



## **NSW Registrar of Births, Deaths and Marriages v. Norrie: implications for intersex people**

10 February 2014

### **1 Background**

The High Court appeal in the Norrie case (High Court case S273/2013) raises the stakes for intersex people, globally, in a way that is of deep concern. We believe that Norrie’s strategy is long-standing, with a track record that seeks to utilise intersex to deliberately “*mess with the system*”. At the same time, Norrie’s legal arguments about surgically-demarcated identities are antithetical to the goals of the intersex movement.

Intersex people are collateral damage in this process. We seek an outcome that recognises Norrie as trans, and not as intersex. The submissions to the High Court cause doubt, despite earlier court decisions. This briefing paper, which accompanies a longer paper on *Intersex people and identification documents*, sets out our case.

Organisation Intersex International (OII) Australia is a national body by and for intersex people. We promote the human rights and bodily autonomy of intersex people in Australia, and provide information, education and peer support. OII Australia is a volunteer-run, not-for-profit company, recognised by the Australian Taxation Office as a charitable institution.

Intersex people are born with variations in physical sex characteristics, such as anatomy, genetics or hormones. Intersex status is not about gender identity or sexual orientation, yet intersex people face many of the same issues as lesbian, gay, bisexual and transgender people, and people with disabilities.

### **2 Contents**

|     |   |   |
|-----|---|---|
| 1   | Background .....  | 1 |
| 2   | Contents .....  | 1 |
| 3   | Intersex in the High Court case .....   | 2 |
| 4   | Risks.....  | 2 |
| 5   | Definitions of intersex .....   | 4 |
| 5.1 | World Health Organization.....  | 4 |
| 5.2 | Office of the UN High Commissioner for Human Rights .....                                 | 4 |
| 5.3 | Council of Europe .....   | 5 |
| 5.4 | Australian definitions.....   | 5 |
| 6   | Intersex and trans – key literature .....   | 6 |
| 6.1 | Intersex as a psychological defence among "transphobic" transsexuals .....                | 6 |
| 6.2 | <i>Dangerous Intersections: Intersex and Transgender Differences</i> .....                | 6 |
| 6.3 | Intersex and hermaphrodite in <i>Principles of Transgender Medicine and Surgery</i> ..... | 6 |
| 7   | Sex and Gender Education (“SAGE”).....  | 8 |
| 7.1 | Norrie’s autobiography.....   | 8 |
| 7.2 | “Sex and/or gender diverse” .....   | 8 |
| 7.3 | “Trans as intersex” .....   | 9 |

### 3 Intersex in the High Court case

Much of the High Court appeal is focused on definitions of intersex, and whether or not the existence of intersex people is relevant to New South Wales on the registration of births. The State argues that only male and female categories are recognised and necessary. Norrie and Norrie's legal team argue that an additional category of "non specific" or "intersex" is necessary and permissible under the existing law.

We detail our position on birth registrations in a separate briefing paper, *Intersex people and identification documents*<sup>1</sup>. Here we focus on the broader issues on our community that are raised by the case.

Norrie's background, as stated in Norrie's own autobiography and court statements by Norrie's legal team, is of a transsexual, born male. Norrie consented to sex affirmation surgery, but subsequently prefers a non-binary identity, i.e. an identity that is neither male nor female.

In the High Court, Norrie's team is the respondent in an appeal by the State. In parts 39 and 40 of the respondent's case, they argue in favour of using the word 'intersex' and synonyms to describe Norrie.

