



**BUILDING OUR COMMUNITY'S  
HEALTH & WELLBEING**

**Submission to:**

**Human Rights and Equal Opportunity Commission**

**Sex and gender diversity  
Issues paper**

**June 2008**

## **1. ACON**

ACON is a community-based non-government organisation promoting the health and wellbeing of a diverse gay, lesbian, bisexual and transgender (GLBT) community, and a leading agency in HIV/AIDS policy development and program delivery. ACON provides education, health promotion, care, support, and advocacy services for members of the GLBT community, including drug users and Indigenous people, sex workers, and all people living with HIV/AIDS (PLWHA).

ACON has offices in Sydney, Illawarra, Northern Rivers, Hunter and Mid North Coast with an extensive range of outreach services. ACON is also home to the Community Support Network (CSN), the Positive Living Centre (PLC), the Lesbian and Gay Anti-Violence Project (AVP) and the Sex Workers Outreach Project (SWOP).

## **2. GENERAL COMMENT**

ACON wishes to commend HREOC for identifying issues relating to sex and gender diversity as an important human rights issue in Australia, and for showing leadership in proposing to act to address the issues. People who are sex and gender diverse are often marginalised within our society, owing to discrimination, social exclusion and ignorance.

This submission will outline the work that ACON does in addressing the health and wellbeing needs of sex and gender diverse people, and discuss the issues that they face in the context of human rights and equal opportunity. It will respond to the issues and options proposed in HREOC's *Sex and Gender Diversity Issues Paper*, with a mind to prioritising approaches to be taken by HREOC that will best serve people of sex and gender diversity in our community.

## **3. ACON'S WORK IN TRANSGENDER HEALTH**

ACON provides services to people who are sex and gender diverse in a range of projects and activities including:

- Counselling Service;
- Positive Living Centre;
- Aboriginal and Torres Strait Islander (ATSI) Project;
- Asian Gay Men's Project; and
- Sex Workers Outreach Project.

ACON has two positions employing transgender individuals as health educators providing services for the transgender community. These staff work in partnership with other ACON and SWOP staff, and key service providers. They work within a community development and peer education model to develop, implement, evaluate and deliver HIV, sexual health and health promotion services among transgender sex industry workers and Aboriginal and Torres Strait Islander transgender/sistergirls respectively.

#### 4. HUMAN RIGHTS

HREOC has set out the international instruments which apply to sex and gender diverse people and the key human rights that are specifically relevant and ACON agrees with these. As pointed out in the *Issues Paper* it is also useful to look to the Yogyakarta Principles in relation to sexual orientation and gender identity even though they do not constitute a formal treaty or covenant.

It is also important to look at the practical effects of discrimination which reduces these rights and inhibits expression, leading to negative impacts on:

- health;
- safety;
- economic participation; and
- social inclusion.

#### 5. WHAT IS SEX AND GENDER DIVERSITY?

Whilst “sex and gender diversity” is the term rapidly coming to common usage in Australian and international human rights circles, there is still some disagreement about the appropriate terminology to use.

Some community members indicated that they would prefer to see the paper discuss the issues in relation to:

- sex markers,
- gender identity; and
- gender diversity.

because the use of the word sex can confuse the issues of sex markers, gender identity and sexuality.

They preferred the terms gender identity and gender diversity which they argued make a separation from the issues of sex and sexuality, and de-sensationalise some of the issues that people experience due to their gender diversity.

This complex issue and sensationalism is epitomised by reporting on the complaint of Paul Hurst currently with the NSW Administrative Decisions Tribunal. Hurst, whilst dressed in women’s evening wear was asked to leave the Star City casino as he was said to be a man, and not appropriately dressed as a man. According to the Sydney Morning Herald, the Deputy President of the Tribunal said: *“The Anti-Discrimination Act does not protect transvestites, it protects transsexuals, but you said you live as a woman,” Ms Hennessy said. “Before the tribunal can hear the case what you have to be able to prove to the court is that sexually you are a transsexual.”*<sup>1</sup>

---

<sup>1</sup> See <http://www.smh.com.au/articles/2008/05/25/1211653847192.html>

The mismatched gender identity with the presumed sex was the trigger for the action, and yet the community and even the Tribunal responsible for administering the legislation are now confusing the issues.

