



Intersex people and identification documents

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1 Background

This document reviews policy and practice in relation to intersex people and identification documents, and makes a series of recommendations regarding birth certificates and data collection.

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.

It is essential that policies and practices in relation to identification documents meet the needs of intersex people, but there are a number of assumptions that need to be dispelled about why this is so. This paper clarifies these issues and proposes recommendations.

2 Contents

1	Background	1
2	Contents	1
3	Sex and gender	2
3.1	“X” gender marker	2
3.2	Sex Discrimination Amendment	3
4	Intersex people and changes to gender markers	3
4.1	Medical data	4
4.2	NSW and Victoria birth register corrections	4
5	A third sex	5
5.1	Federal Guidelines	5
5.2	Intersex voices	6
5.3	German <i>de facto</i> intermediate birth classification	6
5.4	International Intersex Forum	7
5.5	ACT birth registration proposals	7
6	The intersection between birth registration and medical assignment is troubled	9
6.1	Argentinian gender identity law	10
7	Recommendations	11
7.1	Birth registrations and medical treatment	11
7.2	Birth registration classifications	11
7.3	Historical data on birth certificates	11
7.4	Data collection	11

3 Sex and gender

Even though laws, forms and documents typically treat the terms as interchangeable, sex and gender describe different concepts. Sex may describe biological, physical sex characteristics: a person's chromosomes, sex organs, and hormones, or it may describe legal sex, an approximation of physical sex characteristics. Gender describes a person's identity and preferences for the social role they play, as woman or man, or a non-binary identity. In medicine, it is understood that while diagnoses that cause intersex traits are testable (and often are tested) prenatally, such as via amniocentesis, chorionic villus, or preimplantation genetic diagnosis (PGD), gender identities become apparent from around the age of 3 years¹.

Sex and gender in societies with two recognised genders are typically aligned so that people assigned as male will identify as men and people assigned as female will identify as women, but this is not always the case. It can be particularly complex for intersex people when sex assignments at birth may not reflect actual biological characteristics, or when sex characteristics are surgically erased, in early life, in an attempt to reinforce a particular gender identity. Nevertheless, it is unwise to assume that intersex people should have a gender identity aligned with particular biological sex characteristics. Intersex is not synonymous with gender diversity.

3.1 "X" gender marker

An X gender marker is still a relatively new phenomenon in Australia. It was first introduced as a sex marker on passports in 2003, following legal action by Alex McFarlane; McFarlane had a birth certificate showing an "*intermediate*" sex issued by the state of Victoria². Between 2003 until 2011, the policy of the Passports Office was that a birth certificate showing this status was required in order to obtain an "X" passport³. From 2011, passports have been available to anyone who can demonstrate they are of "*intermediate sex*" to a doctor, including intersex people.

Since mid 2013, the criteria have been extended further to include 'gender diverse' people, who are able to supply an evidentiary statement by a doctor or psychologist⁴. The statement for people who are "*intersex/indeterminate/unspecified*" asks a medical practitioner or psychologist either to evaluate a person's medical history or to have provided some unspecified form of prior treatment:

I, <medical practitioner/psychologist's full name> have a clinician/patient relationship with, and have treated, <name of patient> (OR have a clinician/patient relationship with <name of patient> and have reviewed and evaluated their history). <Name of patient> is of <indeterminate/intersex/unspecified> sex and lives in the gender of (specify gender male or female).

¹ Houk, Hughes, Ahmed, Lee, Writing Committee for the International Intersex Consensus Conference Participants, 2006, *Summary of Consensus Statement on Intersex Disorders and Their Management*, in *Pediatrics*, doi:10.1542.peds.2006-0737, <http://www.pediatrics.org/cgi/doi/10.1542/peds.2006-0737>, accessed 21 November 2012.

² See OII Australia, 9 October 2011, *On Australian passports and "X" for sex*, <http://oii.org.au/14763/on-x-passports/>, accessed 7 January 2014.

³ Australian Human Rights Commission, 2009, *Sex Files: the legal recognition of sex in documents and government records*. Concluding paper of the sex and gender diversity project, see section 8.2 (a), <https://www.humanrights.gov.au/sex-files-legal-recognition-concluding-paper-sex-and-gender-2009#Heading495>, accessed 4 December 2013.