*39. ... "Non- specific" is suitable, but "intersex" is another possible description. Despite Professor Greenberg's definition (CA [1 09]), there is no reason to confine it to congenital intersexuality and current and proposed legislative definitions of that expression do not so confine it. Indeed, the mythological origins of the word "hermaphrodite" relate to a person who acquired that status as an adult.*

Paragraph 40 presents a perplexing and unrealistic hypothesis, which seeks to surgically align body and identity. As in the previous appeal of this case, Norrie's arguments posit an intersex identity as an outcome of a failed surgical process:

*40. (AS 51-52) The Court of Appeal was correct to identify the significance of intersex persons to the operation of Part SA. Referring back to the hypothetical indicated earlier in these submission, Part SA of the Act should not preclude a person mis-identified as a male but who is an intersex person and who has a surgical procedure in the expectation or hope that by doing so, it may assist them to identify further as male or female, but who in the result, does not identify as male or female, from applying to register a change to 'intersex', since, as noted earlier, the criteria ins 32DA(l)(c) does not mandate the result that a person identifies exclusively as male or female. That person may, following the surgery, continue to have characteristics not univocally fitting the binary norm, and identify as an intersex person.<sup>2</sup>*

The respondents refer to the federal *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013*. However, this explicitly and correctly recognises "intersex status" as separate and distinct from gender identity issues, and from sex and sexual orientation<sup>3</sup>.

### 4 Risks

Much of the case focuses on the use of surgery to demarcate and justify legally approved

---

<sup>1</sup> Available at <http://oii.org.au/24378/intersex-people-and-identification-documents/>

<sup>2</sup> High Court of Australia, 16 January 2014, *Case S273/2013, NSW Registrar of Births, Deaths and Marriages v. Norrie*, [http://www.hcourt.gov.au/cases/case\\_s273-2013](http://www.hcourt.gov.au/cases/case_s273-2013), accessed 20 January 2014.

<sup>3</sup> Government of Australia, Comlaw, 2013, *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013, No. 98, 2013*, <http://www.comlaw.gov.au/Details/C2013A00098> accessed 18 January 2014.

identities. Sections 18 and 22 of the respondent's case state:

18. ... read literally, Part 5A would not even preclude an intersex person, not born in New South Wales, who does not identify exclusively as male or female, but who identifies as an intersex person, who has surgery for the purpose of confirming that the person is a halfway between male and female (that is, a hermaphroditus verus).

22. ... The true position for Norrie, after the surgery, is that, physically, she is not unequivocally male or female and, psychologically, she does not specifically identify as male or female. The record of alteration, or "change" of sex, following that surgery, on an official register should reflect that position.

The reliance on surgery to confirm an identity, and the conflation of (post-surgical) intermediate sex appearance and an intersex identity both risk reinforcing perceptions that bodies and identities *must* match each other to be valid. The impact of this on people born intersex is that it reinforces contentious surgeries to make intersex people 'appear' male or female. The goals of the intersex movement are to be accepted the way we are born.

The conflation of intersex status with an intermediate gender identity reveals a very narrow and unrealistic vision of who intersex people are. It's also damaging: it reinforces notions that intersex people who identify as male or female are not valid or considered suspect; should Norrie win the case, these issues will be exacerbated<sup>4</sup>.

Intersex people have a range of gender identities, just as non-intersex people do. Federal guidelines on the recognition of sex and gender recognise that intersex people may legally identify as male, female or X<sup>5</sup>. Intersex people include mothers with adopted or natural children, men with facial hair, and people of androgynous appearance. Some intersex people have identities that are both male and female. Our identities often do not match our appearance.

The political goals of Norrie and fellow members of Australian organisation Sex and Gender Education are stated to "*really mess with the system*"<sup>6</sup>. We resist the instrumentalisation of intersex by trans groups; its appropriation for other purposes.

Such an ambit claim erases intersex people as a distinct group with our own distinctive lives and experience. Indeed, over recent years, a great number of press articles have sought to present Norrie as the face of intersex issues in Australia<sup>7</sup>.

Conflating intersex and trans risks confusing the public about the nature of intersex and our concerns. Identity issues obscure our health concerns. Conflating intersex and trans also

---

<sup>4</sup> See, for example, <http://www.theguardian.com/commentisfree/2013/jun/18/intersex-people-australia>, <http://www.washingtontimes.com/news/2013/jun/4/66-year-old-man-finds-out-hes-really-woman/>, and [http://www.huffingtonpost.co.uk/2013/06/05/hong-kong-man-66-with-swollen-stomach-discovers-woman-doctors-turner-syndrome\\_n\\_3388565.html](http://www.huffingtonpost.co.uk/2013/06/05/hong-kong-man-66-with-swollen-stomach-discovers-woman-doctors-turner-syndrome_n_3388565.html)

<sup>5</sup> Australian Government, Attorney-General's Department, 30 May 2013, *Australian Government Guidelines on the Recognition of Sex and Gender*, <http://www.ag.gov.au/Publications/Pages/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.aspx>, accessed 18 January 2014.