Sex is also easily confused with sexuality, which is not the source of the particular type of discrimination being discussed (although the sexuality of gender diverse people may be an additional source of discrimination). In addition, there can be some confusion between sex marker (male/female) and gender diversity.

Further difficulties arise when debate starts out focussing on the male-female dichotomy and fails to recognise that people have different roles, places in society and appearances or indicators of gender which result from and are referenced against where they sit on the gender identity spectrum, which should be considered more “fluid” than the sex markers of male or female alone.

When there is a focus on the appropriate sex marker box for example, intersex people have no accurate place to go, and their gender identity too may be such that this can't be simply described.

## **6. KEY HUMAN RIGHTS ISSUES FOR SEX AND GENDER DIVERSE PEOPLE**

### **6.1 Anti-discrimination legislation and employment issues**

Our society is constructed in such a way that people tend to be categorised as either male or female, which means that almost of our institutions, and the individuals which make up society, do not even recognise a concept of sex and gender diversity. This lack of recognition can result in harm for those who do not conform to society's expectations and understanding around sex and gender, and manifests itself through the high levels of discrimination that transgender people experience.

It is promising to see that governments at the state and territory level in Australia have sought to address the discrimination faced by transgender people by enacting anti-discrimination legislation that prohibits discrimination on the basis of transexuality, gender identity or gender history. However, as the *Issues Paper* points out, there is currently no anti-discrimination protection for sex and gender diverse people under federal law, nor do any of the state or territory laws explicitly protect intersex people.

In terms of discrimination experienced by sex and gender diverse people, employment is a key issue. A person's employment status will have significant impact on their health and wellbeing, socio-economic position and overall quality of life. Research indicates that transgender people experience higher unemployment and lower levels of income than other groups in the community, and are less likely to seek or obtain promotion.<sup>2</sup>

A person's employment prospects rely on them providing documentation such as a resume and other, formal documents that provide information about and proof of identity for an employer. However, such documentation may not reflect a person's current

---

<sup>2</sup> *Tranznation – A report on the health and wellbeing of transgender people in Australia and New Zealand*, Australian Centre in Sex, Health and Society, La Trobe University 2007

gender identity. For most sex and gender diverse people, the experience of revealing past identities is daunting, creates awkwardness and potentially places the transgender person in a difficult, embarrassing position at the commencement of their employment relationship. This may act as a barrier to full social and economic participation.

Within the workplace, transgender people are subject to alarmingly high levels of discrimination. A 2002 report from the Australian Centre for Lesbian and Gay Research and the NSW Gay and Lesbian Rights Lobby found that 75% of transgender respondents had experienced some form of discriminatory behaviour or prejudicial treatment while at work<sup>3</sup>.

## **6.2 Gender reassignment surgery**

### **6.2.1 Transgender people may not undergo surgery**

In many instances, a transgender person will only have their gender identity recognised once they have undergone gender reassignment surgery. For example, in NSW and other states, official documentation will not be amended to reflect a person's gender identity if they have not had surgery. Despite this, the majority of transgender people have not had any form of surgery, with only 39% of respondents in the *Tranznation* report having done so. In addition, 27% had not used hormone treatments, and a significant proportion did not intend to do so<sup>4</sup>.

Recent research has indicated that surgical intervention can result in positive health outcomes for individuals. The *Tranznation* report stated that in relation to surgery "patients often described a deep sense of satisfaction, feelings of relief and completeness with having a body that they felt to be right for them"<sup>5</sup>. Of the respondents in that report, those who had surgery were generally more likely to have better health and wellbeing outcomes<sup>6</sup>.

However, it is important to note that many gender diverse individuals don't want to undergo medical interventions as they feel it is not necessary for the expression of their gender identity. There are barriers to obtaining surgery including work, family, legal issues and access to specialist medical services.

