



**Organisation Intersex International Australia Limited**  
For intersex human rights, information, and peer support

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## **Response to draft federal Guidelines on Recognition of Gender**

### **Organisation Intersex International Australia Limited**

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## **1. Introduction**

We would like to thank the government, and in particular the staff of the Attorney General's Department, for their leadership on gender recognition issues, and the drafting of pragmatic, helpful guidelines.

This report represents a major shift in the recognition of the gender identities and sex of intersex people, along with the recognition of trans and gender diverse people.

We welcome the document, and the decision to make documentation consistent across government. We broadly support the guidelines, with a few concerns related to travel safety, and towards improving clarity, consistency and readability.

## **2. Guiding principles**

Our guiding principles in reviewing this report are that:

1. Intersex people should not be required to identify as a gender to which they were assigned at birth, as a binary gender assignment does not reflect sex at birth.
2. Because of our innate chromosomal, anatomical or hormonal sex differences, and because of a history whereby those differences were surgically normalised, we should not be obligated to modify our bodies to conform to a gender assignment.
3. We should not be required to identify ourselves as one gender in one situation and another gender in another, unless that is a personal choice.
4. Intersex people should not be required, as a category, to identify ourselves as a third sex. We believe that a third sex category would be harmful.
5. Terminology should be clear and precise, easy to disambiguate, and not conflate identity and biology. Terminology must recognise that intersex and trans are distinct, and avoid presumptions of a homogeneous commonality of interest and needs.

With the exception of principle (5), these principles are largely satisfied in the proposed guidelines.

We additionally have some concerns about principle (3), as intersex Australians may find it necessary to have a passport that shows a binary sex overseas, to avoid potentially adverse consequences, while that does not reflect our actual sex or gender identity in all other circumstances.

### 3. Guidelines on recognition of gender identity and intersex status

Given that intersex is not, *per se*, a gender identity, and given that the forms in appendix A relate to both sex and gender, consideration should be given to titling the proposed document “Guidelines on recognition of gender identity and intersex status”.

This would match the relevant attributes in the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013, currently before parliament, and make the full scope of the guidelines both explicit and clear.

#### Recommendation

Title the guidelines “Guidelines on recognition of gender identity and intersex status”.

### 4. Personal titles should be optional

For most people – those of us who do not have an honorific title like doctor, bishop, nurse or constable – the titles attached to our names are gendered.

Acceptance of “Ms” as a title took many decades. The New York Times suggests that it was first promoted in 1901, but it was 1989 when the newspaper embraced it<sup>1</sup>. Acceptance of the title ‘Ms’ took many women many years of battling, and hand-writing it, in place of Mrs and Miss, on paper forms. The design of digital forms precludes the possibility of any similar shift on new gendered, and non-gendered, titles.

No non-gendered equivalent to Mr or Ms exists, yet we believe that these guidelines would have failed if a person with an ‘X’ identity document was required to identify themselves with the title Mr or Ms.

Some people have suggested the creation of a new title, “Mx”, but that is also gendered in a sense, being considered short for “mix”; it’s not conceived as being for everyone. There’s no evidence of widespread support for Mx, even anecdotally amongst Australians with ‘X’ passports, and we do not support it as a match for ‘X’ identity documents.

Ideally, we would welcome the use of a freeform field for title. However, our highest preference is simply for the ability to opt out of giving a title. A title should not be required.

#### Recommendations

Personal titles should be voluntary, not obligatory.

The use of a freeform text field for an optional title is desirable.

### 5. Overseas travel

There may be a conflict between a person’s identity living in Australia, and potentially adverse consequences that may arise from the disclosure of that identity while travelling internationally, whether for work or pleasure.

Currently, the Australian government issues “X” passports with a disclaimer regarding the utility and safety of such passports for overseas travel. Indeed, concern about such issues limits their attractiveness to many intersex people. It is outside the scope of this consultation process, but we hope that the Department of Foreign Affairs and Trade will address this issue in its advocacy work, just as it addresses broader issues related to sexual orientation, gender identity and intersex.

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<sup>1</sup> New York Times, 23 October 2009, “On Language – Explaining the Origins of Ms. – NYTimes.com, [http://www.nytimes.com/2009/10/25/magazine/25FOB-onlanguage-t.html?\\_r=0](http://www.nytimes.com/2009/10/25/magazine/25FOB-onlanguage-t.html?_r=0) accessed 1 April 2013.

We recognise that many people may wish for documentation at home that correctly reflects their sex, but may require travel documentation for use overseas that does not single them out as different. There is a strong case for the availability of passports with a binary (M/F) sex descriptor for people who otherwise are intersex or identify as indeterminate/unspecified.

### **Recommendation**

Passports should be available with an M or F sex descriptor for people who otherwise have documentation reflecting a non-binary gender.

## **6. Timescale**

While recognising that paper systems may take time to change, we would welcome a shorter timescale for digital data systems.

### **Recommendation**

Introduction on a 1.5 year timescale for digital data systems.

## **7. Legislative or regulatory footing**

We are aware that the current passport regulations do not have a legislative basis. We also note that, on page 5, point 20, that there are legislative or regulatory requirements for the collection of sex or gender information in some cases.

### **Recommendation**

It would be advantageous for the Government Guidelines on Gender to be placed on a legislative or regulatory footing. The Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013, currently before parliament, provides an opportunity to achieve this.

## **8. Adoption by other Australian governments**

We hope that the adult gender recognition guidelines will be adopted by other branches of government.

### **Recommendation**

The guidelines should be put forward for adoption by the Council of Australian Governments.

