

# Tony Briffa JP

*Councillor, City of Hobsons Bay*



Mayor (2011-12) | Deputy Mayor (2009-11) | Councillor (2008 – present)

18 December 2012

Ms Julie Dennett  
Committee Secretary  
Senate Standing Committee on Legal and Constitutional Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600

To whom it may concern,

**RE: Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012**

Thank you for the opportunity to provide feedback on the exposure draft of the *Human Rights and Anti-Discrimination Bill 2012* (Cth). I am particularly pleased the Bill aims to include people born biologically both male and female; otherwise known as intersex. I am one such person.

I was born with the genetic condition Partial Androgen Insensitivity Syndrome. This means that I am partially male and partially female. Despite having a typical male chromosomal pattern, I was born with sexual reproductive organs that are more female than male, and hence was raised as a girl. I lived as a woman until I discovered the details of my condition at the age of 30, and then experimented with living as a man. I now live openly as both male and female (and a lesbian), and represent my local community as an elected local councillor on the Hobsons Bay City Council in Melbourne. This year I served my community – the community where I grew up as a girl, went to the local girls' Catholic school, and married a man – as Mayor. My sex and gender ambiguity, gladly, was not an issue to my community and in October I was re-elected to the council with an outstanding vote. I am also on the committee of the AIS Support Group Australia (a national peer support and advocacy group for people affected by intersex conditions and their families), and am a former President of the Genetic Support Network of Victoria. I am also a Justice of the Peace and Bail Justice and have worked for the Commonwealth in the Department of Defence and Australian Federal Police.

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Despite my apparent public success and community acceptance, it is not easy being intersex. I do not have equal recognition in the law and I do not have equal protection in the law to ensure I can enjoy my rights and my life without discrimination because of who and what nature made me. I cannot participate fully in things like sports, not because of my biology, but because I don't fit into the male/female divide. Life insurance (and other forms of insurance) are difficult as the insurance risks are assessed largely on sex. Indeed questions about my sex arise when dealing with a vast array of situations and government departments and agencies, employers, community groups, businesses, educational institutions, etc. Each one of these interactions gives rise to the possibility of discrimination on the basis of my sex and/or gender identity.

My biological nature as both male and female is indisputable. This fact is recognised by my medical records and the doctors that treated me at the Royal Children's Hospital in Melbourne from the first days of my life. My Victorian Birth Certificate also recognises this to an extent, as it does not categorise me as male or female; it is silent as to my sex. Nonetheless, the very fact my birth certificate cannot recognise me as both male and female – the way nature made me – means I do not enjoy recognition in the law. It denies me the acknowledgement every non-intersex person enjoys in this country, including transgender people who are able to have their birth certificates changed to recognise their affirmed gender. I am not sexless as my birth certificate suggests. I am proudly both female and male.

Unfortunately, this Bill doesn't go far enough to recognise intersex people. According to the explanatory notes provided with the Bill, the attribute of Gender Identity includes people born intersex who identify as *either* sex. There are several issues with this. Firstly, it does not provide any protection to intersex people like me who have a bona fide gender identity that matches their biology and therefore identify as both male and female. Secondly, intersex is not about gender identity. It is about biology.

**RECOMMENDATION 1 – That the law allows legal recognition of people born biologically both male and female. This does not require the recognition of a “third sex” but recognition that there are people who are born both male and female; the two sexes already recognised.**

The Bill proposes the following definition of gender identity -

*gender identity means:*

- (a) *the identification, on a genuine basis, by a person of one sex as a member of the other sex (whether or not the person is recognised as such):*
  - (i) *by assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or*



- (ii) *by living, or seeking to live, as a member of the other sex; or*
- (b) *the identification, on a genuine basis, by a person of indeterminate sex as a member of a particular sex (whether or not the person is recognised as such):*
  - (i) *by assuming characteristics of that sex, whether by means of medical intervention, style of dressing or otherwise; or*
  - (ii) *by living, or seeking to live, as a member of that sex.*

This definition reinforces that there are only two gender identifies – male and female – and does not include people who identify as both sexes or neither sexes.

**RECOMMENDATION 2 – That the definition of “gender identity” be broadened to be inclusive of intersex people who identify as both male and female.**

I appreciate your consideration of my submission. I invite you to contact me if you wish to discuss this submission further, and welcome the opportunity to provide further evidence at a public hearing if required.

Yours sincerely,

Cr Tony Briffa JP

