned sex and gender identity which leaves them in a very precarious and dangerous position where they present as one sex and gender but their documents depict them as another sex and gender. In these circumstances they are forced to identify their status by a passport and other documents which leave these people open to embarrassment, harassments and violence both inside and outside Australia.

(<http://www.smh.com.au/news/national/natalie-imbruglias-cousin-in-passport-row/2007/08/18/1186857833242.html>, 2007)

**We ask the Australian government to allow people who are undergoing treatment for sex and gender dysphoria or have sex and gender diverse identities to be allowed to change their documents without having to undergo genital surgery, as is possible in the United Kingdom and Spain, on a letter from their family physician.**

It was previously possible for a person going abroad for genital sex realignment surgery to obtain a passport in the sex and gender to reflect the way they presented themselves in society. In 2007 the government removed this right and refused to issue such passports under the premise that this breached security. This was without consultation with the GLBTIQ community by the Howard government. In many countries the issuing of such passports is handled sensitively and sympathetically by the passport office on a letter from a treating clinician.

**We ask the Australian government to issue passports to transsexed and transsexual people, who are going abroad for genital sex realignment surgery, to be issued with a passport that reflects their socially presented sex and gender identity on letter from their family physician.**

### *Appropriate Treatment of Sex and Gender Diverse People in Prisons*

Some people entering into the penal system may have sex and gender diverse identities. This may be determined and influenced by physical, psychological, sociological or cultural factors. Frequently those prisoners suffer profound harassment, violence and sexual assault in the general prison populations. They may have been prescribed hormones before entering into the prison system for sex and gender dysphoria or may be diagnosed with sex and gender dysphoria as an inmate during their stay in the prison system. It is inappropriate to incarcerate sex and gender diverse people in a prison population that puts them at risk and allows them to be harassed by other prisoners or staff members.

(Edney, Richard, Sexual Violence and Transgendered Prisoners: Transgender Prisoners And The Experience Of Imprisonment, Justice Action, 2008.

[http://www.justiceaction.org.au/index.php?Itemid=151&id=188&option=com\\_content&task=view](http://www.justiceaction.org.au/index.php?Itemid=151&id=188&option=com_content&task=view))

**We ask the Australian government to place sex and gender diverse prisoners in facilities that allow them to remain safe. If a prisoner transitions within the prison system then they should be transferred to a prison population that reflects their new identity. When the prisoner's identity is such that it is sex and gender indeterminable then special facilities should be provided by the prison services whereby the prisoner may remain safe from harassment and violence at all times, which are other than solitary confinement. Prisoners who enter prison undergoing hormone treatment must have that treatment continued within the prison system and be provided with appropriate medical care. Prisoners suffering from sex and gender dysphoria must be treated in accordance with standard medical guidelines for those conditions.**

This document has been prepared for SAGE by Dr Tracie O'Keefe DCH who is psychosexual therapist and sexologist who has been working with sex and gender diverse people for over 30 years, is a member of the Australian Association of Sex, Researchers & Therapists (ASSERT), World Professional Association of Transgender Health (WPATH), and is a steering committee member of SAGE.

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