Surgery can be prohibitively expensive, and is not covered by Medicare, and yet not undergoing surgery creates a tension between desired gender identity, appearance and the official sex marker on identity papers. In some circumstances, this pushes gender diverse individuals towards surgery as a solution for a number of issues, which they may not be financially or otherwise prepared for. For example, rough estimates of up to \$30,000 for male to female reassignment are reported in online forums<sup>7</sup>, along with

---

<sup>3</sup> *The Pink Ceiling is Too Low: Workplace Experiences of Lesbians, Gay Men and Transgender People*, Australian Centre for Lesbian and Gay Research, University of Sydney, Sydney, 2002, p28.

<sup>4</sup> *Tranznation* Ibid. report p8.

<sup>5</sup> *Tranznation* Ibid. report p48

<sup>6</sup> *Tranznation* Ibid. report p51

<sup>7</sup> For example see the ABC forum on gender surgery and hormones at ABC Online, in which the costs of hormones, surgery and Medicare are shared and discussed.

[www.2b.abc.net.au/4corners/forum/archives/archive98/newposts/56/topic56936.shtm](http://www.2b.abc.net.au/4corners/forum/archives/archive98/newposts/56/topic56936.shtm) viewed 27 May 2008

ongoing costly hormone requirements for the remainder of the person's life. Some people seek to have procedures carried out overseas, as the costs are lower.

In effect, the sex marker pushes people to conform to how society and the government will view a person *on paper*. This seems, in itself, an argument for reviewing the very purpose of the sex marker in relation to identity, particularly when other technologies exist for identifying an individual, such as DNA combined with birth date and place, or indeed simply a birth date, place and name based system.

Whether pre or post operative, the gender diverse person's intention is to live life in a chosen gender role, NOT simply as male or female. This gender role is about living life at a particular gender point, where it is *right for that person*. Progression to the desired identity (the person that you need to live as) is NOT about choice or choosing, it's about being right within the person's *own* gender identity.

### **6.3 Changing documentation**

As the Issues paper notes, there is no nationally consistent procedure to assist people to change the sex marker on official documents. There is also little access to information and education on the existing procedures, and the complexities for those who move state or country. This is an area that HREOC could investigate further.

#### **6.3.1 NSW birth certificate.**

Gender reassignment surgery is a *pre-requisite* for changing the sex marker on a NSW birth certificate. The sex marker on a birth certificate can be altered *only after surgical intervention* and the provision of:

- statutory declaration from the surgeon
- statutory declaration from another medical practitioner who has examined the person;
- statutory declaration from the person stating that they want the sex marker changed; and
- a fee is paid.

#### **6.3.2 Passports**

Following the issue of the new birth certificate, a person can apply for a new passport, provided that:

- all of the documentation above is provided together with;
- the new birth certificate; and
- a full new passport processing fee is paid.

It is not simply that the sex marker is changed in an existing passport; in fact a new passport is issued. It is assumed that any current visas held would cease to be valid.

Issues for those residing in Australia but born overseas are more complex. These individuals are not generally able to apply to change the sex marker on official documents in their country of birth, and therefore can't progress these matters on official

documents in Australia. The only exception is the UK since the *Gender Recognition Act 2004*. However, UK citizens report difficulties with changing official documentation in Australia, such as Citizenship Certificates.

### 6.3.3 NSW Drivers licence

The NSW Drivers Licence does not contain a sex marker, nor title. The licence has the name, address, colour photo and signature of the licence holder reproduced on it, all of which act as some protection from misuse, or identity fraud or confusion. This is an example of a pragmatic approach to the use of sex marker and gender related documentation. A person can change their name by deed poll and have their licence and photo renewed, thus enabling transgender people to better express their gender identity in this official document.

### 6.3.4 Marriage

Marriage is defined by law in Australia as a legally binding union between a man and a woman, being two people of the opposite sex. Australian law does not recognise same sex marriages or relationships as having the same responsibilities, rights and entitlements that attach to marriage.

