

## **My responses to the consultation on the Human Rights and Anti-Discrimination Bill 2012**

### **A personal Perspective**

I was born Intersex, I had no choice in the matter, however, due to society's opinions, values and discriminations I have pretty much been made to suffer because of it. I do not consider myself or my body to be defective in any way, it is just different. Because I am different I have been bullied in school, discriminated, harassed, threatened, assaulted and even shot at. Discrimination happens on a regular basis, almost as a daily event. Harassment is quite regular. I have to live a life that is basically a lie, and hide my true identity for fear of harassment and assaults. All that because I was born different.

There are laws that protect people from discrimination because they are born blind.

There are laws that protect people from discrimination because they are born deaf.

There are laws that protect people from discrimination because they are born physical disabilities.

There are laws that protect people from discrimination because they are born with developmental issues.

People don't usually go up to blind, deaf or disabled people and harass them because of that, and if they do, good people step in and put a stop to such treatment and there are laws that allow a legal response to that treatment.

There are no national laws, and in some cases, no state laws that protect people from discrimination because they are born Intersex. A large portion of society still feel it is okay to discriminate against and harass Intersex people. I feel that not only am I at great danger of being harassed and assaulted in public if I show the true me, but that there is also the least amount of protections in law to prevent that. In other words, one of the most vulnerable groups in society happens to be one of the least protected.

### **Some of the discriminations I have faced include:**

In high school I was bullied and assaulted by not only students, but also teachers in state run schools. This included constant bullying, name calling, being told I should commit suicide, being followed home and being assaulted at home, being called offensive names by teachers in class and more. This was constant throughout high school from the age of 13 once breast development began.

I have been assaulted in the street in Sydney when leaving Mardi Gras.

I have been assaulted and threatened when using a public swimming pool and when I raised the issue with staff, they both refused to do anything, then joined in the harassment.

I have had co-workers call me "The freak" while working for Defence.

Upon learning that I was Intersex, I have had so co-workers refuse to work with me, and who became physically aggressive.

I have had a manager complain that she was “sick of treating me like cotton wool” while at the same time treating a female co-worker with politeness and a lack of yelling, the same treatment I requested.

I have been accused of “not being a team player” because I didn’t want to play physical sports with male co-workers or make offensive and/or lewd jokes about female co-workers.

I have been refused permission to try on clothes in shops where as female people were allowed to.

I have been refused accommodation at Youth Hostels Australia twice when I explained I was Intersex and wanted a room that was either not gendered or a single room.

While staying at a Youth Hostel I had male guests expose themselves to me because I was put in a room with males.

I have been refused employment when applying for jobs because the employer (both private and APS) asked who my name did not seem to match my gender.

I have been told that “In our society we don’t have anyone like that (Intersex)” when I explained to a university tutor that not female does not necessarily mean male.

I was told “We know about the gender inclusive language policy, but we decided to leave that in” in reference to a university statistics question which insisted people who were not male must be female.

I was removed from university statics analysis because there was no option for “Intersex” on surveys. When I explained it would be a very simple matter to change the binary statistic to an enumerated one it was refused until the ACT Human Rights conciliation agreed to do that, a change that took mere seconds (yes seconds, not even minutes) to implement.

When the Human Rights Commission conducted their inquiry into inappropriate acts within the Defence force, they specifically requested complaints from “Men and Women”, not Intersex people, so my issues were never even looked into and I was not even invited to submit them despite sexual harassment while working for Defence.

## **Lifestyle choices.**

I have read a lot of the current submissions regarding this bill. Many of them make mention of "Gender Identity" as being a lifestyle choice. I can assure everyone that being born Intersex is not a choice, in any way shape or form. Just as being born with a disability is not a choice, being born Intersex is not a choice. However, unlike being born with a disability, where people are encouraged and empowered to be the best that they can be, Intersex people are not encouraged or empowered to be the best that we can be. There is no empowerment in terms of anti discrimination laws in many cases. There are no positive employment plans or social inclusion programs or even quotas for employment. There is almost nothing. So we have to hide who we are and go on living a lie, or be who we are and face continual discrimination.