⁴ Attorney-General's Department, June 2013, *Australian Government Guidelines on the Recognition of Sex and Gender*, <http://www.ag.gov.au/Publications/Pages/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.aspx>, accessed 7 January 2013.

OII Australia

OR <Name of patient> is of <indeterminate/intersex/unspecified> sex and lives in an <indeterminate/intersex/unspecified> gender.

The 2013 Australian Government sex and gender recognition guidelines clarify that the preferred federal approach is to collect data on gender, not sex:

15. The preferred Australian Government approach is to collect and use gender information. Information regarding sex would ordinarily not be required.

16. Information about people's sex should only be collected where there is a legitimate need for that information, e.g. if a service or benefit to be provided to the individual is directly related to biological sex. However, the necessity of a medical service or associated benefit should be determined by the physical need, regardless of a person's recorded sex and/or gender.

OII Australia supported this approach, but implementations and interpretations of these guidelines have not been respectful of intersex people with other gender identities. We now regard the 2013 guidelines as flawed.

3.2 Sex Discrimination Amendment

Relatedly, the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013* (“SDA”) defines intersex as follows:

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.⁵

The Act defines intersex in relation to biological sex characteristics, but importantly it does *not* make “*intersex status*” a part of, or subsidiary to, the “sex” attribute, nor is it classified under “*gender identity*”; intersex is an independent attribute.

Additionally, the definition in the SDA does not explicitly recognize “*intersex status*” as an innate, congenital phenomenon: under this legislation, no-one has to prove their intersex status to avail of anti-discrimination protection. This lack of a proof requirement does, however, affect the utility of the definition in other contexts.

4 Intersex people and changes to gender markers

While they do not specifically address intersex issues, the Yogyakarta Principles “*address a broad range of human rights standards and their application to issues of sexual orientation and gender identity*”⁶. The Principles acknowledge that mental health consequences arise from failures to recognise people’s identities⁷.

Further, there are some circumstances in which an individual’s prior names and sex classifications can expose that person to discrimination and stigmatisation, while in other

⁵ Australian Government, ComLaw, *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013*, <http://www.comlaw.gov.au/Details/C2013A00098>, accessed 7 January 2014.

⁶ The Yogyakarta Principles include recognition of a person’s gender identity as a fundamental right to recognition before the law, see http://www.yogyakartaprinciples.org/principles_en.htm, accessed 12 November 2013.

⁷ Ansara, Y. G. (2012). Cisgenderism in medical settings: How collaborative partnerships can challenge structural violence. . In I. Rivers & R. Ward (Eds.), *Out of the ordinary: LGBT lives*. (pp. 102-122). Cambridge: Cambridge Scholars Publishing.

circumstances such information can prove important to the individual.

4.1 Medical data

Clinicians and scientists recognise at least 40 distinct intersex variations, each with their own physical, biological and molecular characteristics. Each is historically associated with different clinical treatment protocols, different assignments of sex of rearing, and different expectations about possible future gender identities⁸.

“Gender dysphoria” in intersex people represents a situation where there is a physical ambiguity that complicates determination of the “correct” sex; cases of “gender dysphoria” are those where the wrong assignment was made.

Even without obvious intersex traits, a person’s gender may not correspond with their sex designation at birth. The existence of trans people provides evidence that there is never complete certainty about future gender identities.

Evidence shows that many intersex people need to change the gender marker on their identification documents when they are able to articulate their identities. The available research suggests that, while a significantly higher percentage of intersex people than non-intersex people seek to change their gender marker, this is still a minority of intersex people as a whole.

- Houk, Hughes, *et al*, 2006, suggest 25% in PAIS, and "under 10%" in 46,XX CAH and, in rare diagnoses of virilising 5 α -RD2 assigned female at birth, up to 60%¹.
- Furtado *et al*, 2012, found that intersex people were likely to change lived sex in 8.5-20% of cases, depending on diagnosis, with a range of up to 63% in relatively rare diagnoses of 5 α -RD2 and 17 β -HSD3⁹.