Married transgender people who transition to live their lives as the opposite sex face complex legal issues, as they and their spouse no longer have the same status before the law. Similarly, transgender people who have transitioned may not marry a partner of the same sex.

In the case of *Kevin and Jennifer (2003)*, the court ruled that for the purposes of marriage a person is a particular gender at the time of the marriage, meaning that transgender people can marry if they are of the opposite sex at that time.<sup>8</sup> The reasons for the ruling included that:

*There is no rule or presumption that the question whether a person is a man or a woman for the purpose of marriage law is to be determined by reference to circumstances at the time of birth.*<sup>9</sup>

The court did not require that the person has undergone reassignment surgery to be seen as their chosen sex. The courts can now interpret a marriage on a case by case basis, where people must prove that they live their lives as a particular sex, opposite to that of their marriage partner, so that their marriage can be validated.

On the other hand, same sex couples don't have the same recognition as married couples. This means that when one partner in a heterosexual marriage transitions to the same sex as their partner they lose rights and entitlements before the law.

As one account states:

---

<sup>8</sup> *Kevin and Jennifer v The Attorney General* Family Court of Australia Fam CA 94 (21 February 2003) viewed at [http://www.austlii.edu.au/au/cases/cth/family\\_ct/2003/94.html](http://www.austlii.edu.au/au/cases/cth/family_ct/2003/94.html)

<sup>9</sup> *ibid*

*It is totally unfair that the non-transgender member of the married couple should be labelled as part of a 'same-sex couple' and stripped of all rights as a married person! After all, he/she and the partner are the victims of a medical/mental condition over which they have no control.<sup>10</sup>*

Married couples within which one partner transitions are often older, and can resent the invisibility they suddenly experience before the law, where their rights and entitlements are removed, at a time in life when they are most likely to become more dependent on such supports. In addition, the pressure to change documentation in order to ensure their gender identity is respected results in complex legal and moral issues in relation to marriage, inheritance and the responsibilities they feel toward one another. Children in such marriages are particularly affected by the fallout of discrimination, and there is a lack of appropriate support services for family cohesion during and after gender transition.

### **6.3.5 Impacts of discordant sex markers for people of sex and gender diversity**

Individuals who live in a gender identity that is different from the sex marker on their official documents indicate that this can be a source of ongoing problems and stress, which can lead to poor health outcomes, and expose them to risks.

Individuals may fear being “outed” by their former identity being disclosed, and may find it degrading and disrespectful to their current identity to have this information revealed. Anecdotal evidence indicates that experiences of disclosure are horrible and upsetting to individuals, and can lead to anxiety, depression and self-harm, particularly if the impacts undermine their current identity in areas of life where the past identity is not necessarily relevant to the interactions and relationships in which the disclosure occurred.

In essence, privacy is impacted, as no-one *needs* to know the former name or gender identity. The information can be used to invade privacy further, as the former sex marker, gender identity, title and name can be used to investigate a person’s background, against their wishes.

Transgender women in particular are at risk of violence upon disclosure, as they may be living their lives as women, with relationships and roles that match gender stereotypes, only to be “outed” and then *picked*, meaning that they no longer are *passing* as a woman in the social circles in which they move.

Relationships and employment can be affected by disclosure, as can access to appropriate services. Women’s housing services, for example, have struggled to accommodate transgender women, as issues of male privilege and violence are revisited in the debates around access to services for these women (eg Mission Australia and SAAP policies which ignore current gender and exclude transgender women from accessing services).

ACON would support HREOC conducting a review of the purpose of sex markers and gender identifiers in official documents, with a view to determining where, if any, this could be removed and no longer required.

---

<sup>10</sup> Letter to Member of Parliament (author not attributed) *Polare*, Issue 75, p29 Gender Centre 2008

ACON supports the removal of the sex marker where it serves no purpose. This in itself would advance the rights of gender diverse people.