## **Religion is a lifestyle choice.**

If people wish to use an argument that Gender Diverse people should not be protected because of a lifestyle choice, then we need to consider the lifestyle choice that is religion.

Yes, religion is a choice, be it a lifestyle choice or any other choice. People are not born religious. People are not destined to become religious. Religion is taught or learned. The proverbial babes in the wood will not develop religion without outside influences. However, the proverbial babes in the woods will also not develop gender stereotypes that society forces on to people either. Gender roles are also taught or learned. Just as ever increasing numbers of people are rejecting religion, ever increasing numbers of people are rejecting stereotypical gender roles. I argue that a non stereotypical gender identity is more natural than a religious identity.

When talking about denying the rights of people due to Gender Identity, then we should equally consider the reverse argument, denting the ability to limit rights of others, simply because someone has a religious identity.

People make a choice to be religious. That does not give them a right to limit the rights of others based on those people's Gender Identity. The whole argument of many religious groups is that "We are of Religion X, so we should be able to curtail the rights of, and discriminate against people of Choice Y." In reality, this should be stated as "We made a Choice X, and we want to discriminate against people who made Choice Y." Why should some one's choice be allowed to let them rule over others who made a different choice? The who argument then could be turned around so that people who made Choice Y can discriminate against those who made Choice X. Noticeably Gender Diverse people are not seeking to discriminate against religious people, they are just seeking to have the same protections against discrimination that other people in society already have.

I have noted also that some submissions already submitted have referred to Gender Diverse people as being perverts, a rather offensive and dubious assessment. The argument being that in the USA a Transgender child was allowed to access female toilets and that this was essentially a bad thing. Surprisingly, when a person who is Trans goes to the toilet, it is usually to just go to the toilet. There are other existing laws in place that take care of inappropriate behaviour in toilets. It is not illegal for a male to access a toilet, but if he

assaults a person or acts inappropriately in the toilet, there are laws in place already to take care of that. I think it is a bit irrational to have a law to prevent a person from accessing a toilet on the basis of what they might do where that person has no past history of inappropriate behaviour. For me personally, I just want to go to the toilet.

Additionally, I think it is completely wrong for religious groups, and Christians in particular to be calling gender diverse people perverts. I note that there is currently a Royal Commission into Church sexual abuse. Researching church sexual abuse found masses of cases of abuse by priests, clergy, church goers, members of congregations and more. I would argue that there is a far greater chance of a Christian being a sex offender and sexual abuser than a non religious person. In addition, I note a rather huge and conspicuous absence of cases in Australia of people who are Gender Diverse being involved in sexual abuse. Yes I am aware of some cases in the United States, but I have not found any in Australia, and I have looked on the same sources I searched to find cases of religious sexual abuse, notably Wikipedia and Google key word searches.

I find it unfair that a group that is notorious for sexual abuse should be calling any other group perverts, or dictating the terms under which other groups can interact with children. They need to fix up their own house first before telling others how to run theirs. I also find it extraordinary that some religious groups feel they should have the right to restrict services and access to Gender Diverse people. If they get government funding (such as to run programs / services) it should be conditional upon accepting that funding that they can not discriminate against anyone.

The latter is very important. Imagine if in a small town the only Job Services provider program to link job seekers to is a religious organisation. Imagine if they could turn away people who were GLBTI / Gender Diverse. Those job seekers could then find Centerlink saying "well you have not fulfilled your job seeker component, no unemployment benefit for you." Or worse, people seeking food assistance could be turned away from such organisations.

These protections need to be at a federal level to remove ambiguity and jurisdiction issues. I raised a complaint against a an organisation which is based in the ACT, which however was created through a Federal act. This organisation simply refused to accept the authority of the ACT Human Rights Commission. This is similar for many other organisations and government departments.

In the end, religion is a lifestyle choice. People who make the choice to be religious have no right to dictate the lives of people who are gender diverse. There is some highly credible medical evidence that Gender Identity is biological. There is no evidence that religion is biological. Certainly being Intersex is not a choice. By the argument of various religious groups, I should be able to dictate the terms under which they live and how they are or are not protected under law. I have no desire to do that however. I simply want to ensure that I, and other Intersex people have the same protections from discrimination and harassment that other people have.

