



Organisation Intersex International Australia Limited
For intersex human rights, information, and peer support

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Dear Natasha Kontzionis and Mardi Kalika,

Thank you for the letter from Ruth Ambler inviting responses to questions regarding the implementation of regulations for changes to sex or gender identity in South Australia.

Intersex people are born with physical or biological sex characteristics (such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that are more diverse than stereotypical definitions for male or female bodies. For some people these traits are apparent prenatally or at birth, while for others they emerge later in life, often at puberty. We acknowledge a variety of terms used by intersex people to describe our bodies, identities, sexes and genders.

OII Australia is a national intersex-led organisation that promotes the human rights and bodily autonomy of people born with intersex variations. We have members in South Australia.

OII Australia welcomed the extended deadline for submissions, as this enables us to provide you with a copy of a joint consensus statement, the "Darlington Statement" on this and other human rights and health issues affecting intersex people, ratified by Australian and NZ intersex organisations and independent advocates.¹ South Australians joined us in making the statement.

The Darlington Statement makes the following relevant points:

A. Intersex people are born with physical or biological sex characteristics (such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that are more diverse than stereotypical definitions for male or female bodies. For some people these traits are apparent prenatally or at birth, while for others they emerge later in life, often at puberty (see UN definition[6]). We recognise our diverse histories and use the word intersex inclusively, and acknowledging our right to self-determination.

4. That the word 'intersex', and the intersex human rights movement, belong equally to all people born with variations of sex characteristics, irrespective of our gender identities, genders, legal sex classifications and sexual orientations.

8. Regarding sex/gender classifications, sex and gender binaries are upheld by structural violence. Additionally, attempts to classify intersex people as a third sex/gender do not respect our diversity or right to self determination. These can inflict wide-ranging harm regardless of whether an intersex person identifies with binary legal sex assigned at birth or not.

¹ Androgen Insensitivity Support Syndrome Support Group Australia, Intersex Trust Aotearoa New Zealand, Organisation Intersex International Australia, Black E, Bond K, Briffa T, et al. Darlington Statement [Internet]. 2017 [cited 2017 Mar 10]. Available from: <https://oii.org.au/darlington-statement/>

Undue emphasis on how to classify intersex people rather than how we are treated is also a form of structural violence. The larger goal is not to seek new classifications but to end legal classification systems and the hierarchies that lie behind them. Therefore:

a. As with race or religion, sex/gender should not be a legal category on birth certificates or identification documents for anybody.

b. While sex/gender classifications remain legally required, sex/gender assignments must be regarded as provisional. Given existing social conditions, we do not support the imposition of a third sex classification when births are initially registered.

c. Recognising that any child may grow up to identify with a different sex/gender, and that the decision about the sex of rearing of an intersex child may have been incorrect, sex/gender classifications must be legally correctable through a simple administrative procedure at the request of the individual concerned.

d. Individuals able to consent should be able to choose between female (F), male (M), non-binary, alternative gender markers, or multiple options.

Accordingly, OII Australia's position is to call for an end to legally-imposed sex and gender markers. At the same time, we recognise that voluntary disclosure of self-reported sex and gender information may be required, in the same way as self-reported Indigeneity, ethnicity and religion, to support statistical analysis and research in the public interest, including data collection by public bodies.

Given your legislated requirement to impose a legal classification, our answers to your two questions are as follows:

1. What sex or gender identities should be recognised by the regulations for persons who apply to have their registered sex and/or gender changed?

We recommend that the preferred new gender registration should be 'Other; please specify' with a free text field.

In the alternative, applicants should be able to change their registered sex and/or gender to a minimum of 8 categories, being male, female, male and female, X, non-binary, unspecified, brotherboy and sistergirl.

2. What period of counselling should be prescribed in the regulations as a sufficient amount of appropriate treatment by counselling only?

Given that intersex is a physical or biological phenomenon, where sex characteristics are more diverse than stereotypes for females or males, and given that such biological variation can create risks of incorrect assignment of legal sex, we do not support the imposition of any form of counselling to change sex classification of people born with variations in sex characteristics.

