

The Gender Centre Inc.

Sydney Australia

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The Gender Centre submission to the Universal Period Review Australia

About The Gender Centre Inc

The Gender Centre Inc is a specialist state-wide organisation providing services to the transgender and gender questioning communities for more than twenty-seven years.

The Gender Centre was originally funded by the NSW Department of Community Services (now known as Human Services Department of Community Services) through the Supported Accommodation Assistance Program (SAAP). By late 1993 the Department of Community Services and the Department of Health entered into a joint funding agreement, This meant that the Gender Centre was now funded to provide services to minimise the effects of the Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) on the transgender community as well as provide housing options and education to the wider community.

Today The Gender Centre offers a wide range of services to transgender people, people with gender issues their partners, family members and members of the wider community, The gender centre is the only government funded organisation in Australia that provides services specifically to the transgender community, during the course of 2009/2010 the Gender Centre provided services to over 3,000 transgender clients and received over twelve million visits to our website

Definitions:

For the purpose of this paper the following definitions apply:

Transgender male: A person who was born female and identifies as male; adopts characteristics and roles of their identified gender, not their birth gender.

Transgender female: A person who was born male and identifies as female; adopts characteristics and roles of their identified gender, not their birth gender

Transgender: A person whose innate gender is incongruent with her or his assigned gender. The legal definition adds “who is making, intends to make or has made the transition to the gender with which they identify.” It should be noted that a person can be transgender without ever transitioning, for a variety of reasons and a person who has made the transition is more properly defined as “man” or “woman” (depending which way they have gone) rather than perpetuating the association with “transgender”.

Transgender is a medical condition which, once remedied, becomes part of one’s history rather than one’s current existence.

Our submission on transgender people and human rights is as follows:

Identity Documents

Transgender people in New South Wales, Australia, are able to change the record of sex on their birth certificate if they comply with a number of conditions. These conditions include:

- a. being born in NSW;
- b. being over 18 years of age;
- c. being unmarried;
- d. having completed sex reassignment surgery (in exceptional cases, on a case by case basis, this requirement has been waived).

The requirement to have completed sex reassignment surgery is particularly onerous for many transgender people. Sex reassignment surgery is an expensive process, and can be unaffordable. Many clients of the Gender Centre cannot afford surgery, although they may have been taking hormones for several years and living in their non-birth-assigned gender role..

Other transgender people may not be candidates for surgery due to an existing medical condition or health problems and some transgender people may not want surgery for religious, moral or ethical reasons, believing that surgery is a cosmetic process unconnected to their innate gender, even if it means they can

live and function more easily, and find wider acceptance in society, if they undertake invasive surgical procedures..

All of these situations cause extreme difficulties for transgender people who are unable to amend their birth certificates. A person may have been living as a woman for twenty years, and present as obviously female. She is living in the community and is known as a woman. However, her birth certificate indicates that she is male. If her birth gender is disclosed, she is exposed to ridicule and violence.

In June 2010 the Board of Directors of the World Professional Association for Transgender Health (WPATH), in the interest of the health and well-being of transgender and transsexual people world-wide, issued, the following identity recognition statement:

No person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person's lived gender, regardless of reproductive capacity. The WPATH Board of Directors urges governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.

Clients of the Gender Centre have experienced serious social problems when they have been outed including persecution, vilification, violence, refusal of goods and services and loss of employment.

The issue of identity documents is problematic and the example that shows how a criminal record check can prevent or deter a transgender person from seeking employment.

The risk of exposure as transgender is very high and their right to privacy is not protected. This is a good example of how the laws in Australia discriminate against transgender people.

That is not to say that anyone should be exempt from undergoing a criminal record check when they seek employment, however disclosure of their previous identities to prospective employers is a subtle form of discrimination that subjects a transgender person to forgoing privacy in order to gain employment. A simple change to the reporting system that indicates a “criminal record check has been undertaken relative to the person known as ... and all other names associated with this person” without disclosing the names, would alleviate much concern around exposure. If this reporting style was applied uniformly to all people undergoing a criminal record check, then there are no discriminatory practices evident as all persons would have the same level of privacy afforded them.