## The definition of Intersex in the proposed act:

Currently the definition in the act is not a good one. It is worded as::

“intersex people (ie people born of indeterminate sex) who identify as male or female”

The big issue I have with this is that I do not identify as either male or female, I identify as Intersex, which is neither male or female. There needs to be a clearly worded definition that includes people who were born with, or later naturally developed biological attributes typically found in both males and females, such as hormones, chromosomes, or reproductive organs. Even then, that definition needs modification to include people for example who have Androgen Insensitivity (AIS). AIS people may not even know they are Intersex. They may appear as female, but have male chromosomes and no reproductive organs other than breasts. In some cases they would even have to undergo hormone treatment to develop breasts even though they look and sound female.

I prefer the following definition for Intersex from the recently proposed Tasmanian bill.

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;

With a qualifier that they be naturally developed or occurring.

The definition of Gender Diverse.

There should be no requirement to have undergone surgery to be recognised as Gender Diverse. I think a similar definition to that of being Aboriginal should be used. EG, “They Identify as being Gender Diverse and are accepted as being so by other Gender Diverse people / by other members of the Gender Diverse community.”

## Arguments.

*Text in italics are questions of this consultation process.*

*Text in blue italics are quotes from acts or websites or web site references.*

### Benefits of having a federal anti discrimination act.

*What benefit would there be in **federal** anti-discrimination laws prohibiting discrimination on the basis of sexual orientation and sex and/or gender identity?*

This bring in to place consistent laws across the country.

To send a message that such discrimination is not acceptable.

To deal with situations where it is not clear which state or territory should be dealing with complaints regarding discrimination. For example if an employee of a company based in one state harasses some one who is Trans or Intersex in another state, where is the complaint lodged? This can also help prevent such cases getting bogged down by interstate communication or buck passing.

Some territories and possibly states do not seem to have current laws to protect Intersex people. EG, the ACT. I searched the ACT Discrimination act 1991 and found that intersex people could only be protected under the act if they were considered to be discriminated against on the grounds of Gender Identity which meant:

*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 way of medical intervention, style of dressing or otherwise; or  
(ii) by living, or seeking to live, as a member of that sex.*

This wording is a bit ambiguous, as some could argue that “a particular sex” does not include intersex if the government only accepts the genders of male and female but not Intersex. I think there would be a massive benefit from having a federal law which unambiguously stated that Intersex is a gender, and that Intersex people were protected under such an act.

The Western Australian Equal Opportunity Act 1984 also seems to be poorly worded and possibly ambiguous. It only seems to protect people with a gender history, and not Intersex people. Having read that Act, I could not find any protection of Intersex people there at all. It also seems to have no protection of Trans people who have not undertaken gender reassignment surgery.

**35AA. Gender history**

(1) *For the purposes of this Part, a person has a gender history if the person identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex.*

(2) *In subsection (1) —*

*opposite sex means a sex of which the person was not a member at birth.*

**Examples of benefits of a Federal anti discrimination act.**

*What examples can I provide examples of situations where federal protections from discrimination on the basis of sexual orientation or sex and/or gender identity are needed because state and territory laws do not provide adequate protections?*

In some state acts which allow discrimination based on “adequate notice of gender identity allow for a whole range of discrimination. The following exceptions are found in the Victorian Equal Opportunity act 1995”

***Exception—gender identity***

(1) *An employer may discriminate against another person on the basis of gender identity in any of the areas specified in section 13 or 14 if—*

(a) *the person does not give the employer adequate notice of the person's gender identity; or*

(b) *the person gives the employer adequate notice of the person's gender identity but it is unreasonable in the circumstances for the employer not to discriminate against the person.*

These exceptions allow for all sorts of discrimination based around what “adequate notice” of gender identity. For example, an Intersex or Trans person could be fired from a job which they had been at for any period of time because the employer considers “adequate notice” to be notification prior to employment. A Trans person can be discriminated against because the employer deliberately insists that “adequate notice” be several years but the Trans person would prefer to transition in a shorter time frame.