Section 42 of the Act allows a Registrar to correct the Register 'to bring the particulars contained in an entry about a registrable event into conformity with the most reliable information available to the Registrar of the registrable event'. The Registrar has an obligation to ensure the registrable event is accurate and must correct the register (and subsequent birth certificate) if information later comes to light that shows the recording of the registerable event at birth was incorrect.

This already empowers a Registrar to correct a sex marker for an intersex person where there is an error in how an intersex person's legal sex was recorded at birth. Some intersex people will apply for their birth certificate to be corrected, including, for example, to reflect the fact that they were male and female at birth, or that the initial legal registration was otherwise inaccurate. This is different from

a change of sex application, and simply reflects that the decision made about their legal registration was wrong.

Additional issues

1. Guidelines for corrections to birth certificates

We recommend that guidelines be prepared by the Registry of Births, Deaths and Marriages for applications by people born with variations of sex characteristics and, if applicable, any parent or carer, to correct an inappropriate a sex marker on a birth certificate in South Australia.

2. Legal sex registration at birth

Guidelines for legal sex registration do not form part of the current consultation, but we draw the government's attention to the 2016 Family Court of Australia case, *Re Carla (Medical procedure)* [2016] FamCA 7.²

This case describes a situation where surgical procedures were used to reinforce a legal sex assignment on a 5-year old child. The Family Court stated that parents could authorise the sterilisation of the young child, despite medical evidence that does not support that decision. The judgement was grounded in gender stereotyping, and took place two years after the child was subjected to clitorrectomy and labiaplasty surgeries without independent oversight; those surgeries were described by the judge as having "enhanced" her female genitalia. These interventions are described by the United Nations Committee on the Rights of the Child as a "harmful practice", and multiple human rights institutions and organisations have called for such practices to end.³

No protection is yet afforded to children born with intersex variations in South Australia, meaning that the harmful practices described in *Re Carla* occur to children born in the State.

Accordingly the Darlington Statement calls for:

*7. We call for the immediate **prohibition as a criminal act** of deferrable medical interventions, including surgical and hormonal interventions, that alter the sex characteristics of infants and children without personal consent. We call for freely-given and fully informed consent by individuals, with individuals and families having mandatory independent access to funded counselling and peer support.*

*15. We acknowledge the **long-term physical and psychological implications of harmful and continuing medical practices**, and limited access to support and peers.*

*16. Current forms of **oversight of medical interventions** affecting people born with variations of sex characteristics have proven to be inadequate.*

a. We note a lack of transparency about diverse standards of care and practices across Australia and New Zealand for all age groups.

² *Re Carla (Medical procedure)* [2016] FamCA 7. Available from: <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FamCA/2016/7.html> Carpenter M. The Family Court case *Re: Carla (Medical procedure)* [2016] FamCA 7 [Internet]. OII Australia - Intersex Australia. 2016 [cited 2016 Dec 7]. Available from: <https://oii.org.au/31036/re-carla-family-court/>

³ Office of the High Commissioner for Human Rights. Intersex Awareness Day – Wednesday 26 October. End violence and harmful medical practices on intersex children and adults, UN and regional experts urge [Internet]. Office of the High Commissioner for Human Rights; 2016 [cited 2016 Oct 24]. Available from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20739&LangID=E>

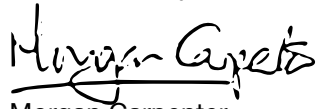
b. We note that the Family Court system in Australia has failed to adequately consider the human rights and autonomy of children born with variations of sex characteristics, and the repercussions of medical interventions on individuals and their families. The role of the Family Court is itself unclear. Distinctions between “therapeutic” and “non-therapeutic” interventions have failed our population.

*17. We call for the implementation of advisory bodies to develop appropriate **human rights-based, lifetime, intersex standards of care** with full and meaningful participation by intersex community representatives and human rights institutions.*

We ask that the South Australian government act on these pressing issues.

Thank you for the opportunity to make this submission.

Yours sincerely

A handwritten signature in black ink that reads "Morgan Carpenter". The signature is written in a cursive style with a horizontal line underneath the name.

Morgan Carpenter
Co-executive director, OII Australia