<sup>6</sup> Tracie O'Keefe, undated, *Trans as intersex: Crossing the line*, in *The Scavenger*, <http://www.the-scavenger.net/isgd/trans-as-intersex-crossing-the-line-56934-369.html> accessed 18 January 2014.

<sup>7</sup> See, for example, Anna Chapman in *The Conversation*, 20 November 2013, <http://theconversation.com/beyond-male-and-female-time-for-a-non-specific-sex-category-20159> or Fairfax's *Daily Life*, 8 November 2013, <http://www.dailylife.com.au/news-and-views/dl-opinion/norrie-maywelbys-battle-to-regain-status-as-the-worlds-first-legally-genderless-person-20131107-2x3nh.html>, and international press like *El Tiempo*, 5 October 2013, [http://www.eltiempo.com/vida-de-hoy/salud/derechos-de-intersexuados\\_13103276-4](http://www.eltiempo.com/vida-de-hoy/salud/derechos-de-intersexuados_13103276-4) complete with info graphic with picture of Norrie at <http://www.eltiempo.com/Multimedia/infografia/intersexualidad/>

risks damage to the development of optimal medical and legal protocols for intersex people<sup>8</sup>.

## 5 Definitions of intersex

There are no established definitions of intersex that are based upon identity. All definitions in use are based upon biological characteristics. Most definitions recognise that intersex is congenital; people are born intersex. Definitions that do not specifically state this have a relevant context, or are contested. Many definitions of intersex contrast intersex with trans and gender identity issues.

### 5.1 World Health Organization

The World Health Organization's Genomic Resource Centre states the following:

*Intersex is defined as a congenital anomaly of the reproductive and sexual system.*<sup>9</sup>

Norrie was not born with any anomaly of the reproductive and sexual system. Norrie is established to have been born unambiguously male, and has simply brought Norrie's physical characteristics into line with a non-binary gender identity.

### 5.2 Office of the UN High Commissioner for Human Rights

The Office of the UN High Commissioner for Human Rights (OHCHR) defined intersex as follows, as part of a "Free & Equal" campaign, 2013<sup>10</sup>:

*An intersex person is born with sexual anatomy, reproductive organs, and/or chromosome patterns that do not fit the typical definition of male or female. This may be apparent at birth or become so later in life. An intersex person may identify as male or female or as neither. Intersex status is not about sexual orientation or gender identity: intersex people experience the same range of sexual orientations and gender identities as non-intersex people.*

The OHCHR also defined transgender, in terms that include people, like Norrie, with non-binary gender identities:

*Transgender (sometimes shortened to "trans") is an umbrella term used to describe a wide range of identities — including transsexual people, cross-dressers (sometimes referred to as "transvestites"), people who identify as third gender, and others whose appearance and characteristics are perceived as gender atypical. Transwomen identify as women but were classified as males when they were born. Transmen identify as men but were classified female when they were born. Some transgender people seek surgery or take hormones to bring their body into alignment with their gender identity; others do not.*

Non-binary gender identities appear to be particularly common in some Pacific countries and South Asia<sup>11</sup>. We commend the definitions used by the OHCHR.

---

<sup>8</sup> See intersex issues here: <http://oii.org.au/24241/public-statement-by-the-third-international-intersex-forum/>

<sup>9</sup> World Health Organization Genomics resource centre, 2013, *Gender and Genetics*, <http://www.who.int/genomics/gender/en/index1.html>, accessed 19 November 2013.