The “adequate notice” clauses allowing discrimination must not be included in any federal act.

Exceptions for “standard dress and behaviour, such as the following in the Victorian Equal Opportunity act 1995 should not be used as basis of discrimination on gender.

***Exception—standards of dress and behaviour***

*An employer may set and enforce standards of dress, appearance and behaviour for employees that are reasonable having regard to the nature and circumstances of the employment.*

In NSW anti-discrimination law, it seems that Transgendered people can not play sports as the gender they identify:

[http://www.lawlink.nsw.gov.au/lawlink/adb/ll\\_adb.nsf/pages/adb\\_transgender](http://www.lawlink.nsw.gov.au/lawlink/adb/ll_adb.nsf/pages/adb_transgender)

### *Exceptions — sport and superannuation*

*There is an exception in the law for playing sport. This means that whether or not you are a recognised transgender person, you do not have the right to play single-sex sport as the gender with which you identify. You only have the right to play single-sex sport with people of your birth gender. For example, a female to male transgender person can still participate in all-female sports, but does not have the right to play all-male sport.*

*Of course, people may not mind you playing single-sex sport as your identified gender, or they may not know that you are transgender. However, if they do know, and they decide that they don't want to play with you, they can legally stop you playing.*

This needs to be changed to allow Trans / Intersex people to play sport as the gender they identify as. Barriers should also be removed against preventing Intersex people from playing sports in single sex teams where there are no other reasonable alternatives. For example, if an Intersex person wanted to play Australian rules football and there was only a male team in the area they lived, then they should be allowed to play in that team. There should not be barriers put in place to prevent them from playing in sports.

Also, I am still pretty sure that if I express that I am Intersex, and not female or male, that I can not marry. During the round table consultation one of the speakers indicated that the marriage act allows for an Intersex person to marry if they “fit” into either a male or female identity. Why should I be forced to take on a gender identity that I am not? That is like telling a female that she has to identify as a male in order to marry. I identify (quite rightly too) as Intersex. Why should I have to change my gender to marry?

### **The right to attend a single sex school.**

Intersex students should be allowed to attend a single sex school if they wish to. For example, in many smaller towns in the country there may only be high schools designated for boys only or girls only. An Intersex student should be able to choose which school they wish to attend and should not be refused permission to do so. They should not be forced to attend a school or be rejected from attending a school due to the school not being for Intersex students. For example, an all male school should not be able to reject an Intersex student if that student wishes to attend. That



child may wish to attend the school not as a male, but simply to be with friends that they grew up with. This should also be a consideration for Trans students who identify as a gender other than the one they were born as.

Currently NSW legislation does not allow for this:

[http://www.lawlink.nsw.gov.au/lawlink/adb/ll\\_adb.nsf/pages/adb\\_transgender#education](http://www.lawlink.nsw.gov.au/lawlink/adb/ll_adb.nsf/pages/adb_transgender#education)

### **Personal experiences of discrimination.**

*Have I experienced discrimination because of your sexual orientation or sex and/or gender identity for which there is no legal protection?*

Yes, as detailed above and (at least if there is legal protection I am not aware of it):

### **Provision of medical services;**

When I found a lump in my breast I was referred to a breast specialist who refused to see me straight away because "I might scare the women in the waiting room." I was instead required to wait 7 days before the specialist would see me.

### **Medicare.**

Shortly after I changed my name, I tried to update my Medicare card. I was advised that there was no option to select a gender of Intersex. I have also been advised by my medical service that if my gender with them was Intersex, it would not match my Medicare records and this would mean I could not bulk bill things or claim a Medicare rebate. Medicare confirmed this.

### **Centerlink.**

The staff at Centerlink have tried to set my gender to Intersex, but again this was not possible. In addition, Centerlink data matches my payment with my university. If my gender at either the university or Centerlink do not match the other, my payments would, and have stopped. I was sent a letter shortly after my name change to indicate that Centerlink cancelled my payment because I was no longer registered as a university student with my university. I had to explain the situation. I was lucky that staff at my Centerlink office knew of this change and fixed the issue for me. Generally I have had a positive and supportive experience at Centerlink. Some of the staff were quite supportive of the idea of changing my gender to Intersex, but were held back by their software.

