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## **DISCRIMINATION AGAINST TRANS PEOPLE**

### **REFORM OF ANTI-DISCRIMINATION LEGISLATION, THE SEX DISCRIMINATION ACT 1984**

Having spoken with a gentleman in the Federal Attorney-General's office, it all became clear. The Legislation referred to is "The Sex Discrimination Act 1984". It is based on the binary sexes only. The discussions are for us to put forward our problems concerning Trans people. There is nothing new in the way of discrimination against Trans people, it is the status quo as now. This means, not being able to amend birth certificates if remaining married after surgery.

This means that the exemptions in force enabling the States and Territories to discriminate against Trans people will be fully recognised and condoned by the Federal government. The Federal government, by condoning these discriminatory exemptions produced by the States and Territories governments is not only supporting discrimination against a minority group, but is not respecting the "UN Human Rights Charter", to which Australia is a signatory. It also does not reflect best practice as per the

### **THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: 1948-2008**

#### **Article 6.**

- Everyone has the right to recognition everywhere as a person before the law

#### **Article 7.**

- All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

The theme of the campaign, "Dignity and justice for all of us," reinforces the vision of the Declaration as a commitment to universal dignity and justice and not something that should be viewed as a luxury or a wish-list.

#### **"Yogyakarta principles"**

- **Principle 2. The rights to equality and non-discrimination**

Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.

Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. Discrimination based on sexual orientation or gender identity may be, and commonly is, compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status.

**States shall:**



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- Embody the principles of equality and non-discrimination on the basis of sexual orientation and gender identity in their national constitutions or other appropriate legislation, if not yet incorporated therein, including by means of amendment and interpretation, and ensure the effective realisation of these principles;
- Repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;
- Adopt appropriate legislative and other measures to prohibit and eliminate discrimination in the public and private spheres on the basis of sexual orientation and gender identity;
- Take appropriate measures to secure adequate advancement of persons of diverse sexual orientations and gender identities as may be necessary to ensure such groups or individuals equal enjoyment or exercise of human rights. Such measures shall not be deemed to be discriminatory;
- In all their responses to discrimination on the basis of sexual orientation or gender identity, take account of the manner in which such discrimination may intersect with other forms of discrimination;
- Take all appropriate action, including programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression.

## THE RIGHT TO RECOGNITION BEFORE THE LAW **3**

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.

### **States shall:**

- Ensure that all persons are accorded legal capacity in civil matters, without discrimination on the basis of sexual orientation or gender identity, and the opportunity to exercise that capacity, including equal rights to conclude contracts, and to administer, own, acquire (including through inheritance), manage, enjoy and dispose of property;
- Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity;
- Take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex – including birth certificates, passports, electoral records and other documents – reflect the person's profound self-defined gender identity;



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- Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned;
- Ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy;
- Undertake targeted programmes to provide social support for all persons experiencing gender transitioning or reassignment.

***Everyone has the right to recognition everywhere as a person***

**From Thomas Hammarberg, The EU Council**

“Discrimination against transgender persons must no longer be tolerated”

- [05/01/09] During missions to member states of the Council of Europe, I have been reminded of the on-going discrimination many face on account of their gender identity<sup>1</sup>. Transgender persons encounter severe problems in their daily lives as their identity is met with insensitivity, prejudice or outright rejection.
- I have been struck by the lack of knowledge about the human rights issues at stake for transgender persons, even among political decision-makers. This is probably the reason why more has not been done to address transphobia and discrimination based on gender identity. The result is that individuals are discriminated against all over Europe, in areas such as employment, health care and housing.
- In a number of countries, the problem starts at the level of official recognition. Transgender persons who no longer identify with their birth gender, seek changes to their birth certificates, passports and other documents, but often encounter difficulties. This in turn leads to a number of very concrete problems in daily life when showing one's ID papers - in the bank or the post office, when using a credit card, or crossing borders.
- The Court stated that “the very essence of the Convention was respect for human dignity and human freedom. Under Article 8 of the Convention in particular...protection was given to the personal sphere of each individual, including the right to establish details of their identity as human beings.”<sup>3</sup>
- Additionally, many countries require that a married person divorces before his or her new gender can be recognised, even though the couple itself does not want to divorce. This in turn may have an impact on children of the marriage. In fact, in several countries the parent who has undergone the gender change will lose custody rights. Legislation requiring divorce needs to be reformed in the spirit of the best interests of the child.
- To require surgery as a prerequisite to enjoy legal recognition of one's gender identity ignores the fact that such operations are not always desired, medically possible, available, and affordable (without public or other funding). It is estimated that only 10% of transgender persons in Europe actually undergo gender reassignment surgery.
- Even access to ordinary health care is a problem for transgender people. The lack of trained staff familiar with the specific health care needs of transgender persons - or simply prejudice towards transgender people - render them vulnerable to unpredictable and sometimes hostile reactions.
- Data presented by EU's Fundamental Rights Agency shows that in some countries the unemployment rate of transgender persons can reach up to 50%. Some jobless transgender persons are unable to find employment, and see no other option but to work in the sex industry. A report from Human Rights Watch on Turkey called attention to the situation of transgender sex workers in that country - victimised by violence, drug addiction, sexual abuse, lack of health insurance, homelessness, police attacks, and a high risk of HIV/AIDS.



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- There is no excuse for not immediately granting this community their full and unconditional human rights. Council of Europe Member States should take all necessary concrete action to ensure that transphobia is stopped and that transgender persons are no longer discriminated against in any field.

*Thomas Hammarberg*

Notes:

1. Gender identity is understood to refer to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

I quote this because of the existing requirement, forcing Trans people to ***DIVORCE IN ORDER TO AMEND THEIR BIRTH CERTIFICATE***. This only proves that the Marriage Act 1961 can and is over ruled at State and Territory level. For Trans people to stand in Court and declare via the only way of divorcing in Australia, is asking them to commit perjury

Add to this the fact that we are expected to be

- Over 18
- Single (Read Divorced)
- Have had Sex Affirmation Surgery
- This means the alteration, or removal of all reproductive organs
- The above, in order to amend a birth certificate
- Please define. "Reproductive Organs"

Why are we allowed to amend some documentation before Sex Affirmation Surgery? E.G:- Driver's license, Utilities, Banks, GPs, Dentists, Pharmacists, Rates and Land ownership. Name change of course.

Currently, where Federal government departments and agencies are concerned we face a double whammy. Most will change your name or even issue a new card in your new name (Medicare and Private Health) but the sex will not be amended until after Sex Affirmation Surgery. This again can be construed as discriminatory.

What would be the outcome if these situations were tested in an action claiming discrimination against all 9 governments in Australia?

It is now up to us to put submissions to, the Federal Attorney-General who is discussing our problems with SCAG, as laid out in "Sex Files"

I feel that we have a good chance to get some of the 15 items amended/alterd, in order to better reflect the current situation regarding Trans people

I have supplied the contact details for the Senate Committee, so use it.

Yours Sincerely, Kathy Anne Noble.

President, Changeling Aspects

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