<sup>10</sup> Office of the UN High Commissioner for Human Rights, 2013, *Free & Equal Campaign Fact Sheets, LGBT Rights: Frequently Asked Questions*, [https://unfe-uploads-production.s3.amazonaws.com/unfe-7-UN\\_Fact\\_Sheets\\_v6\\_-\\_FAQ.pdf](https://unfe-uploads-production.s3.amazonaws.com/unfe-7-UN_Fact_Sheets_v6_-_FAQ.pdf), via <https://www.unfe.org/en/fact-sheets>, accessed 19 November 2013.

<sup>11</sup> See, for example, Morgan Holmes, July 2004, *Locating Third Sexes*, in *Transformations Journal*, issue 8, [http://www.transformationsjournal.org/journal/issue\\_08/article\\_03.shtml](http://www.transformationsjournal.org/journal/issue_08/article_03.shtml), accessed 20 November 2013.

### 5.3 Council of Europe

The Council of Europe, in an explanatory memorandum to Resolution 1952/2013 on *Children's right to physical integrity*<sup>12</sup>, defines intersex as

*The term "intersex" refers to atypical and internal and/or external anatomical sexual characteristics, where features usually regarded as male or female may be mixed to some degree. This is a naturally occurring variation in humans and not a medical condition. It is to be distinguished from transsexuality, a phenomenon where someone has an evident sex, but feels as if he or she belongs to the other sex and is therefore ready to undergo a medical intervention altering his or her natural sex.*

### 5.4 Australian definitions

The Australian federal *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* defines intersex as:

*intersex status 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.<sup>3</sup>*

There is an obvious rationale for the lack of clarity that intersex is congenital: it should not be incumbent on a person who suffers discrimination on the basis of their intersex status to have to prove that they are intersex. The report of the Senate committee inquiry that recommended the inclusion of "*intersex status*" in anti-discrimination legislation recognised that intersex is both biological and innate, stating:

*7.17 The committee agrees with the evidence presented by Organisation Intersex International Australia, and other submitters, that intersex status is a matter of biology rather than gender identity, and as such should not be covered within the definition of gender identity in the Draft Bill...*

*7.19 As a concluding point, the committee is of the view that since intersex status is a condition related to the innate biological characteristics of an individual, it should not be an attribute to which any religious exceptions apply.<sup>13</sup>*

The ACT government has inadvertently sought to use this definition in a *Births, Deaths and Marriages (Amendment) Bill, 2013*. We vigorously contest this<sup>1</sup>.

In contrast, Australian guidelines on the recognition of sex and gender (2013) explicitly recognise that intersex is congenital, and that intersex people may identify their gender in three broad, legally recognised, ways. This directly conflicts with Norrie's assertion that intersex status is related to Norrie's identity. We commend this definition of intersex:

*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 the 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. People who are intersex may identify their gender as male, female or*

---

<sup>12</sup> Council of Europe Parliamentary Assembly, 6 September 2013, *Children's right to physical integrity*, Report Doc. 13297, <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20057&lang=en> accessed 18 January 2014.

<sup>13</sup> Senate of Australia, Legal and Constitutional Affairs Legislation Committee, 21 February 2013, *Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed%20inquiries/2010-13/antidiscrimination2012/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/antidiscrimination2012/report/index), accessed 18 January 2014.



## 6 Intersex and trans – key literature

### 6.1 Intersex as a psychological defence among "transphobic" transsexuals

Sharon Preves and Evan Eyler describe in an article in the *International Journal of Transgenderism*, 1999, on how some trans people seek to identify themselves as intersex as a psychological defence. Intersex can be seen as:

*more socially acceptable; since their variance appears to be the result of a medically documentable physical difference, rather than an invisible, psychological difference.*<sup>14</sup>

Certainly, a significant proportion of peer support calls to OII Australia are of persons seeking a perceived more socially-acceptable biological rationale for their gender identity.

### 6.2 Dangerous Intersections: Intersex and Transgender Differences

Kaldera, in a 2001 article, agrees with Preves and Eyler, while arguing that intersex people face significant barriers not faced by trans people. Kaldera presents additional arguments, including a political dimension. An intersex man who transitioned from female sex of rearing, he presents a strong argument against the appropriation of intersex by trans people<sup>15</sup>.