### **Scholarships.**

Before attending university I attended a 1 year Year 12 equivalence program. I studied very hard and consistently scored grades well above what any other student scored. I know this for a fact, and often compared scores with other students. I also

assisted other students with their studies. However, at the end of the year during our graduation ceremony I was mortified when a scholarship was granted to another student and it was announced to the group that that she had the highest scores of any student. Later I asked to see the scores and was told that only female students were eligible for the scholarship, which was provided to encourage more female students into university. This was despite the fact that in 1996, there were more female students attending university than male students and certainly far more than Intersex students. Later it was confirmed that my scores massively exceeded those of the student who was awarded the scholarship.

### **Products and service.**

I have twice been refused permission to try on clothing at in the ACT. I have been refused permission to try on a dress at a store in the Canberra Centre, ACT. I have been both refused permission to try on clothing, and refused service at several other stores over the years.

### **Accommodation.**

Hostel staff refused to put me in a disabled room on two separate occasions when I indicated that I was Intersex and would prefer a room where there were no males. I suggested that I be accommodated in a room which was normally used to accommodate disabled people. On both occasions that room was available for use. On one occasion I was told that “you look male to me so you’ll have to go in the male dorm.” On the other occasion I was told “We put people in rooms based on the sex in their passport.” When I indicated that I did not have my passport with me but I did have my driver’s licence as the location was within Australia I was told “If you don’t have a passport we can’t book you here. Sorry that’s policy.”

I made a complaint to the hostel with regard to this and the inability to choose “Intersex” as a gender on their online booking system in 2004. Their head office also were of the opinion that they would only allow me to book rooms based on the gender in my passport. They also indicated that they would not change their online booking system to allow “Intersex” or “other” as a gender choice.

### **Government services**

More times that I can count I have encountered various forms that do not allow me to correctly indicate that I am Intersex. Some of these go on to threaten punitive action for not providing correct information. This is quite stressful as I am continually not given the option to tell the truth, and are treated if I don’t tell the truth. It wears you down after a while.

I contacted the office of Births, Deaths, and Marriages in Victoria to request that my birth certificate be changed to indicate that I was Intersex. They asked me to send a

letter requesting that in writing. I sent the letter as requested. Over a month, several emails and phone calls later I was finally told that I would need to send a letter indicating that I was Intersex and to again make the request for my birth certificate to be modified. So I did send the requested letter. Again, after several weeks, phone calls and emails I was told I needed a letter from my doctor to the effect that I was Intersex and to make the request again. So I obtained letters from two of my doctors which both indicated that I was Intersex and sent these in with another request for my birth certificate to be modified. After a considerable number of weeks, and again several phone calls and emails including some to the person in charge of birth certificates for BDM Victoria I was told that I needed two letters from my doctors detailing the exact detail of exactly how I was different from males and/or females.

At this point I gave up on the process as I had on each iteration of the process met every condition that they had set, provided all of the material they requested and sent it in, only to be met with delay, lack of communication on their part and then finally after calls on my part, a new set of standards to meet. The process was getting expensive, and showed no signs of ending. I also felt that it was extremely unfair that every time I delivered what they requested of me, that they moved the goalposts. I felt very disillusioned by the who process and felt that they were deliberately changing the goalposts so that they could have reasons not to meet my request rather than doing their best to assist me.

### **In the workplace**

While working for the Department of Defence I had a manager, tell me one day that one of the applicants for an IT position was highly qualified but that "I'm not going to employ them because they will tear this section apart." I later found out that the person in question was a Trans person who had worked for the section for a number of years as a contractor, but who's contract was not renewed shortly after they started to transition at work.

Still while working in Defence I was handed an IT job which involved changing a person's name because they had undergone gender reassignment. Co-workers made several jokes about the person. The person's privacy was not respected. Their name was disclosed to several people who had no part to play in resolving the job.

