
Briefing Paper on Equal Opportunity Tasmania, Options Paper:

Legal recognition of sex and gender diversity in Tasmania: Options for amendments to the *Births, Deaths and Marriages Registration Act 1999*

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'Proposed sex-change laws infringe on women's rights'

Equal Opportunity Tasmania (EOT) released an Options Paper recommending changes to the *Births Deaths & Marriages Registration Act* (Tas) (BDMRA) in February 2016.¹ Key recommendations included the removal of the requirement for 'sexual reassignment surgery' for a legal change of sex, to be replaced by mere self-identification, and that no historical record of a person's sex-change be indicated on the register.

Little effort appears to have been made by Equal Opportunity Tasmania to engage the public in consultation regarding the recommended changes. There is no publicly available information about the groups or individuals who were involved in informing the contents of the Options Paper and we are concerned that women and girls have been dis-regarded as legitimate key stakeholders.

Allowing any male who professes an 'identity' of female to have their sex legally recorded as female **would result in violations of girl's and women's rights** in several spheres of public life.

The proposed change would practically limit the protections afforded to women and girls under the *Sex Discrimination Act 1984* (Cth) ('SDA'), which implements Australia's international obligations regarding the protection of women's rights under the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).

For example, women would be forced to allow access to males who have self-identified their sex as 'female' into women's only services, such as domestic violence shelters and women's support groups. Women's clubs (such as gyms) and events (such as festivals and awards ceremonies) will also be similarly affected.

Services that provide intimate care to female clients (such as assistance with toileting, showering, grooming and dressing) would not be able to legally discriminate against male people who have identified their sex as 'female' in recruitment to such positions.

¹ Legal recognition of sex and gender diversity in Tasmania: Options for amendments to the *Births Deaths & Marriages Registration Act 1999*, Equal Opportunity Tasmania (Options Paper).

The ability of women to exclude such males from competitive sporting activity, as explicitly provided for under the *SDA*² will also become practically void if males are able to become legally indistinguishable from females.

The change would also limit the ability of authorities to prevent males who self-identify their sex as female from being housed in female prisons, as they would be legally indistinguishable from actual female people. This scenario raises particularly grave concerns for women's rights:

'Women's prisons are spaces in which women are confined and unable to escape unwanted attention from males. The fact that women may have to share cells and shower facilities with men who are seeking to transgender could be seen as an extra layer of punishment. Male prisoners in western countries are using human rights laws successfully to gain access to transgender treatment at public expense in prison, and the right to then transfer to the women's estate. These men are often precisely those who are most violent and dangerous to women's safety, having been convicted of grave crimes including the murder of women....there seems to be no acknowledgement here of the....serious and pressing right of women to avoid being compulsorily housed with violent men.'³

Further areas of concern include the implications for confusing demographic data, especially as it relates to reporting on health, crime and the social, economic and political status of the sexes.

All persons should have protection against discrimination in employment, education, housing and access to services irrespective of how they choose to dress or present themselves - such protection exists under both the *Anti-Discrimination Act 1998* (Tas) and the *Sex Discrimination Act 1984* (Cth) in the recognition of 'gender identity' as a protected attribute, which includes transgenderism and transsexualism.

We do not believe that 'gender rights' should extend to being able to self-identify one's sex. There are important differences between sex and gender identity, and these two concepts need to remain differentiated in law for the protection of women and girls. Gender is a social construct, describing characteristics that our society stereotypically views as masculine or feminine. Sex refers to the biological difference between males and females.

Women and girls do not experience discrimination on the basis of their 'gender' (i.e. aspects of appearance and behaviour associated with 'femininity' or 'masculinity') but on the basis of sex (that is, their sexed *body type*).

² See Sex Discrimination Act (Cth) 1984, s42.

³ Women's Spaces, iii,
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/transgender-equality/written/19512.html>.

The protection of people who are gender non-conforming, whether they identify as transgender or not, should not conflict with women's right to protection from discrimination as persons of the female sex. Legally erasing the existence of female people, by legally conflating them with male people who 'identify as female' severely limits women's legal rights *in practice* and also impedes their ability to publicly discuss issues that affect them because of their *sex*. an examples is the trend towards talking about 'pregnant people' or 'birthing parents' rather than 'pregnant women' or 'mothers' in health care and reproductive rights advocacy settings.

The Anti-Discrimination Commissioner has failed to acknowledge our concerns about the impact that the proposed changes would have upon women's and girls' rights.

There is no publicly available information about the stakeholders who were consulted in the process of formulating these proposed changes.

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