



TransGender Victoria Inc

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Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600

August 28, 2009

Dear secretary

TransGender Victoria welcomes this opportunity to submit to the Senate inquiry into the Marriage Equality Amendment Bill 2009

We support the submission of the Victorian Gay and Lesbian Rights Lobby. We have chosen to focus in our submission on issues specific to sex and gender diverse¹ (SGD) people.

Overview

We totally support the bill as presented and give special commendation to the objects as set out in clause 3.

We believe the current assumptions behind the recognition of marriage simply cannot equally support all Australians in the 21st century as they fail to recognize the realities of life for all Australians, only some Australians.

Background to TransGender Victoria

TransGender Victoria was established in 1998 and has achieved the following:

- major contributor to the addition of the attribute of gender identity to the Equal Opportunity Act Victoria:
- major contributor to amendments to the Birth, Deaths and Marriages Act to enable transsexuals to change their birth certificates, albeit on the basis of "sex reassignment surgery" based on genital surgery;
- worked with Seahorse Club of Victoria and the Victorian Chamber of Commerce and Industry (VECCI) to establish "Practical Transitioning Guidelines for Employers:"
- members of the following groups:
 - Ministerial Advisory Committee to the (Victorian) Attorney-General on Gay, Lesbian, Bisexual, Transgender and Intersex (GLBTI) issues;
 - Ministerial Advisory Committee to the (Victorian) Health Minister on Gay, Lesbian, Bisexual, Transgender and Intersex (GLBTI) Health and Wellbeing; Policy Working Group on GLBTI Issues;
- present to a diverse range of groups, e.g, community health centres, employers,

¹ We have adopted the terminology used by the Federal Human Rights and Equal Opportunity Commission in 2008-9 that led to the Sex Files Report



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youth groups, counselling services on SGD issues;

- involved in situations where an employee affirms their gender identity in the same employment role;
- provides referral for people seeking assistance on transgender issues (both SGD people and those connected to them e.g. family, social workers).

Detail

For a married couple the issue of one person affirming their true gender can often be very challenging. So (assuming the situation is one of a husband affirming a female gender identity)², imagine that after dealing with the initial shock, a woman decides to stay with her spouse of over 20 years. They deal with the individual issues and jointly work out how to adapt their relationship. Increasing numbers of such couples successfully achieve this. You would think that finally, after the trans woman has surgery, it should be a case of “journey’s end.” Not so.

Before the trans woman can change her birth certificate to “F” they have to divorce because Australia won’t recognize anything other than a heterosexual³ marriage.

We reject the idea that such a couple can still get recognition as a de-facto couple. This still means changing the status of their relationship against their true wishes, incurring the legal costs of a divorce and other financial loss. We believe this puts a question mark against the idea that the changes made to over 80 laws in 2008 end discrimination against *all* couples.

Article 16(2) of the UN Declaration of Human Rights states that “Marriage shall be entered into only with the free and *full* (our emphasis) consent of the intending spouses.” We believe it is fair and reasonable to imply from Article 16(2) marriage should equally be *ended* with the full consent too? Is it really full consent where a couple is reluctantly forced to end their marriage only because of heterosexual assumptions that are unable to recognise the full diversity of relationships in 21st century Australia?

We believe that trying to enforce the current structure creates unnecessary burdens and complexities for bureaucracy and cost for Australian taxpayers as well as financial discrimination for SGD people.. We note recently the announcement made by the Department of Foreign Affairs and Trade in relation to the issuing of passports for SGD people.⁴ While these announcements are welcome, we note that if equal marriage existed the requirement re changing passports for a transgender person in a marriage would not be an issue. It would be far more logical to allow marriage regardless of a letter in a box on a birth certificate than to try to build processes around an illogical assumption that is “opposite-sex by birth certificate” marriage

² The situation could equally be of a wife affirming a male gender identity

³ Heterosexism has been used to describe a social system that privileges heterosexuality at the expense of non-heteronormative sexual orientations and gender identities (Fish, 2006; Herek, 1990; Leonard, 2005). As quoted in Coming Forward: Gay and Lesbian Health Victoria

⁴ <https://www.passports.gov.au/Web/SexGenderApplicants.aspx>



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Intersex people

Transgender Victoria does not represent people with intersex conditions. However, given that issues for both groups of people have similarities, it would be impossible not to express our support for our intersex cousins.

Victoria issues birth certificates with an I (for indeterminate) for a range of reasons including for those people with an intersex condition who identify as neither male or female. There is currently some uncertainty as to whether such people can marry at all. Having equal marriage regardless of sex, sexuality or gender identity would create certainty, dignity and equality rather than uncertainty and degradation of human rights simply for having a recognised medical condition.

On a similar note, the Sex Files report mentioned earlier recommended the creation of an unspecified sex.⁵ If this recommendation was implemented without removing the current limitations on marriage, the result would be to immediately reduce the human rights of those people who identified as the unspecified sex.

Conclusion

The current framework of “marriage by opposite-sex birth certificate” is a foundation that has crumbled in the 21st century. We are amazed it survived the 20th century as it did. A restumping of the current marriage foundation cannot carry Australia further. Only a new foundation that is equal for all Australians has the strength to be equal – and that foundation is in the bill presented to the Senate.

We urge that the bill be passed as soon as possible.

Yours sincerely

SALLY GOLDNER
Spokesperson

⁵ Sex files http://www.hreoc.gov.au/genderdiversity/sex_files2009.html#Heading180

Recommendation 5: A person over the age of 18 years should be able to choose to have an unspecified sex noted on documents and records.