



AIS SUPPORT GROUP AUSTRALIA

Support for people affected by intersex conditions.
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The Honourable Rod Welford MP
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Dear Sir,

Thank you for your email replying to the concerns raised by the AIS Support Group Australia (AISSGA) and various medical specialists with the *Discrimination Law Amendment Bill 2002* ("DLA Bill"). We fully appreciate your sincerity in introducing a Bill that reduces the discrimination endured by a large number of people in the community.

We are pleased you have provided assurances to both the Queensland Parliament and the AISSGA that those with intersex conditions will continue to have their birth certificates corrected under Section 42 of the *Registration of Births, Deaths and Marriages Act 1962* ("RBDM Act"). There are however, some outstanding concerns with the DLA Bill in relation to the definition of "sexual reassignment surgery" (Clause 68 Amendment of s 5), and references to children undergoing 'sexual reassignment surgery' (Clause 72 28B *Application to record change of sex*). Both of these concerns are explained in detail in the Annex A.

Our requested changes to the DLA Bill are as follows:

1. Remove part (b) from the definition of 'sexual reassignment surgery' Section 5(1)—Clause 68 Amendment of s 5 (Interpretation);
2. Remove any reference to children undergoing 'sexual reassignment surgery' from Clause 72 of the Bill; and
3. Include a definition of intersex in the Bill with a note explaining those with bona fide intersex conditions can have the sex on their birth certificates corrected under section 42 of the RBDM Act if they are able to provide appropriate specialist medical evidence supporting their application.

Given that those affected by intersex conditions were not adequately consulted in either the drafting or passage of this Bill, I respectfully request your office resolve these issues as soon as possible. We look forward to helping you in any way possible.

Yours sincerely,

Tony Briffa
President, AIS Support Group Australia

Annex A - List of concerns with the Law Discrimination Bill 2002.

Annex A: List of concerns with the Law Discrimination Bill 2002.

PART 10—AMENDMENT OF REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES ACT 1962

What the Bill says:

Clause 68 Amendment of s 5 (Interpretation), Section 5(1)—insert—

“sexual reassignment surgery” means a surgical procedure involving the alteration of a person’s reproductive organs carried out—

- (a) to help the person to be considered to be a member of the opposite sex; or*
- (b) to correct or eliminate ambiguities about the sex of the person.’.*

This definition unnecessarily includes those with intersex conditions who were born with ambiguous genitals in the SDA Bill. These people do not undergo sexual reassignment surgery. Rather, they undergo cosmetic surgery to improve their self-image and ability to function normally. They are not having their sex reassigned. Part (b) of this definition should be removed.

Those with transsexualism do not have physical ‘ambiguities’ about their sex. They are unambiguously male or female but with the brain sex of the opposite gender.

The Attorney General has confirmed that Section 42 of the RBDM Act already permits correction of birth certificates for those with intersex conditions who reject their sex of rearing. They do not need to be specifically included in this Bill as per the definition above.

What the Bill says:

Clause 68 Amendment of s 5 (Interpretation), Section 5(1)—insert—

“recognition certificate” means a certificate issued under the law of another State that identifies the person who is the subject of the certificate as having undergone sexual reassignment surgery and as being the sex stated in the certificate.

If the definition of ‘sexual reassignment surgery’ remains as per the SDA Bill, those with intersex conditions will be categorized as transsexual because they will be labeled as having undergone ‘sexual reassignment surgery’. These people will then be issued with a recognition certificate which is not recognized by the Federal Government for the purpose of marriage.

Consequently, people with intersex conditions who are issued with recognition certificates because of this Bill’s definition of sexual reassignment surgery will not be allowed to marry. This even applies to children with intersex conditions.

What the Bill says:

Clause 72 Insertion of new ss 28B–28D

‘28B Application to record change of sex)—insert—

‘(3) The parents or guardian of a child whose birth has been registered under this Act or whose adoption has been registered under the Adoption of Children Act 1964 may apply to the registrar general—

(a) to enter a change of the child’s sex in the register of births or adopted children register; and

(b) to reregister the child’s birth or adoption.

‘(4) A person may make an application under subsection (3) only if the child—

(a) has undergone sexual reassignment surgery; and

(b) is not married.

‘(5) An application under subsection (1) or (3) must be in the prescribed form.

‘(6) An application under subsection (3) may be made by 1 parent if—

(a) the applicant is the sole parent named in the registration of the child’s birth or adoption; or

(b) the other parent is dead; or

(c) the registrar general is satisfied that—

(i) the other parent’s whereabouts are unknown; or

(ii) the other parent is unable to sign the application; or

Given the Bill’s definition of sexual reassignment surgery and the fact that sex reassignment surgery is not performed on transsexuals until they are adults, this section specifically details the process of changing the birth registration for a child with an intersex condition. This section should be removed as children with intersex conditions can have their birth certificates corrected under section 42 of the Act. This section is not required.

Recommendations

1. Remove part (b) from the definition of ‘sexual reassignment surgery’ Section 5(1)—Clause 68 Amendment of s 5 (Interpretation);
2. Remove any reference to children undergoing ‘sexual reassignment surgery’ from Clause 72 of the Bill; and
3. Include a definition of intersex in the Bill with a note saying that those with bona fide intersex conditions can have the sex on their birth certificates corrected under section 42 of the Act if they are able to provide appropriate specialist medical evidence supporting their application.