Medical reporting only identifies cases of “*gender dysphoria*” and changes between ‘male’ and ‘female’ roles. Underreporting is likely. It does not identify preferences for a non-binary gender, nor any related changes of name, nor does it address other forms of gender expression.

There is not yet evidence to support infant assignment to a third option as a means of improving health, familial, educational or social outcomes for that child and their family.

We strongly support *opt in* non-binary and multiple classifications for those intersex (and other) people who need them; we can not support the imposition of such classifications on people who, based on available data, are more likely to prefer a binary classification.

4.2 NSW and Victoria birth register corrections

The need for some intersex people to change documentation is recognised by the NSW and Victorian Births Deaths and Marriages Registries, which enable intersex people to change registration markers on the basis of a “*correction*” to birth details by providing evidence of the

⁸ Professor Olaf Hiort, 2013, *I-03 DSDnet: Formation of an open world-wide network on DSD at clinician conference*, “4th I-DSD Symposium”, June 2013: “*DSD comprise a heterogeneous group of differences of sex development with at least 40 different entities of which most are genetically determined. An exact diagnosis is lacking in 10 to 80% of the cases*”, http://www.gla.ac.uk/media/media_279274_en.pdf, accessed 1 July 2013.

⁹ Furtado *et al*, 9 October 2012, *Gender dysphoria associated with disorders of sex development*, in *Nat. Rev. Urol.* doi:10.1038/nrurol.2012.182, <http://www.nature.com/nrurol/journal/vaop/ncurrent/abs/nrurol.2012.182.html> accessed 2 March 2013.

correct details. There is no requirement for surgical or other clinical treatment. In contrast, intersex people in WA who wish to change their sex marker require the approval of a board, following medical intervention¹⁰.

Most State and Territory legislation so far only offers F and M categories. Victoria has issued birth certificates showing “*indeterminate*” sex, although we understand that it has recently advised such certificate holders that a binary sex is still marked in the register itself¹¹.

5 A third sex

Intersex characteristics are on a highly variable spectrum of possibilities that are not strictly male or female, rather than a discrete and arbitrary category by itself. Intersex bodies show that what is not male can also be not female, or both female and male. Yet, while the definitions of male and female each depend on the other, neither depends on a definition of intersex. Concluding that a third category is required to capture the spectrum of intersex biological states is overly simplistic.

A third, biologically-defined sex does not reflect gender identities any better than the current model. Most intersex people identify with a binary gender as men or women. Although a third category is helpful – and preferable – to people with non-binary genders, this category should not be conflated with intersex or enforced based on intersex status.

The gender identities and the intersex status of intersex people who superficially appear female or male, or who identify their gender as female or male, are constantly questioned and treated as suspect¹². The imposition of a mandatory third sex marker would exacerbate this problem.

While a few intersex people identify their gender simply as intersex, many more identify with a binary gender, or identify as, for example, an intersex woman, or an intersex man. It is inappropriate to define intersex itself as an intermediate gender identity. It is inappropriate to associate intersex with an androgynous appearance, or with people who have a gender identity as neither woman nor man. Intersex is not synonymous with gender diversity.

Conflating intersex with gender diversity denies agency to intersex people, particularly to those intersex people whose visual appearance is not androgynous, or who identify their gender as female or male or both.

Intersex is more appropriately defined as an innate biological state with a consequential life history, building upon the description in the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013*.

5.1 Federal Guidelines

The need for some intersex people to adopt a new gender classification, including non-binary classifications, is recognised by the federal government’s introduction to its Guidelines on Recognition of Sex and Gender which explicitly state:

¹⁰ See OII Australia, 3 November 2009, *On intersex birth registrations*, <http://oii.org.au/4856/on-birth-registrations/>, accessed 13 November 2009.

¹¹ Personal communication from Councillor Tony Briffa JP, Vice President of OII Australia and holder of such a Victorian birth certificate.

¹² 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

People who are intersex may identify their gender as male, female or X⁴.

The demand for “X” documentation by intersex people, albeit still constrained by social demands and stigmatisation, has effectively been met by supply since 2011. However, contact with the Passport Office suggests that this level of demand is low, consistent with the spectrum of identities of intersex people. We have seen no published data on the numbers of people with “X” passports.