*The newest issue is whether or not transgendered people should be "allowed" to call themselves intersexuals, to claim that both groups are, for all practical purposes, the same, and should be combined into one big gender-transgressive group...*

*Right now, the thrust of those TG folk who would combine the two movements is to point out the preliminary research that suggests primary transsexualism may be some sort of intersex condition in and of itself.*

*Personally, I don't think that this theory is at all unlikely, but it's not proven - not even to a reasonable doubt - and basing your political stance on unproven science is a shaky place to plant your flag. On top of that, much of the [intersex] community - I'd say more than half - do not think of themselves as being anything more than men or women with unpleasant medical histories...*

*The suspicion of the [intersex] community towards the TG community stems from more than just internalized transphobia. Intersexuals have been continually assaulted by transgender activists who offer to do work for us only because they feel that it will look good on their activist resume (to have an "in" with the "real" freaks, I suppose), and transsexuals who express envy to those of us who have been mutilated at birth. ("You're so lucky! You got the sex change that I wanted!")*

Kaldera also describes how the two communities have very different immediate goals and objectives. Intersex communities are “*far less concerned with academic gender theory and the deconstruction of social gender roles*”.

### 6.3 Intersex and hermaphrodite in *Principles of Transgender Medicine and Surgery*

In *Principles of Transgender Medicine and Surgery*, *Intersex: Definition, Examples, Gender*

---

<sup>14</sup> Sharon Preves and Evan Eyler, 1999, *Belief in Having Been Born Intersexed as a Psychological Defense among "Transphobic" Transsexuals: Report of Three Cases*, XVI Harry Benjamin International Gender Dysphoria Association Symposium, 17 - 21 August 1999, London <http://web.archive.org/web/20090105203554/http://www.symposium.com/ijt/greenpresidential/green42.htm>

<sup>15</sup> Raven Kaldera, November 2001, *Dangerous Intersections: Intersex and Transgender Differences*, <http://genderfreenation.de/gfn/kalderatsis.html>, accessed 19 January 2014.

*Stability, and the Case Against Merging with Transsexualism*<sup>16</sup> authors Mazur, Colman and Sandberg present their own definition of intersex, which also presents other words used to describe the phenomenon:

*The term "intersex" refers to discordance between any level of genotypic and phenotypic expression of sexually dimorphic features. As such, intersex conditions may or may not include atypical genital appearance. Intersex has been used synonymously with "hermaphroditism," which refers to congenital ambiguity of the sexual anatomy that, in appearance, is neither fully female nor fully male (Money 2002). Other terms adopted by researchers and clinicians include: disorders of sex development, physical intersex conditions, sex errors of the body, ambiguous genitalia, birth defects of the sex organs, and male and female pseudohermaphroditism*

None of these definitions relate to identity, including the term 'hermaphrodite'. A history of medicalisation, and in particular the term 'pseudohermaphrodite' mean that many intersex people find the term pejorative: consider the implications of someone being told that they are not real men or women, and then being told they are not even a real hermaphrodite. In this context, it is disappointing that Norrie's case uses the term 'hermaphroditus verus' in paragraph 18<sup>2</sup>.

The authors describe how intersex is often conflated in popular and scientific literature, and how some trans people have sought help claiming to be intersex:

*Important distinctions between individuals with transsexual and intersex conditions are, at times, blurred in both popular and scientific literature. While individuals with an intersex syndrome may share some features (e.g., gender dysphoria and identity concerns) with those diagnosed with transsexualism, persons with intersex conditions diverge from transsexuals in terms of associated features including prevalence, age of onset, and sex ratio when presenting with a gender identity disorder (GID) (Meyer-Bahlburg 1994).*

While Mazur, Colman and Sandberg come into contact with people seeking assistance with gender dysphoria, the focus of their article, research shows that a minority of intersex people change assigned sex of rearing<sup>1</sup>.