Where a sex marker is required, ACON supports the reversal of order such that male privilege is conceptually addressed, and where possible, the inclusion of further categories allowing individuals to indicate sex and gender diverse identities. Of course this needs to be balanced against the negative impacts which could flow from a person being *required* to complete a gender identity indicating that they are transgender or intersex for example.

## 6.4 Health Policy and services

### 6.4.1 HIV/AIDS and the sexual health of transgender people

The Australian Government's National HIV/AIDS Strategy notes that stigma and discrimination are associated with the epidemic, and in the section on guiding principles makes the following reference:

*The UN General Assembly Declaration of Commitment on HIV/AIDS requires governments to:*

- *eliminate all forms of discrimination against, and to ensure the full enjoyment of all human rights and fundamental freedoms by, PLWHA and members of vulnerable groups; and*
- *develop strategies to combat stigma and social exclusion connected with the epidemic.*<sup>11</sup>

In 1994, reports of the impact of HIV on transgender people were anecdotal and speculative, as the data was not being collected. One report estimated that 0.7 % of transgender people had HIV and that this was 9 times the rate in the Australian population, but also stated:

*The actual number of transgenders who are HIV positive is unknown... transgenders have an alarming mortality rate by violence, overdose and suicide. In recent years this has been compounded by a high rate of death by AIDS*<sup>12</sup>.

Transgender women are at risk of HIV due to their attachment to the gay community, which is in turn the community most affected by HIV in Australia. In a Sydney survey conducted at a large GLBT community event, 112 (26%) women had ever had sex with men they believed to be bisexual or gay men, with 25 (6%) having done so in the last 6 months, of whom 12 were transgender women.<sup>13</sup> Of the total number of women (25) who indicated they had had sex with a gay or bisexual man in the previous six months, 11 (44%) reported having vaginal or anal sex without a condom. It may be assumed that

---

<sup>11</sup> *National HIV/AIDS Strategy 2005-2008* Commonwealth of Australia 2005 p13

<sup>12</sup> *Transgender Lifestyles and HIV/AIDS Risk* Roberta Perkins et al, UNSW 1994 p65

<sup>13</sup> *SWASH Sydney Women and Sexual Health* 2004 survey on the health of lesbian, bisexual and queer women in Sydney

transgender women who are attached to the GLBT community may be at greater risk of HIV than other women.

The 2006 *Private Lives*<sup>14</sup> report included 118 people of sex and gender diversity. The report states that there is very little research on STI rates in transgender and intersex people. These participants reported having had an STI check up in the last year at relatively high rates, however there was also a proportion of these respondents who said they had never had an STI check-up, including 42.9% of intersex females.

In addition, the *Private Lives* report asks directly about HIV status, with no HIV self-reporting amongst any of the transgender respondents, which is surprising.

The report contains other indicators as to HIV risk behaviours relating amongst sex and gender diverse people. For example, 2.9% of trans-males and 1.5% of trans-females reported they had been told they had Hep C, an indicator for injecting drug use. Yet, in the responses to questions around drug use in the previous month, with the exception of steroid use, these participants did not appear to be using injected drugs. However, in another set of questions relating to issues discussed at counselling, 16.7% of intersex females gave "HIV concerns" as a reason for seeing a counsellor or psychiatrist in the past 5 years.

ACON notes therefore that more research needs to be conducted into the HIV and sexual health needs of transgender people.

#### **6.4.2 Gender reassignment interventions, surgery and health outcomes**

Gender reassignment involves a set of interventions, all of which carry some health risks for the individual. Little information is widely available on the options, stages, processes and any related health risks.

This disadvantages the health consumer, who is vulnerable to the influence of professional people in making decisions that may affect their health now or later in life. Often the patient is a young adult with little life experience, who therefore lacks the ability to foresee how a decision may impact later in life.

Some transgender activists state that there is an over willingness to treat the patient medically and offer surgery, rather than other slower options. It is too easy to get medical referrals and prescriptions for hormones which can be positive for some, and negative for others.