5.2 Intersex voices

A December 2013 report by trans organisation Global Trans Action for Equality with the American Jewish World Service has identified that intersex-led organisations have distinct priorities from both “*trans** and *intersex*” organisations, and from “*LGBTI*” organisations¹³. The first recommendation of the report, *The State of Trans* and Intersex Organizing*, states:

Fund intersex groups and trans* groups as distinct areas of work, not subsumed under the LGBTI or “trans and intersex” (TI) umbrellas. Some LGBTI groups are doing useful work around trans* and intersex rights, but most have not prioritized these issues and most do not have the expertise to do this work well. Similarly, some trans*-focused groups are doing effective work with intersex communities, but many are not. Look for independent intersex and trans* groups and fund them directly. If you are funding LGBTI groups or TI groups, ask them how they prioritize trans* or intersex work. Also ask them how trans* and intersex people play leadership and decision-making roles within their organization.

No intersex-led organisation in Australia is funded. This creates a situation where intersex voices are often missing, or subsumed into different agendas. Institutions and media must take care to identify where such issues have arisen, in particular, in relation to identification documents and health policy. We believe that this makes it essential to fund intersex-led organisations to support intersex communities.

5.3 German *de facto* intermediate birth classification

While welcomed by some trans advocates, the introduction of a *de facto* (blank) third sex classification in Germany on 1 November 2013 has been controversial. All local intersex organisations, Intersexuelle Menschen, OII Deutschland, and Zwischengeschlecht, have publicly rejected the policy, in part because the subset of intersex people who receive a third sex classification will be denied full rights of citizenship (including marriage, which in Germany is only possible between two persons legally designated F and M)¹⁴.

In addition, the sex classification being imposed on identified intersex people is non-consensual and does not reflect the identities of the majority of people so classified. It is “*othering*”¹⁵, it increases social distance¹⁶ between intersex people and non-intersex people.

¹³ Justus Eisfeld, Sarah Gunther and Davey Shlasko, 2013, *The State of Trans* and Intersex Organizing: A case for increased support for growing but under-funded movements for human rights*, New York: Global Action for Trans* Equality and American Jewish World Service. Copy available via <http://oii.org.au/24333/funding-for-intersex-human-rights-and-community-development-work/>

¹⁴ See summary at OII Australia, 20 August 2012, *German proposals for a “third gender” on birth certificates miss the mark*, <http://oii.org.au/23183/germany-third-gender-birth-certificates/>, accessed 20 August 2013.

¹⁵ Johnson, Bottorff, Browne, Grewal, Hilton and Clarke describe how, “*Othering is a process that identifies those that are thought to be different from oneself or the mainstream, and it can reinforce and reproduce positions of domination and subordination*”, see *Othering and being othered in the context of health care services in Journal of Health Communication*, 2004, 16(2):255-71, <http://www.ncbi.nlm.nih.gov/pubmed/15090288>, accessed 30 December 2013.

¹⁶ A sociological description of the distance between different groups in society, such as social class, ethnicity and sexual orientation. See Emory Bogardus, 1925, *Measuring social distances* in *Journal of*

5.4 International Intersex Forum

The 2013 International Intersex Forum in Malta was the third annual occasion of the only international event that brings together intersex organisations and activists from around the world together to discuss community issues. OII Australia has been represented at each event, wholly funded by ILGA scholarships¹⁷. At the 2013 Forum, participants agreed a statement on identification documents. Drafting the statement was complicated by the lack, in many languages, of any differentiation between sex and gender, but simplified by consensus on the fundamental issues. The final agreed statement was shortened for reasons of space; the full statement put forward by a working group was as follows:

We support gender diversity, however, we believe that in most of today's environments, children would be challenged by not being identified as boys or girls. Thus we recommend that intersex children be registered as females or males with the awareness that, like all people, they may grow up to identify as a different sex or gender. We reject normalising medical treatments on children.

Sex or gender classifications should be changeable non-bureaucratically on request by the individual. Adults and capable minors should be enabled to choose between F, M, non-binary, or multiple options.

All people regardless of their identities have the right to full equality and participation in society.