*Historically, in an effort to obtain professional help, some transsexuals claimed to be intersex or hermaphrodites. More recently, the term "intersex" has been subsumed by some writers under the broader term "transgender," which also includes individuals who "transgress usual gender roles" such as "cross-dressers, drag artists, gender queer, [and] androgynes," among others (Monro 2005; Raymond 1994). Additionally, some neuroanatomical studies contribute to a merging of the entities into a single category.*

Merging the different issues comes at significant cost:

*Failure to differentiate between individuals with and without a clearly identifiable intersex condition may hamper studies of etiology and optimal clinical management.*

The authors also identify how language can be used to pursue political objectives:

*language has three main functions: to transmit information, to induce mood, and to promote action. Lumping individuals with intersex with those who are nonintersex but experiencing problems of gender, or who challenge conventional gender boundaries, enlarges the base of minorities, which, hopefully, increases their political influence and the opportunity to gain "rights" previously denied to them*

---

<sup>16</sup> Tom Mazur, Melissa Colman, David Sandberg, 2007, *Intersex: Definition, Examples, Gender Stability, and the Case Against Merging with Transsexualism* in Ettner, Monstrey, Eyler (editors) *Principles of Transgender Medicine and Surgery*, Haworth Press, New York. ISBN 978-0-7890-3268-3

It is our view that the Norrie case is about the pursuit of political change, using intersex people merely as collateral damage.

## 7 Sex and Gender Education (“SAGE”)

### 7.1 Norrie’s autobiography

Norrie’s own autobiography is available online, dated March 2011. It describes Norrie’s changes in identity from a “*classic transsexual*” to someone who identifies as both male and female. We don’t dispute this shift in identities; we do dispute Norrie’s inaccurate usage of the words ‘intersex’ and ‘hermaphrodite’ as a result. Norrie’s use of the phrase “*born hermaphrodite*” is one attempt to differentiate Norrie’s experience from actual intersex people:

*While the classic transsexual story was still in handwritten form, I volunteered to be the Assistant Secretary of the Australian Transsexual Association, which then managed the refuge. Thus I maintained, post-operatively, a sense of identification as a transsexual...*

*During the course of writing Gender Agenda, I realised that I didn’t want to be exclusively male or female, but male and female. I realised that “society’s oppression” of me (and those like me) was based on making everyone conform to fit the mutually exclusive roles of “real man” or “real woman”. I hadn’t realised the option of being “hermaphrodite” (male and female) was available until Aidy gave me a copy from an academic journal of an essay about “intersexed infants.” This essay talked about how human children born hermaphrodite are routinely dissected and altered by doctors to conform to the doctor’s pre-conceptions (and surgical pre-dispositions) that humans must be unambiguously “male” or “female.”*

*I cried in public on the train as I read how the doctors remove healthy testicles from and amputate clitoro- penises off of infants they decree to be “really” female, and remove healthy ovaries from and stitch up vaginas of infants they decree to be “really” male.<sup>17</sup>*

It is, ironically, Norrie’s *imposition* of a simplistic identity on people born hermaphrodite or intersex, and the *congenital biological* nature of intersex, that are our core contentions. It results in a conflation of trans and intersex that erases intersex people as a distinct group with our own distinctive lives, experience, and agenda. It removes our agency.

### 7.2 “Sex and/or gender diverse”

Norrie is a member of an advocacy organisation called Sex and Gender Education (“SAGE”), along with other members such as hypotherapist and counsellor Tracie O’Keefe<sup>18</sup>. Members of the organisation have a history of activities which repeatedly attempt to use intersex for political purposes. In O’Keefe’s words, the objective is to “*really mess with the system*”.

O’Keefe has coined a number of neologisms that seek to merge intersex and trans issues into a broad identity for political objectives, that support her advocacy as a trans person. Examples include “*sex and/or gender diverse*”, and “*intersex, sex and/or gender diverse*”<sup>19</sup>. The definitions are very wordy:

*The sex and gender diverse include any human being who does not comply to the average*

---

<sup>17</sup> UltraSex, 31 March 2011, *Introduction*, <http://spansexual.wordpress.com/2011/03/31/ultrasex-introduction/>, accessed 19 January 2014.