I also noted that despite gaining more qualifications, building good working relationships, instituting improved work practices and good feedback on my work, I never received a promotion in the five years while working for Defence, while others around me did. I was actually passed over by people I had trained up. It was only after I did the same job for a private company that I was promoted.

### **Vilification and harassment due to being Intersex.**

*Have I experienced vilification or harassment because of your sexual orientation or sex and/or gender identity for which there is no legal protection?*

In high school I was repeatedly bullied, verbally abused, threatened, assaulted and eventually shot at for being obviously different. One of the schools in question, a rural high school in Victoria refused to investigate the issue saying it was a police issue. When I reported it to the local police station they refused to investigate saying it was a school issue.

I think that schools should be required to provide education on what Intersex and Trans people are if they have Intersex or Trans students. Those students should be provided with **separate** change facilities and should not be required to change in front of male or female students. No school should be allowed to force a Trans or Intersex student to change in front of some one who is not of their own gender. Any person who does force an Intersex person to change with, or in front of male or female students, should face instant dismissal and an ongoing ban against working with students. Intersex and/or Trans students should not be forced to play in teams of a different gender against their will. For example, an Intersex student should not be forced to play in a team of male students against the will of the Intersex student, nor should they be coerced into doing so. If schools do not provide adequate facilities for Intersex or Trans students to change, those students should be allowed to opt out of sports programs if they wish, or if they do want to participate in the programs, the schools should be forced to provide reasonable facilities for those students.

While a public servant I was referred to as “the freak” by several co-workers and received ongoing harassment by one particular employee after I had mentioned that I was Intersex. As I understood it then, there was no protection for harassment on the basis of being intersex as the sexual harassment laws only protected males and females, and not Intersex.

### **Terminology.**

I am in favour of the use of the term **Gender** to refer to Intersex people. I mean male is a gender, female is a gender, why is it that Intersex is referred to as a Gender Identity? People born male or female are not referred to as “identifying as male or female” so why should people born Intersex be referred to as “identifying as Intersex” or as Intersex as being their “gender identity?” **I find it extremely insulting that Intersex is still not recognised for what it is, a gender, not a gender identity.**

The term “opposite sex” should not be used in such policy. I note that the term “opposite sex” is often used when setting out exceptions to state anti discrimination legislation. For example from the ACT Discrimination act 1991:

*Section 22 does not make it unlawful to discriminate against a person on the ground of that person’s sex if membership of the relevant club is available only to people of the opposite sex.*

From the Western Australian Equal Opportunity Act 1984

### **35AA. Gender history**

- (1) *For the purposes of this Part, a person has a gender history if the person identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex.*

I suggest that this obviously in itself discriminates against Intersex people and other people of indeterminate gender. I suggest that instead the term “gender other than their own” should be used. Use of “opposite sex” perpetuates that incorrect assumption that there are only two genders. Similarly, any other term which indicates that there are only two genders should not be used except when specifically referring to those two genders with the specific exception of all other genders (and specifically Intersex). Some of these terms may include, but are not limited to; “other sex”, “opposite gender”, “male or female”, “men and women”, “man and woman”, “he or she”, “girl or boy”. I suggest inclusive or non determinate terms be used when referring to a non specific gender such as “people”, “all people”, “they”, “them”, “their”, “a group”, “of a specific gender”, “of any gender”, “unspecified gender”. When referring to a specific gender, “Intersex”, “Transgender”, “female” or “male” should be used as relevant.

The term “gender reassigned” or any term which limits the act to only providing protection from discrimination against people who had reassignment surgery should be avoided. The proposed act should cover the widest variety of Trans people, which should include but not be limited to: Transgender, Transsexual, Crossdressers, Drag Queens, Drag Kings, any one else who displays, or is assumed to display, attributes of a gender other than the one they were born as.

### **Protection on the basis of assumed characteristic of gender diversity.**

*Should protection from discrimination be provided if a person has or appears to have the characteristics of any gender?*

Yes. All people should be protected from discrimination regardless of whoever and whatever they are or any specific distinguishable features or traits they have..

