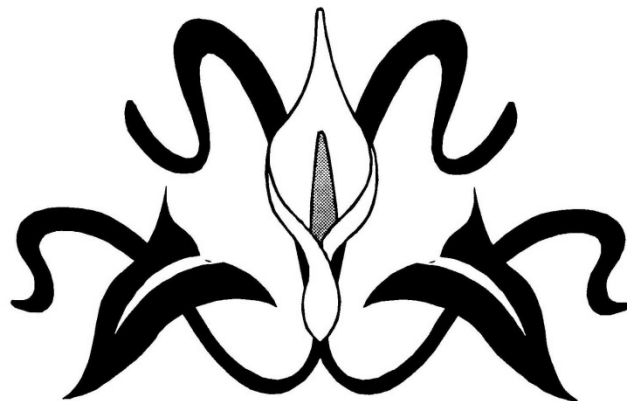


**Exposure Draft**  
**Human Rights and Anti-Discrimination**  
**Bill 2012**  
No. , 2012

ANDROGEN INSENSITIVITY SYNDROME  
SUPPORT GROUP AUSTRALIA INC.

Submission  
20 December 2012



**AIS Support Group**  
**Australia Inc.**

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## About AISSGA

The Androgen Insensitivity Syndrome (AIS) Support Group Australia Inc. (A0041398U) is a peer support, information and advocacy group for people affected by AIS and/or related intersex conditions, and their families.

We support members (both in Australia and overseas) that have any grade of Androgen Insensitivity Syndrome, and support any issues relevant to living with AIS. These issues include infertility, disclosure, hormone therapy, gender identity, surgical intervention of children with intersex conditions, sexual intimacy, etc.

We also provide support to those with related intersex conditions like Partial and Complete / Gonadal Dysgenesis, MRKH (also known as Vaginal Agenesis), 5a-Reductase Deficiency, 3b-Hydroxysteroid Dehydrogenase Deficiency, 17-Ketosteroid Reductase Deficiency and 17b-Hydroxysteroid Deficiency. (The previous name for AIS was Testicular Feminisation Syndrome).

We acknowledge that people with intersex conditions (including AIS) range from female to male, both and anywhere in between.

The AISSG Australia believes in a holistic model of health as per the World Health Organisation definition of 'health':

"Health is a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity".

The AISSGA's main concern is the health and safety of both our members and the wider intersex community. We make this submission to the commissioner with the motivation of ensuring adequate levels of legislative protection for our members and interest group.

## Legislation – Areas of Concern

### 1. **EXPOSURE-DRAFT**

*Chapter 1 Introduction*

*Part 1-2 Interpretation*

*Division 2 Interpretation*

*Section 6*

*Page 14 Human Rights and Anti-Discrimination Bill 2012,*

*disability means any of the following:*

...

### 2. **EXPOSURE-DRAFT**

*Introduction Chapter 1*

*Interpretation Part 1-2*

*Interpretation Division 2*

*Section 6*

*Page 15 Human Rights and Anti-Discrimination Bill 2012,*

*gender identity means:*

...

### 5. **EXPOSURE-DRAFT**

*Unlawful conduct and equality before the law Chapter 2*

*Unlawful discrimination Part 2-2*

*Exceptions to unlawful discrimination Division 4*

*Section 32 - 33*

*Subdivision C—Exceptions related to religion*

*Page 47 Human Rights and Anti-Discrimination Bill 2012,*

*32 Exception for appointment of priests, ministers etc.*

...

*33 Exceptions for religious bodies and educational institutions*

**4. EXPOSURE-DRAFT**

*Unlawful conduct and equality before the law Chapter 2*

*Unlawful discrimination Part 2-2*

*Exceptions to unlawful discrimination Division 4*

*Section 36*

*Page 51, Human Rights and Anti-Discrimination Bill 2012*

*36 Exceptions for competitive sporting activities*

...

**5. EXPLANATORY NOTES**

*Chapter 2—Unlawful conduct and equality before the law*

*Part 2-1—The protected attributes*

*Division 1—Guide to this Part*

*65. Division 1 provides a guide to Part 2-1 of the Bill.*

*Division 2—The protected attributes*

*Clause 17—The protected attributes*

*Page 23 Human Rights and Anti-Discrimination Bill – Explanatory Notes 2012*

**85. Gender identity:** *gender identity is introduced in this Bill as a protected attribute at the Commonwealth level. Gender identity will cover people:*

...