Clients of the Gender Centre often state that applying for employment is one of the biggest barriers to overcome due to the fear of being constantly ‘outed’ to

their prospective new employer. Transgender people when filling out criminal record checks are required by law to disclose all previous names. Whether a person has a criminal record or not, the report given to the employer usually reveals the earlier name and refers to the current name, which is the person's legal name as an 'alias'.

An additional problem is created for transgender people who are in a heterosexual marriage before they affirm their innate gender. Marriage in Australia can legally only be between a man and a woman although these terms are not defined in the Marriage Act. The Gender Centre is aware of many couples where one member transitions and the couple decide to maintain their relationship.

Under current Australian law, a transgender person is not able to change the legal record of sex on their birth certificate if they are married. However, in order to obtain a divorce, a couple need to state that their marriage has irretrievably broken down.

This places these couples in a difficult situation. They are unable to claim that their marriage has broken down in order to obtain a divorce but unless they obtain a divorce, the person who has transitioned is not able to change the record of sex on his or her birth certificate.

Medical treatment

It is sometimes suggested that gender affirmation surgery, endocrinological therapy and ancillary procedures such as electrolysis, should be publicly funded. There are approximately two hundred cases of gender affirmation carried out annually in Australia, with another two hundred going overseas for this purpose. There are only two specialist surgeons in Australia carrying out this work and the expense is considerable.

Although there is no obvious reason to support complete public funding of these procedures, it would seem reasonable to have a 'public' stream available in public hospitals as well as the private (specialist) stream currently available. This is the system followed in Britain and other countries and if there were a cheaper, but still high quality, system available in Australia there would probably be an increase in the numbers asking for treatment.

The reasons for wanting affirmation surgery are varied. In many cases the person concerned wishes to be as close as possible, in every way, to a person born into the gender they know they are. In other cases the reasons are more pragmatic and relate to safety in public, and a desire not to cause offence or embarrassment to others.

There is a wide spectrum of procedures available and some of these fall clearly into the cosmetic area, others are 'core' to movement from one gender role to the other, and some are marginal. Decisions would need to be made on a case by case basis, since it is quite possible that a procedure might be marginal for one

individual, while being vital to the mental well-being of another (e.g. a tracheal shave might be vital for one person, who might have an excessively obvious Adam's apple, while to another it might seem desirable while in fact not being essential).

Similarly a woman with alopecia has a much better claim for a wig on therapeutic grounds, than a woman who simply want to change her appearance for a day.

Breaches of Human Rights

Australia does not have a Charter of Human Rights. However, we believe that the rights of transgender people are being breached by current legislation, including rights to privacy, safety and medical treatment and these breaches are often in contravention of United Nations Treaties which have been signed by the Australian Government..

Recommendations

1. That the Australian government implement necessary legislation to allow transgender people to amend their official identity documentation without the requirement for sex reassignment surgery. The only requirement should be an attested intention to live continuously in the innate gender role.
2. That the Australian government allows transgender people to be able to amend their identity documents without the requirement that they be unmarried. This procedure is followed in the United States, who are, if anything, more passionately opposed to same-sex marriage than we are, yet permit the continuation of marriages where one partner has moved from one gender role to the other, effectively creating a same-sex marriage.
3. That the Australian government ensure that any necessary medical treatment for transgender people be covered by the public health system, and accessible to all transgender people who require it. This is the system followed in Britain, although access to treatment for transgenders in the public system often involves an excessively extended waiting time. If this were to be avoided in Australia it might involve a training program for gender affirmation surgeons, in order to bring the numbers up to appoint where transgender were not required to move to Melbourne or Sydney for treatment and to ensure that waiting times for treatment did not blow out unreasonably.

- .4 That a serious campaign be undertaken by government bodies at all levels, and educational systems, to inform people (from pre-school level to adulthood) that transgender is a natural condition and one to be accepted in all walks of life, so that transgender would no longer need to conceal their situation and many of the stigmas and restrictions on transgender in society would, over time, disappear.

Please contact me if you require any further information.

Yours faithfully,

Phinn Borg
Manager
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