*In the future, as with race or religion, sex or gender should not be a category on birth certificates or identification documents for anybody.*¹⁸

Similar recommendations, including infant assignment as a boy or a girl, have been a stated part of the policy of intersex organisations since the first known intersex-led organisation in the field, the Intersex Society of North America, made such a recommendation¹⁹.

Nevertheless, intersex people possess a diverse range of biological characteristics, and a diverse range of gender identities. That diversity of gender identities should be acknowledged through the availability of binary, non-binary and multiple sex or gender markers for adults and capable minors who choose them.

The intersection between legal sex assignment, and surgical or hormonal sex assignment is troubled. While the intersection between legal assignment and medical treatment is explicitly stated in requirements for trans people to change sex markers on identity documents, it is more often implicit for intersex people: reflected in medical treatment protocols, not in legislation.

5.5 ACT birth registration proposals

The *Births, Deaths and Marriages Registration (Amendment) Bill 2013*, currently before the

Applied Sociology, 9, 299-308, http://www.brocku.ca/MeadProject/Bogardus/Bogardus_1925c.html, accessed 30 December 2013, and Davison, 1983 *The third-person effect in communication* in *Public Opinion Quarterly*, 47, 1-15, <http://polisci2.ucsd.edu/ps100da/Davison%20Third-Person%20Effect.pdf>, accessed 30 December 2013.

¹⁷ ILGA is the International Lesbian, Gay, Bisexual, Trans and Intersex Association. ILGA and ILGA-Europe have now funded three International Intersex Forums, the only international gatherings of intersex activists. See http://www.ilga-europe.org/home/news/latest/intersex_forum and http://www.ilga-europe.org/home/news/latest/intersex_forum_2013

¹⁸ See OII Australia, 4 December 2013, *The third intersex forum and identification documents*, <http://oii.org.au/24250/third-intersex-forum-birth-certificates/>, accessed 4 December 2013.

¹⁹ See Intersex Society of North America, <http://www.isna.org/faq/patient-centered> and <http://www.isna.org/faq/third-gender>, accessed 31 May 2005.

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ACT Assembly, requires “*appropriate clinical treatment*” for applications to change records of sex by trans people:

8 (c) the person believes their sex to be the sex nominated in the application (the altered sex), and—

*(i) has received appropriate clinical treatment for alteration of the person’s sex; or
(ii) is an intersex person.²⁰*

Although not clearly stated in the ACT Bill, a letter to OII Australia by Simon Corbell MLA and ACT Attorney-General states that “*appropriate clinical treatment*” is necessary for intersex people to change documentation, also²¹:

The government agrees that the requirements to change a record sex be no more burdensome than the Australian Government Guidelines ... The proposed requirements .. are consistent with the Australian Guidelines...

I agree with you that intersex people should not be required to identify as X if they genuinely identify as male or female and the Bill does not require this. An intersex person may change their record of sex to M or F provided they meet the requirements under the Bill. That is, they believe they are the sex nominated in the application, and they have received appropriate clinical treatment for the alteration of their sex.

Our reading of the ACT Bill is that “X” is not defined in the Bill, whereas the Bill defines “*intersex*” using the definition in the SDA. “X” is defined in the federal guidelines, as “*indeterminate/intersex/unspecified*”, and the Commonwealth Attorney General’s Department advises in the Guidelines that the Australian Government aim should be to capture gender, and not sex. We believe that it is inappropriate to reduce “X” to mean “*intersex*”. Doing so does not reflect our understanding, reflected in the federal Guidelines, that intersex people may identify as, *inter alia*, F, M or X.

The evidence requirements in the ACT Bill proposed are significantly more onerous than the current model in NSW and Victoria, and in the requirements in the federal Guidelines.

There is an explicit requirement in the ACT Bill for “*appropriate clinical treatment*” to change classification. The Attorney-General’s interpretation also presupposes a birth registration category of “X” as a default classification for intersex people.

