



Organisation Intersex International Australia Limited
Australian affiliate of the world's largest organization of intersex people.

1/04/2011

The honourable members of the senate enquire into marriage

Honourable senators

What is OII?

The Organisation Internationale des Intersexués (OII) is the world's largest intersex organisation with members representing almost all known intersex variations. OII has affiliates in twenty countries, on six continents, speaking ten languages, including Mandarin Chinese and Arabic.

OII is represented in Australia by **OII Australia** Pty Ltd, a not-for-profit company.

OII's Mission:¹

To support intersex individuals by providing information and contact with other intersex people.

- Campaign in favour of human rights for intersex people.
- Encourage an exchange of ideas and different perspectives about intersex from various groups and geographical regions.
- Provide information concerning actual life experiences of people with intersex variations to medical personnel working with infants with atypical sex anatomy, to psychological experts, sexologists, sociologists and specialists in feminism.
- To assist families and friends of intersex individuals to understand intersex and to cope with the specific problems related to the role as a support person.

What is Intersex?

The term Intersex was adopted by science in the early 20th century, and applied to human beings whose biological sex cannot be classified as clearly male or female. An intersex person may have the biological attributes of both sexes or lack some of the biological attributes considered necessary to be defined as one or other sex. Intersex is always congenital and can originate from genetic, chromosomal or hormonal variations. Environmental influences such as endocrine disruptors can also play a role in some intersex differences. The term is not applicable to situations where individuals deliberately alter their own anatomical characteristics.

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¹<http://oiiaustralia.com/about/mission/>

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OII Australia supports the rights of all Australians to marriage. We support the submissions of the NSW and Victorian Gay and Lesbian rights Lobby, The LGBTI health alliance and those of Dr Paul Martin and others that demonstrate the positive mental health outcomes for LGBTI (lesbian Gay Bisexual Transgender and Intersex) people when equally rights are available to them.

We note the many submissions to the senate enquiry demonstrating that marriage is a state institution and not religious, that religious organisations already enjoy wide-ranging discretion around who they may or may not admit to their church and be involved the ceremonial practices of their religion. No church is currently bound to marry people irrespective of them being male or female or in a heterosexual relationship.

We support those submissions who insist that marriage equality is a rights issue and not a religious one .

We make the following observations in so far as marriage and Intersex is concerned. Where the marriage act currently insists that a marriage must be between a man and a woman the act makes no attempt to clarify exactly what a man or a woman is.

From the legal cases we have been able to study we understand those terms would have the normal meaning as found in either the Macquarie or Oxford dictionaries.

Two cases have been contested in Australian courts of law where the sex of an Intersex person was the issue in deciding if an Intersex person can marry.

The first as in the supreme court of Victoria in the late 1960's the second in the Family Court of Australia in 1979. The later known as the case of C and D (falsely known as C) .

We are aware that a Transsexual case known as re :Kevin was also heard in the FCA is widely understood to have resolved the issues for Intersex people raised in C and C.

We contend that is not the case. We understand that in the matter of re: Kevin the individual in question was Transsexual not Intersex and was understood to be wholly male after successfully transitioning from being whole female.

Intersex are not wholly male or female and in the matter of C and C his honour found that being of

²<http://oii australia.com/about/mission/>

indeterminate sex we were barred from marriage. The intersex individual in that matter had undergone significant surgery to confirm a male sex assignment and had cardinal documents revised to reflect that surgery. The Intersex individual had differences remarkable enough to feature in medical journals of the time and was incontestably Intersex.

So in the matter of C and C the issue was not one of transitioning from male to female , man to woman, the issue was having being born as neither male or female . His honour contended, and we would agree , that irrespective of surgery or other medical interventions if one is born Intersex one remains intersex .

The situation then is that for all Intersex people in Australia today the security of our marriages, were we have them, is unsure.

If same sex marriage is allowed how then would Intersex be viewed . We under current precedent do not qualify for heterosexual marriage. If the same logic is applied we would likewise not qualify for same sex marriage.

OII Australia contends that no one can be sure of their sex in absolute terms. Each one of us is placed on a continuum somewhere between the ideals of male and female no one ever being either absolutely.

Given the large numbers of Australian Intersex people , the technical impossibility of determining what exactly makes a man or a woman and the lack of clarity in the current marriage act when it refers to a “man and a woman” we consider the act extraordinarily unfair and discriminatory against Intersex people.

Where an argument might be run that LGB people can opt to marry a person of the opposite sex if they choose, however uncomfortable that might be and Transsexual people can marry someone of the opposite sex following surgery and cardinal document change the situation remains that Intersex people can never marry if their Intersex is made known to the courts.

It is our view that rather than attempt to resolve the irresolvable and make all human beings conform to male or female anatomies irrespective of how they are born , and thereby place the burden of heterosexual certainty on Intersex bodies , the marriage act should not specify sex or gender in declaring who might qualify for that institution.

Intersex people already bear an unfair burden in ensuring sex binaries of male and female, we are subjected to conforming surgeries as children before we can consent , often with dreadful outcomes, we are subjected to behaviour modification and reinforcement from our families and councillors, we are subjected to hormone therapies where the long term outcomes are unknown. All of this to ensure we are marriage qualified.

Then in spite of these imposts whether we accede willingly or not we remain unqualified, we simply have the anatomical appearance of being marriable without lawful certainty.

Gina Wilson

President OII Australia .