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Senate Standing Committee on Legal and Constitutional Affairs
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Exposure Draft of the Human Rights and Anti-Discrimination Bill, 2012

Thank you for the opportunity to comment on the Exposure Draft of the proposed Human Rights and Anti-Discrimination Bill, 2012. I am glad that the bill aims to protect intersex people, such as myself.

I have a collection of medical issues that, together, have led multiple doctors to describe me as intersex, even though these diagnoses were only formally made in my 30s. Diagnosis was preceded by a series of medical examinations, and followed, a year later, by a series of four surgical procedures that took place within four months. The outcomes of one surgery were non-consensual, and I struggle still with the impact of that.

In my life, the most difficult and, indeed, damaging experiences that I've had have been where people have incorrectly judged me on the basis of my legal gender or my presentation. When the current government broadened the eligibility for a passport with an 'X' sex descriptor, I took the option. Previously, due to a reform by the Howard government in 2002-3, a birth certificate showing intersex status was required; as I understand it, only Victoria issues such birth certificates in Australia. My home country doesn't.

I have plenty of medical documentation showing my status, and my GP (who stood with me through diagnosis and who I'm immensely grateful for) was obliging in providing me the summary statement needed to obtain an 'X' passport.

The Passport Office states:

"this initiative is in line with the Australian Government's commitment to remove discrimination on the grounds of sexual orientation or sex and gender identity" - Australian Passport Office,
<https://www.passports.gov.au/web/sexgenderapplicants.aspx>

It is therefore hugely disappointing to me that the current proposals in the Human Rights and Anti-Discrimination Bill, Exposure Draft, explicitly reject protection for people, like me, who are intersex and who do not fully or "on a genuine basis" identify as one or other sex.

This is inconsistent with the recognition given to me by the Commonwealth. I don't personally regard my passport as marking me as a member of a third sex or gender. I'm uncomfortable with that notion. Rather, I see it as an opt out of a system of belief that I can't live up to.

This is also inconsistent with the bill's intention to otherwise protect people who are perceived to have a protected attribute, or who associate with people who possess such attributes.

For the first time in my life, I can understand what trans people go through when they change their documentation. Obtaining an X passport is very different in many ways - I haven't changed my appearance or name. I use the same (male) toilet as before. My need for testosterone hasn't changed and, in fact, I needn't have gone through any of the surgical experiences I have had to be able to qualify for the passport.

Nevertheless, the passport presents some challenges with service providers who have computer systems that require me to specify a sex or gender what isn't an accurate description.

Intersex is not an identity, although it could be argued that a non-normative gender identity is a logical consequence of having biological differences.

My name and address are withheld from this submission due to the lack of protection in the proposed bill for intersex people with non-normative gender identities, and the potential impact on my work.

For these reasons, I ask that the definition of intersex used in the 2012 Tasmanian Anti-Discrimination Amendment Bill 45 of 2012 be inserted into the federal bill. I also ask that the Tasmanian definition of "gender identity" replace the definition proposed in the Exposure Draft.

I'm a member of Organisation Intersex International Australia Limited (submission 12). OII Australia is proudly a member of the National LGBTI Health Alliance, and a member of ILGA, the International Lesbian, Gay Bisexual, Trans and Intersex Association. I believe we were the first intersex organisation to join ILGA. We joined ILGA in an understanding that the issues we face in society because of our biological inability to conform to sex and gender norms are fundamentally the same as the issues of prejudice and homophobia that gay men, lesbians, bisexuals and trans people face.

I support the OII Australia submission, and also the submissions by the Androgen Insensitivity Support Group Australia (submission 298) and Councillor Tony Briffa (submission 203).

Just as the homophobia that intersex people face is an LGBTI issue, so is the homophobia that LGBTI people face an intersex issue. I stand in solidarity with my trans, gay, lesbian and other queer friends. I also support the submissions by the National LGBTI Health Alliance and by the AIDS Council of New South Wales (ACON). I

believe that religious exemptions as proposed should not apply to publicly-funded activities by religious organisations.

To those who support the Exposure Draft's religious exemptions on grounds of sexual orientation or gender identity, I question why you are willing to countenance discrimination against intersex people because of our biological differences. And if you can understand why intersex status should not face such discrimination, I hope you can begin to understand why no LGBTI groups should face that either.

I do believe that people are entitled to their views; I also accept that causing offence can be warranted, such as in the pursuit of insight or art. However, it is incumbent on people to rationally justify their views when they could adversely impact on the lives of other people. We live in a society where religious belief is no longer a prerequisite for high office, or any public office. I feel that it is important that religious belief be recognised as important in its place to people who believe, but, services provided by religious organisations – particularly those in areas with few secular alternatives – should not be privileged in how they utilise public funds.

I ask that the religious exemptions in clause 33 be replaced by an exemption applying only to the non-publicly funded activities of religious organisations.

Thank you for the consideration of my submission.