## **9. “Sex and/or gender diverse”**

The term ‘sex and/or gender diverse’ is used in the guidelines, albeit largely in reference to historical documents. The term is often treated as synonymous with trans and gender diversity, even though it purports to include intersex people as a form of “sex diversity”. This terminology is not used by intersex communities or organisations in Australia, nor internationally. We recommend that terminology that relates to both intersex and trans communities should:

- Recognise that intersex and trans are two distinct communities and avoid presumptions of a homogeneous commonality of interest and needs.
- Not erase the needs and issues of one community, but promote visibility and understanding of both communities.
- Promote clarity about what it means and who it refers to.
- Be legible to a broad audience, including in Australia but also internationally.
- Be concise.
- Be easy to disambiguate.
- Avoid abbreviation in ways that imply a homogeneous community of interest.
- Not necessarily be a single fixed phrase: terminology could vary, both in the order of words to describe intersex and trans communities, and even in descriptors for trans and gender diverse communities.
- Most importantly, reflect usage within the communities it refers to. In the case of reference to intersex people, communities and organisations, this will involve clear use

of the word “intersex”.

We strongly encourage the use of the term ‘intersex’ to refer to intersex people and our needs.

The National LGBTI Health Alliance has recently ceased use of the term as a result of community consultation, in favour of the terms “Intersex, Trans and Gender Diversity”. Family Planning Victoria, Gay and Lesbian Health Victoria, TransGender Victoria, and Y Gender have also acknowledged concerns about the term<sup>2</sup>. Other groups (such as A Gender Agenda, Canberra) are following suit.

In addition to addressing community concerns, removing the term “sex and/or gender diverse” from the guidelines would make the report shorter, easier to read, more precise and less jargonistic.

## Recommendations

We recommend the replacement of the term “sex and/or gender diverse” throughout with the term “intersex, and trans and gender diverse”, or “intersex, or trans and gender diverse”, as appropriate.

In paragraph 5, replace:

*“recent changes to the Australian Government passport policy for sex and/or gender diverse applicants.”*

With:

*“the implementation of the gender recognition policy for Australian passports”*

In footnote 3, replace:

*In September 2011, the Minister for Foreign Affairs and the Attorney-General launched a new Australian Government passport policy for sex and gender diverse applicants. The passport policy was the first step in changing the way the Australian Government recognises sex and/or gender diversity in its records and documents. Under the passport policy, sex reassignment surgery is not a prerequisite to issue a passport in a new gender. Birth or citizenship certificates do not need to be amended for sex and gender diverse applicants to be issued a passport in their preferred gender. A letter from a medical practitioner certifying that the person has had, or is receiving, appropriate clinical treatment for gender transition to a new gender, is intersex and does not identify with the sex assigned to them at birth, is acceptable evidence of gender identity. A passport in a new sex may also be issued to applicants who have undergone sex reassignment surgery and have registered their change of sex with Registrars of Births, Deaths and Marriages or the Department of Immigration and Citizenship. A passport may be issued to sex and gender diverse applicants in M (male), F (female) or X (indeterminate/unspecified/intersex).*

with:

*In September 2011, the Minister for Foreign Affairs and the Attorney-General launched a new Australian Government passport policy, such that birth or citizenship certificates do not need to be amended for applicants to be issued a passport in their preferred gender, and sex reassignment surgery is not a prerequisite to issue a passport in a new gender. A letter from a medical practitioner certifying that the person has had, or is receiving, appropriate clinical treatment for gender transition to a new gender, or is intersex and does not identify with the sex assigned to them at birth, is acceptable evidence of gender identity. A passport in a new sex may also be issued to applicants who have undergone sex reassignment surgery and have registered their change of sex with Registrars of Births, Deaths and Marriages or the Department of Immigration and Citizenship. A passport may be issued in M (male), F (female) or X (indeterminate/unspecified/intersex).*

In paragraph 18: replace:

*This classification system is consistent with the Australian Government passports policy for sex and gender diverse applicants.*

with:

*This classification system is consistent with the gender recognition policy for Australian passports.*

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<sup>2</sup> See submission to the ABS “review of the sex standard / potential new gender standard”, February 2013, <http://www.fpv.org.au/assets/Family-Planning-Submission-re-ABS-gender.pdf>

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Paragraphs 39 and 41: remove the term:

*sex and/or gender diverse community*

replace with:

*intersex, and trans and gender diverse communities*

Remove the definition “Sex and/or Gender Diverse” from Key Terms.

Remove the term “sex and gender diverse applicant” from Appendix A. additionally, remove duplicate sentence. Replace first paragraph:

*This sample text is for a letter from a registered medical practitioner certifying the sex and/or gender of a sex and gender diverse applicant.*

with:

*This sample text is for a letter from a registered medical practitioner certifying the sex and gender of a intersex, or trans or gender diverse applicant.*

Omit duplicated sentence in part 2, replacing:

*2. For people who are intersex/indeterminate/unspecified*

*This sample text is for a letter from a registered medical practitioner certifying the gender of someone who is sex and gender diverse applicant. This letter should be used for applicants who are intersex or gender diverse.*

with:

*2. For people who are intersex/indeterminate/unspecified*

*This letter should be used for applicants who are intersex or gender diverse.*

## **10. Appendix A**

The forms certify both the sex and gender of intersex people, and trans or gender diverse people. One paragraph is unnecessarily duplicated, immediately preceding (1.), and immediately following point (2.).

### **Recommendations**

The form, as amended, should replace the existing template in use by DFAT.

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