<sup>18</sup> Membership of Sex and Gender Education is listed at *SAGE people*, [http://www.sageaustralia.org/sage\\_2011\\_003.htm](http://www.sageaustralia.org/sage_2011_003.htm), accessed 18 January 2014.

<sup>19</sup> Tracie O’Keefe, Tracie, 31 October 2002, *Understanding Sex and Gender Diversity* (Speech). Amnesty International human rights conference. Sydney, Australia, <http://tracieokeefe.com/2012/04/understanding-sex-and-gender-diversity/>, accessed 14 January 2014.



*male or female interpretation of masculinity or femininity – for example an intersexed person who was born with both male and female sex characteristics or absence of both; transsexuals who were born appearing to be one sex but believe they are or feel compelled to live as another sex; the transgendered person who changes their body and external appearance to represent another biological sex and gender identity but identify with their original genitalia; the third gendered person who identifies as being neither male nor female but a third sex and gender; the androgynous individual who wishes to live and be accepted as both male and female sexed and gendered, the sinandrogynous who wishes to have neither sex nor gender identification but instead identifies as neuter; the victim of genital mutilation who after involuntary circumcision, castration or forced genital surgery cannot function to their own physical satisfaction; and those who through illness have lost or taken on feminine and masculine characteristics.*

This conflation of intersex and trans issues is an instrumentalisation of intersex for other purposes: the use of intersex to pursue a different political agenda.

Norrie and/or Sex and Gender Education did not, for example, join intersex-led and some other organisations in making submissions to a 2013 Senate Community Affairs Committee inquiry into the *Involuntary or coerced sterilisation of intersex people in Australia*<sup>20</sup>.

### 7.3 “Trans as intersex”

In an article entitled “*Trans as intersex: Crossing the line*” explicitly makes an ambit claim for trans as a form of intersex<sup>6</sup>. Norrie’s case follows precisely the same agenda:

*“People from intersex, sex and/or gender diverse groups need to declare and emphasise our own identities, rather than letting others bully us into fitting into their version of who or what we are... Many of us who are transexed, transsexual or even transgendered may identify as intersex. To us it is just a fact of our identities. We are not seeking approval from doctors, politicians or political advocates...”*

*“Who knows what my genes say? Do I have the ‘transsexual gene?’ Is there that particular part of my brain that is common to transsexual women indicated within scientific literature? ... The truth is I don’t give a damn. I’m not interested in being poked and prodded anymore to satisfy other people’s insecurities...”*

The political objective of the strategy is clearly stated:

*People who are trans and claim their intersex status really mess with the system.*

Finally, article also states that intersex people who object to the inclusion of people with trans identities in a definition of intersex are “transphobic”:

*Intersex people who do not want trans people to be recognised as a form of intersex are also doing transphobia, along with those doctors and academics who are profiting from linguistically transgendering all trans people without their permission.”<sup>6</sup>*

Such an ambit claim instrumentalises intersex people to pursue the objectives of a different community of interest. We have our own broad range of identities, just like non-intersex people. We have our own concerns, life stories, issues and agendas; we resist this<sup>21</sup>.

<sup>20</sup> See submissions to the inquiry at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/Involuntary\\_Sterilisation/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Submissions), accessed 18 January 2014.

<sup>21</sup> See, for example, OII Australia, 22 May 2011, ‘ISGD’ and the appropriation of intersex <http://oii.org.au/13651/isgd-and-the-appropriation-of-intersex/>, accessed 22 May 2011; OII Australia, 1 June 2011, *OII Australia and ‘ISGD’ – a response to the debate*, <http://oii.org.au/13750/oii-australia-isgd-response-debate/>; OII Australia, 9 January 2013, *Discussion paper on “sex and gender diverse” terminology*, <http://oii.org.au/21550/sex-and-gender-diverse-discussion-paper/>