### **Special measures and positive employment plans.**

*What special measures designed to benefit specific groups based on sexual orientation and sex and/or gender identity should be allowed by federal anti-discrimination law?*

A positive education and employment plan. If it is good enough for females to have such things, then it is good enough for Intersex people to have such things. Failure to do so is clear discrimination. I want to be able to work and contribute to society but there are many barriers to me doing so.

Exceptions based on religion should only be allowed based on an individual's belief in that religion.. Why should a person be allowed to dictate to me that I can be discriminated against? This is particularly so in the case of employment. I understand that some religious groups are permitted to refuse to employ an Intersex person on the grounds of them being Intersex. I can understand a religious group refusing to employ some one on the grounds that the prospective person must have a belief in / understanding of that religion, but they should not be allowed to refuse employment of intersex or Trans people who do have a belief in / understanding of the religion.

One great clause that I found in the South Australian Equal Opportunity Act 1984 is:

*(2a) For the purposes of this Act, a person discriminates on the ground of chosen gender—*

*(d) if he or she requires a person of a chosen gender to assume characteristics of the sex with which the person does not identify;*

I think this is a must have for the proposed federal discrimination act. It should be a basic human right of any Trans or Intersex person to live as the gender they identify as, including Intersex. They should not be able to be forced to live as a gender that they do not identify as. I would though remove the "he or she" and replace it with "they" and change "*the sex with which the person does not identify*" to "*any gender with which the person does not identify*"

## Additional points:

I found this section of the Western Australian Equal Opportunity Act to be particularly worthy of being included in a federal act.

### 35AQ. *Application forms etc.*

*Where, by virtue of a provision of Division 2 or this Division, it would be unlawful, in particular circumstances, for a person to discriminate against a gender reassigned person on gender history grounds in doing a particular act, it is unlawful for the first-mentioned person to request or require the gender reassigned person to provide, in connection with or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons who do not have a gender history would not, in circumstances that are the same or not materially different, be requested or required to provide.*

Basically, the federal act should make it discrimination for forms to request information such as past names / gender etc. where there was no obvious need for such information. I would accept that in relation to security clearances, police checks, tax forms, company management or circumstances where knowledge of past names was needed, that past names should be provided. However this information should not be asked for where there was no reasonable need, such as library membership, hotel room bookings etc.

The Queensland ANTI-DISCRIMINATION ACT 1991 includes the following clause:

### *28 Work with children*

*(1) It is not unlawful to discriminate on the basis of lawful sexual activity or gender identity against a person with respect to a matter that is otherwise prohibited under subdivision 1 if--*

*the work involves the care or instruction of minors; and*

*the discrimination is reasonably necessary to protect the physical, psychological or emotional wellbeing of minors having regard to all the relevant circumstances of the case, including the person's actions.*

I don't see the benefit of this clause. I do see the benefit of protecting children from unlawful sexual activity or predation. But seriously, what child is going to know the difference between a person of a particular gender based on that person's gender preference? And even if they do, is it practical or fair to hide such people from children? Would it be better that children learn young that society is a diverse place, with diverse people and allow those diverse people to work with children provided

they passed all police checks and other working with children laws applicable equally to all other people?

Also, this clause makes it impossible for an Intersex person to work with children in Queensland. **This means they can not be a teacher, or even a bus driver, and if they are one, they have to leave their job.** Why should some one be banned from work based on who they were born as? Is there any proven statistic that suggests that intersex people are more likely to be a danger to, or harm children? I seriously doubt that would be the case, instead I think there is a far better case against priests and the clergy working with children based on the hundreds (if not thousands internationally) of cases of them sexually abusing children. If there is no proven reason for this clause, then it should be specifically overturned in a federal law. Once again, children should learn from a young age that society is diverse, and diverse people should be allowed to work with children. The more children become aware of how diverse society is, they will see it as normal and this in turn will lead to less future discrimination.