Non-reversible impacts of medications, such as Androcur, which renders males sterile within a short time-frame, may not be fully explained to patients or understood in the whole of life context. The associated side effects of this drug, used for the treatment of male to female patients include liver toxicity, depression, fatigue, weight gain, osteoporosis and thrombosis and embolism.

Where surgery is involved, some procedures are minor, whilst others are major, invasive, and require long recuperation and rehabilitation time frames. Infections and

---

<sup>14</sup> *Private Lives-A Report on the health and wellbeing of GLBTI Australians* Australian Research Centre in Sex Health and Society, La Trobe University 2006

problems with healing are an important factor in making the decision to undergo surgery, which may not be well understood as patients give consent.

#### **6.4.3 Mental health, and drug and alcohol use**

The transgender community is considerably affected by a range of health issues that result from or relate to gender identity issues. The *Tranznation* survey included several widely used measures of general health, well-being, and depression. The study found, as follows:

*These ratings of general health were comparably lower than those reported in the Australian National Health Survey (ABS, 2006b). The results indicate that the health of transgender people is poorer than the general population in Australia.*

Depression, anxiety and suicide are a risk for gender diverse individuals, due to social isolation, a lack of appropriate services, and the experiences of discrimination. The *Tranznation* report states:

*There are many reasons why a transgender person may experience depression or depressive symptoms. Depression and distress may arise as a result of experiencing gender dysphoria; it can be associated with the process of sex reassignment (including attempts to gain access to such treatments), it may develop in response to gender related treatments (e.g. adverse reactions to hormones or through unsatisfactory outcomes), or because of discrimination and abuse relating to their gender identity (Clements-Nolle, Marx, & Katz, 2006). Alternatively, depression may be unrelated to an individual's gender identity.*

*The survey found that just over one third (36.2%) met the criteria for a current major depressive episode, which is much higher than the level of depression found in the general Australian population. Of some concern, one in four respondents reported suicidal thoughts in the two weeks before they completed the survey. Almost half of all participants (49.4%) reported that they had been diagnosed with depression in the past.<sup>15</sup>*

#### **6.4.4 Transgender workers in the sex industry**

Anecdotal evidence provided to ACON indicates that the cost of surgery may motivate people to enter the sex industry, such as making pornography or engaging in sex work. This work may offer a means of saving whilst in transition.

In an internal report to the ACON Board in 2006<sup>16</sup>, the Sex Workers Outreach Project's Transgender Project Officer noted that there are fewer transgender sex workers than in the past,<sup>17</sup> for a range of reasons including:

---

<sup>15</sup> *Tranznation* Op cit p26

<sup>16</sup> *Health Issues Paper on Transgender Sex Workers*, norrie mAy welby, ACON Strategic Planning papers 2006-2009

<sup>17</sup> In 1994, 45% of male to female transgender people had engaged in sex work see *Transgender Lifestyles and HIV/AIDS Risk*, Roberta Perkins, University of NSW 1994 p34

- More options for employment
- Better tolerance of transgender and transitioning people in the workplace
- More access to appropriate services, such as the Gender Centre and SWOP

Transgender sex workers generally earn more than their male or female counterparts for providing sexual services. Some people who enter the sex industry may then find themselves in limbo, as they make better money from their pre-operative physical discordance than with their chosen gender identity, and the income from the work becomes a reason to postpone the surgery. In addition, some transgender sex workers state that their ability to attract clients and make money within their preferred gender identity acts as a psychological positive, which they enjoy and find meaningful. Leaving the sex industry may remove access to this level of acceptance and sexual power.