## ISSUES

- 1. Intersex is not synonymous with Gender Identity.** Intersex is a series of biological, genetic occurrence which are expressed in individuals as a physical divergence from classical views of male and female sex. Intersex can be medically determined. Gender identity refers to an individual's *view* of their own gender – everybody has a gender identity. Referring to both intersex and gender identity synonymously is neither linguistically, scientifically or socially correct.
- 2. “On a Genuine Basis”.** The purpose of needing to be genuinely verified in order to be protected by this legislation raises concern. Considering that there is no definition on the meaning of this statement, or who would authenticate the person's “genuine basis”. How

much of this statement concerns the person's self-determined view and how much is related to professional diagnosis or bureaucratic categorization.

3. **Either sex.** Much reference is made to one sex or another. We believe that there needs to be consideration for those who identify with **neither** sex or **both** sexes. This “neither/both” category needs to be defined to protect those who are most prone to discrimination within the intersex community. Intersex individuals may consider their gender to be either clearly defined as male or female but may also consider themselves on a continuum between these two sexes.
4. **A person of indeterminate sex.** This phrase does not clearly define intersex and transgendered individuals.
5. **Intersex as a Disability.** We are happy that the following definitions exist under disability as they potentially affect a population of our member group:
  - i. (e) the malfunction, malformation or disfigurement of a part of the body;
  - ii. (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement, or that results in disturbed behaviour; and includes:
  - iii. (h) behaviour that is a symptom or manifestation of a disability referred to in any of the above paragraphs; and

We would like to see extra wording or definitions to include syndromes, genetic conditions and mental health issues.

6. **Religious Exemption.** It is of great concern to us that intersex is covered under the term “Gender Identity” in this section particularly as the inclusion of this exemption may negatively impact on an intersex individual's access to education, healthcare and spiritual pursuits. Bear in mind that in many areas of Australia education and/or healthcare facilities are only offered by religious institutions.
7. **Sporting Exemption.** Having this exemption in the bill may provide future avenues for lawful discrimination to intersex people. As there is a diverse multitude of intersex conditions currently included under the “gender identity” category, there is no way of universally saying that intersex will provide unfair benefit to a sporting competitor. It is possible to argue that all competitive athletes have some form of genetic advantage to one another. We believe that any intersex person must be able to compete in competitive sporting, in which ever sex category they identify with.

## RECOMMENDATIONS

1. Include “Intersex” as a discrete term and protected category within the legislation and all supporting documentation, thereby separating it from “Gender Identity”. The definition of the term as outlined in the Tasmanian Anti-Discrimination Amendment Bill 2012 is adequate:

*intersex means the status of having physical, hormonal or genetic features that are –*

- (a) *neither wholly female nor wholly male; or*
- (b) *a combination of female and male; or*
- (c) *neither female nor male*

2. Remove the statement “On a Genuine Basis” completely from the legislation wherever it occurs. If it is to remain, clearly define what this phrase means and how it is determined that a person is “genuine” so as to not create a further platform for discrimination.
3. Add adequate provision for those who identify as neither sex or both sexes in the current definition of “Gender Identity” and in the proposed “Intersex” protected category.
4. In Chapter 2, Part 2-1, Division 2 of the Explanatory Notes, make the following amendment:  
**85. Gender identity:** gender identity is introduced in this Bill as a protected attribute at the Commonwealth level. Gender identity will cover people:
  - born as one sex who identify as another sex, or
  - born intersex who identify as either, **both or neither** sex or on a continuum between the sexes.
5. Replace “a person of indeterminate sex” with specific, defined terms such as “Intersex” and “Transgendered” to avoid misunderstanding.
6. In the current definition of “Disability”, add extra wording or definitions to include syndromes, genetic conditions and mental health issues.
7. Do not place the proposed “Intersex” protected category in sections 32 Exception for appointment of priests, ministers etc. and 33 Exceptions for religious bodies and educational institutions in the Exemptions to unlawful discrimination.
8. More specific language is require in the Exemptions to unlawful discrimination – Section 36 Exceptions for competitive sporting activities to ensure that people who receive no obvious competitive benefit from their intersex condition are not disadvantaged from entering competitive sport.