As a young child I grew up in an inner Melbourne neighbourhood. At school there were kids from all over the world. There were plenty of Greek, Vietnamese, and Italian kids. There were in my class Greek, Vietnamese, Italian, Yugoslav, Scottish, Ethiopian, New Zealander, Middle Eastern and other kids. We all got along okay. There was no race based bullying or teasing. We all just took our differences for granted, accepted each other and got along fine. On the other hand, as I was Intersex and obviously different, I was teased by a few. If kids are shown that Intersex and Trans people are a normal part of society they will adapt and accept them as being normal.

The current concept that children need to be protected from Intersex and Trans people is silly, particularly in the case of Intersex people. An Intersex person can not be blamed for how they were born, nor should they be forced to be ashamed of who they are. This is akin to medieval times when people born with disabilities were hidden away, or worse, killed off at a young age. Is it acceptable to discriminate against some one born blind, some one born deaf, some one born with cerebral palsy? No. So why is acceptable to discriminate against an Intersex person? Especially when so many efforts are being made to intergrade people who are blind, deaf or who have cerebral palsy into society? If a blind person, deaf person or a person with cerebral palsy had the skills, the will power and the ability to work with children, then they would be encouraged to do their absolute best and to work with children? Why should I, an Intersex person, be banned from working with children based purely on my birth? I have no criminal record, am extremely non violent, have never abused a child, rarely ever raise my voice and rarely ever swear. If I choose to work with children, should I not have the same rights to do so as others? In fact, it comes down to the very core of self determination here. I should be able to do any



job that any other person can do if I have the ability to do so. My choice of job should not be decided upon by other based on discrimination.

I think that this particular clause is less about protecting children, and more about closing children's minds to the knowledge of Intersex and Trans people. I think that adults don't want their children knowing that if they feel uncomfortable as the gender that they are, that they can change it. This is similar to the situation where gay and lesbian teachers often caused an uproar with parents because the parents were worried that the teachers would "warp" their children's minds. Perhaps parents don't want their children to be aware that they can change their gender if they so choose to?

## Additions

### Security screenings.

Gender diverse people should be subject to the same security screenings as other people. However, their gender should not be the basis of a security check or search. For example, a Trans person at an airport should not be directed towards a security screening just because their identity documents indicate one gender, while their appearance indicates another gender. Similarly, Trans people should not be singled out for searches if a nightclub is being searched for whatever reasons.

When doing frisk searches, consideration should be made for the chosen gender of Trans people, and for the fact that some Intersex people identify as Intersex, which is not male, or female. Trans and Intersex people should be able to nominate the gender of the officer who frisks them. Also, there should be an option for people to choose one gender frisk one part of their body while another gender frisk another part. For example, a pre-operative male to female Trans person may have developed breasts, but who has not undergone reconstructive surgery may feel more comfortable with a woman frisking their upper half and a male frisking their lower half.

### Imprisonment.

As shown by this story, Trans people are still being put into prisons which do not represent their presenting gender. <http://mcv.gaynewsnetwork.com.au/news/trans-death-in-custody-inquiry-demanded-007648.HTML>

Trans people should be put in prisons of the gender they are presenting as. Current policies also tends to require that they be put into isolation and are not allowed to mix with other prisoners. I can see that in some situations that would be for their

protection. However, that should be their choice. They should not be treated differently from other prisoners.

When it comes to Intersex people, I know that I personally am terrified of ever being sent to jail. I am extremely law abiding as a result. I fear being in the wrong place at the wrong time and end up being swept up in something that would land me in jail or some other form of detention. I drive very safely for that reason.

I do not know if there are any policies on Intersex people in prisons, in particular, people like myself who do not identify as being male or female. What would happen to me if I did go to jail? I suspect that if I was placed in a male prison that I would be raped almost constantly due to having breasts. Naturally this would probably lead to fatal depression. I think it is VERY important that a suitable federal policy be created to protect Intersex people in the prison system.

It is also probably worth noting that for these reasons, that Trans and Intersex people will probably have one of the lowest offender rates in society, but will probably face some of the highest harassment and attacks in prison. I was thinking that perhaps there should be a special prison for Trans and Intersex people, but then again that is in itself discrimination, and would see us being separated from our family and friends unnecessarily.