It is unclear to which of the intersex variations mentioned in earlier this default might apply, or on what basis:

- How does it relate to the known (predominantly binary) patterns of gender identities of individuals with relevant intersex traits?
- What assessments of likely gender identity will be made to assess the likelihood of a non-binary identity, given that there is no evidence base to support such an assignment?
- If access to a non-binary option is a matter of parental choice, then what are the criteria that parents or child must meet in order to avail of the classification?
- If such access is a matter of clinician choice, then how does this relate to current clinical practices and treatment protocols?
- What are the social, medical and legal advantages and disadvantages of the

²⁰ ACT Government, *Births, Deaths and Marriages Registration (Amendment) Bill, 2013*, http://www.legislation.act.gov.au/b/db_48870/default.asp, accessed 13 December 2013

²¹ Letter to Tony Briffa, on behalf of OII Australia and the Androgen Insensitivity Syndrome Support Group Australia, dated 20 December 2013.

classification? What will be the impact on the developing child?

The lack of clarity on these issues reinforces our concern about the proposals of the ACT Government.

6 The intersection between birth registration and medical assignment is troubled

Current policy in NSW, Victoria and WA shows variation across different States and Territories. The intersection between legal assignment and medical treatment for intersex people is explicit in some cases and implicit in others.

The implicit intersection arises from involuntary and coerced “*normalising*” medical interventions that are still imposed on intersex people in Australia in efforts to instil an assigned gender identity and to reinforce an assigned sex of rearing. The Hon. Diana Bryant AO, Chief Justice of the Family Court of Australia, has described this intersection in a way that shows how non-consensual interventions are framed as necessary to enable intersex people to take on a socially accepted appearance:

*... in respect of young people born with an ambiguous or indeterminate sex to undertake medical treatment (surgical or otherwise) that would enable them to have the appearance of a particular sex.*²²

The Senate Community Affairs Committee stated:

*3.109 ... As OII commented, normalisation surgery is more than physical reconstruction. The surgery is intended to deconstruct an intersex physiology and, in turn, construct an identity that conforms with stereotypical male and female gender categories*²³

Such surgeries are carried out for “*psychosocial*” reasons – essentially, to make intersex people meet social obligations, typically before a child is able to give consent. Such surgeries also stigmatise intersex people. The Committee stated:

3.128 ... Normalising appearance goes hand in hand with the stigmatisation of difference and:

*1.59 The expectation that children are assigned and will adhere to a binary sex, and for their genitals to appear 'normal', increases pressure for medical decisions to be made during infancy.*²⁴

It is our view that the present-day focus on normalising intersex bodies to meet a binary model is *not* addressed by providing a new, arbitrary gender classification; normalisation must be addressed by eliminating the need for genital appearance to meet social norms.

Both explicit and implicit requirements for “*appropriate clinical treatment*” to change

²² Submission on the Human Rights and Anti-Discrimination Bill 2012 by The Hon Diana Bryant, AO, Chief Justice of the Family Court <https://senate.aph.gov.au/submissions/comitees/viewdocument.aspx?id=129543e5-fd82-46bb-8a2d-e11002f46f90>, accessed 7 January 2014.

²³ Senate of Australia, Community Affairs References Committee, October 2013, *Involuntary or coerced sterilisation of intersex people in Australia*, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Involuntary_Sterilisation/Sec_Report/index, accessed 25 October 2013.

²⁴ Morgan Carpenter, *It's time to defend intersex rights*, Australian Broadcasting Corporation, The Drum, <http://www.abc.net.au/news/2013-11-15/carpenter-its-time-to-defend-intersex-rights/5093966>, 15 November 2013.

documentation are disturbing, particularly given that standard medical protocols are still employed to “*deconstruct an intersex physiology*”.

The Senate Community Affairs Committee has acknowledged that the preconceptions of “*normality*” that underlie these treatments raise “*some disturbing questions*”. The Australasian Paediatric Endocrine Group acknowledges “*significant concern*” regarding risks to sexual function and sensation as a result of genital surgeries²⁴.

Our core concern is this: How many medical interventions should intersex bodies be obliged to undergo to satisfy social or legal requirements?

Our view, expressed to the Senate Community Affairs Committee, is that intersex people should not be obliged to undergo any “*normalisation*” treatments for reasons of appearance or “*psychosocial*” rationales. The Committee has supported this:

*3.129 The proposals put forward by Organisation Intersex International have merit, and are consistent with the committee’s conclusions. The committee believes that a protocol covering ‘normalising’ surgery should be developed, and then adhered to in all cases of intersex children. Such a guideline should be consistent with Organisational Intersex International’s recommendations.*²³

A third classification called “intersex” is likely to simply reinforce the notion that genitals and identities need to match – a disaster particularly for intersex people subjected to surgery to reinforce the wrong sex in infancy.