However, it should be noted that transgender sex workers, in particular those who work on the street are the subject of greater incidence and more serious violence than other sex workers. SWOP's report on analysis of reports of violence in the five years to 2006 noted that some 7% of reports involved violence against transgender sex workers who make up just 3% of SWOP's total service users, and 47% of the reports were from street based sex workers who make up around 2% of the sex working population.<sup>18</sup>

Transgender women are a key risk group for HIV, and epidemiological studies in other countries have attributed high rates of HIV infection to behaviours associated with sex work in this population. One study compared HIV prevalence among transgender female sex workers (TFSW) with prevalence among transgender women who do not engage in sex work, and with male sex workers and biologically female sex workers. The study found HIV prevalence was 27.3% in TFSW, 14.7% in transgender women not engaging in sex work, 15.1% in male sex workers, and 4.5% in female sex workers. Meta-analysis indicated that TFSW experienced significantly higher risk for HIV infection in comparison to all other groups and particularly in comparison to female sex workers.<sup>19</sup>

However, in Australia, rates of HIV amongst sex workers are lower than in other countries due to the strategic response to HIV /AIDS that has included sex worker peer health education and outreach, including to transgender sex workers. The *National HIV/AIDS Strategy* states as follows:

*Australia has the lowest rate of HIV/AIDS among sex workers in the world, due to the work of community-based sex worker organisations and projects conducted in partnership with State, Territory and Australian Governments, and with other agencies. Peer education has been a significant focus of the work of community-based sex worker organisations and has included the provision of information on safe sex practices, up-skilling new workers to implement these practices, and outreach services.*

ACON's Sex Workers Outreach Project (SWOP) has a dedicated transgender project, which provides up to 800 occasions of service to this target group in any one year.

---

<sup>18</sup> *Safety Issues in Sex Industry Settings Report*, SWOP 2006

<sup>19</sup> Sex Work and HIV Status Among Transgender Women: Systematic Review and Meta-Analysis, Operario D, Soma T, Underhill K. *Journal of Acquired Immune Deficiency Syndromes*. 2008 Mar 13

Transgender people are likely to remain a target population of the *National HIV/AIDS Strategy*, as are sex workers.

#### **6.4.5 Intersex newborns and children and health**

The very existence of intersex newborns is a hidden, unknown and rarely discussed issue. Rather than educating parents, caregivers, the medical profession and the general community about intersex babies and children's needs and issues, decisions are made based on relatively crude information as to the sex assignment that will be made available to that child and their family. Decisions made shortly after birth are irreversible.

Gender variance is not well prepared for in society. There is little education or tolerance of these issues, and we have social constructs that defeat tolerance, such as a lack of androgenous clothing and names for children, and a highly invested social exchange based on the sex marker of babies and children.

In later life intersex people may have the experience that a decision made as a baby doesn't match the gender identity or attraction they experience as young adults. This is an avoidable outcome of the need to match a sex marker to a body, and raise a child within a limited male or female sex and gender identity. Technology, medical advances and other social developments indicate that the current practice could be avoided, or at least postponed to enable children to grow and develop to a stage where a more informed decision may be made.

### **7. THE FOCUS OF HREOC's PROPOSED PROJECT**

ACON recommends that HREOC's project on sex and gender diversity should focus on three key areas:

#### **7.1 Inquiry**

The impact that HREOC's *Same-Sex: Same Entitlements* report has had in advancing the campaign for the recognition of same-sex couples under federal law demonstrates the benefit that a HREOC Inquiry could have in addressing the human rights issues facing sex and gender diverse people in Australia. While it may be that it is not practical to undertake an inquiry of the same size again, it would be highly beneficial for HREOC to produce a report outlining the key issues for sex and gender diverse people, which can be used as an advocacy tool.

#### **7.2 Anti-Discrimination Legislation**

Given the lack of federal protection in the area, HREOC should take a lead role in advocating for anti-discrimination legislation relating to sex and gender diversity. In order to do this, it should work in partnership with community-based organisations that represent the interests of the sex and gender diverse community.

#### **7.3 Development of Guidelines or Fact sheets**

The potential project outcome of developing guidelines or fact sheets would also be a useful tool for working to improve the health and wellbeing of transgender and other sex and gender diverse people in our community.

For further information on the issues raised in this paper, please contact David Scamell, Manager, Policy, Planning and Research at [dscamell@acon.org.au](mailto:dscamell@acon.org.au) or on 02 9206 2048.

*Acknowledgement*

ACON wishes to thank Kerry Ellison for her assistance in the preparation of this submission.