



# TransGender Victoria Inc

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Standing Committee on Social Policy and Legal Affairs  
PO Box 6021 Parliament House,  
Canberra ACT 2600  
Via email: [spla@aph.gov.au](mailto:spla@aph.gov.au)

Dear committee members

Thank you for the opportunity to make an invited submission to the Marriage Equality Amendment Bill 2012 and the Marriage Amendment Bill 2012.

As per your request, we will comment on the technical aspects of concern to us.

We note that as the bills are very similar, we will comment on both bills jointly, except as where indicated.

## Background

Marriage in Australia under the Marriage Act 1961 and following the 2004 amendments to the Act is defined as being between “a man and a woman” or colloquially, “heterosexual marriage.”

To expand on the legal and colloquial definitions, this could be defined as “where one person has male on their birth certificate and the other has female on their birth certificate at the time of entering into the marriage.”

## Issues for consideration

What are the implications of this for people who fall under the grouping of sex and gender diverse (SGD) and may not fit the sex/gender “binary” (including but not limited to transgender, transsexual, and genderqueer?)

By “binary,” we mean those who fit other people’s ideals of male or female.

### **1. Affirmation of identity when an SGD person is already married.**

What happens when a trans person enters a marriage before realizing their need to affirm their identity in a way that differs from societal “ideals” given the person’s body at birth.

The couple can remain married and the person experiencing sex and gender diverse issues can complete any necessary hormonal and surgical treatment. However, the couple must divorce before the trans person can change the sex marker on their birth certificate.



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The current situation therefore clearly places the couple in a horrible no-win situation. Either the SGD person has a birth certificate that is, in simple terms, wrong, or the couple divorces while having no irreconcilable differences (or possibly creating a perjurious situation so the SGD person can change their birth certificate). However, divorce clearly puts the couple at a financial disadvantage, a situation that has been discussed publicly by one such couple (MP3 available on request). Therefore, this casts strong doubt on the idea that the same-sex Federal law reforms in 2008 ended financial discrimination against ALL couples.

Further, Article 16(2) of the UN Declaration of Human Rights states that “Marriage shall be entered into only with the free and *full* (my emphasis) consent of the intending spouses.” Would it be fair to imply from that article, marriage should equally be *ended* with the full consent too? It simply cannot be called full consent where a couple is reluctantly forced to end their marriage only because of outdated assumptions that are simply unable to recognize the full diversity of relationships in 21<sup>st</sup> century Australia.

Finally, Austria and Germany have ruled it is unconstitutional to “force trans divorce.”

## 2. SGD people may be any given sexual orientation

Some SGD people may be attracted to their own sex, some to another sex, others to more than one sex. This is exactly parallel to the issues faced by cisgender gays, lesbians and bisexuals in their striving for marriage equality. Changing the laws will allow equality for transgender people in relationships in exactly the same way.

(Cisgender: where a person’s physical sex *matches* their gender identity).

It is in relation to this point we prefer Mr Bandt’s bill over Mr Jones’ bill due to the inclusion of the words “sex, sexual orientation or gender identity” as distinct from simply “sex.” We would note, however, that we would prefer Mr Jones’ bill be passed than neither bill be passed.

### Frequently asked questions (FAQ)

#### **Birth certificates are a matter for the states and Territories; why you are asking the federal Parliament to fix that?**

We are not asking the Federal Parliament to do anything with regard to birth certificates. The issue here is the federal law that defines marriage as “an ‘M’ on one birth certificate and an ‘F’ on the other birth certificate.” Changing the definitions of State and Territory laws as to how M and F are defined does nothing to change the blockage to equal marriage for transgender people.

#### **Is the issue of re what point in the SGD person’s journey a birth certificate can be changed relevant?**

No. Put simply, if people love each other, their bodies are their business, not the anyone else’s business – in exactly the same way as the bodies of cisgender people are not the anyone else’s business.



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**What is TransGender Victoria's viewpoint on issues for people experiencing intersex?**

There are some similarities between SGD as defined above and intersex and TransGender Victoria supports the principle of equality for people experiencing intersex. However, we do not speak specifically for that group out of respect for their unique issues.

We again thank the committee for the opportunity to assist in its deliberations on these bills. If there is any further way in which we can assist, please feel free to contact me via email or on [REDACTED].

Yours sincerely



SALLY GOLDNER  
Spokesperson