6.1 Argentinian gender identity law

In contrast to the Australian approach to birth registration changes, the Argentinian Gender Identity Law of 8 May 2012 states in its requirements (Article 4):

*In no case will it be needed to prove that a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychological or medical treatment has taken place.*²⁵

This is a significant step forward from the position taken in Australia: It depathologises trans people. However, the Argentinian Gender Identity Law does not address the pathologisation of intersex people whose genders match those they were reared in, or who are subject to normalising surgeries as an infant under clinical rather than legal guidelines. The Argentinian law is thus insufficient.

Births, Deaths and Marriages legislation should not require medical treatment to register or re-register sex. Furthermore, it should criminalise the provision of medical treatment for the purpose of making a registration or re-registration of sex, in the absence of a person’s own wishes to change their body.

This should not mean that people would be denied medical treatment for the purposes of confirming or affirming their gender, but that such medical treatment would be prohibited when imposed by others as a requirement for obtaining a certificate.

²⁵ Senate of Argentina, 8 May 2012, *Gender Identity Law*, translation by Global Action for Trans Equality (GATE), <http://globaltransaction.files.wordpress.com/2012/05/argentina-gender-identity-law.pdf>, accessed 13 December 2013.

7 Recommendations

7.1 Birth registrations and medical treatment

We recommend an end to requirements for surgical or other clinical treatment in order to change documentation. We believe that there is no justification for such requirements for intersex people.

Further, the existence of explicit surgical or other clinical treatment requirements for trans people is mirrored by medical guidelines that impose *de facto* requirements for such treatment on intersex people. We recommend that:

- Medical treatment be completely decoupled from legal designations of sex for all people.
- BDM legislation should criminalise clinical treatments conducted solely for the purposes of making a registration or re-registration of sex, in the absence of a person's own stated wish to change their physical characteristics.

7.2 Birth registration classifications

We recommend that:

- Infants or children should be assigned as M or F.
- Adults and competent minors should be able to change their birth sex classification through a simple administrative procedure.
- The classifications available for such changes should include F, M, X, and M+F; support for other multiple options is also desirable.
- Intersex should not be deemed synonymous with X; this means that the term "intersex" should not be included in a definition of X as doing so misgenders very many intersex people.
- Multiple different definitions of X are ok, including "Intermediate", "Non-binary" and "Unspecified". The meaning of chosen terms should be defined through cross-community consultation.
- Any definition of intersex must acknowledge the congenital character of intersex differences. A sole exception to this is in anti-discrimination law, where such terminology may impact on people perceived to be intersex.

7.3 Historical data on birth certificates

We recommend that:

- Historical data on previous names and sex should not be included on corrected or amended birth certificates unless requested by the applicant.

7.4 Data collection

We support the collection of data on gender rather than sex, but we no longer support the detail of the current federal Guidelines.

- As a minimum requirement, the collection of data on gender should conform to the principles of the federal Guidelines, minimising data collection on sex and gender, and permitting the use of simple F, M and X markers.
- We recommend that X be defined as "indeterminate/unspecified", or "non-binary/indeterminate/unspecified".
- It is acceptable to offer "unspecified" as an additional, separate, option.
- It is our recommendation that organisations collecting data should additionally provide for multiple choice options, such as M+F.

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- When data is collected, titles (such as Mr, Ms, etc.) should be optional, to avoid the creation of a *de facto* record of gender.

Because intersex people have many different gender identities, including F, M, X, M+F, it is not possible to capture data on intersex status using a gender marker. It should be recalled that current federal guidelines describe “X” as “*indeterminate/intersex/unspecified*” and not “*intersex status*”.

- If required, data on intersex status should be collected via a simple check box or query, separate to a classification for sex or gender. An explanation of the meaning of the word intersex is desirable, given widespread public misunderstanding. This could include a statement such that: “*Intersex refers to people born with atypical sex characteristics*”, or “*Intersex is a term for people born with congenital differences in sex characteristics. Do you have an intersex variation?*”

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