

**Submission to the Northern Territory Attorney-  
General and Minister for Justice or the Department  
of the Attorney-General and Justice**

**Inquiry into the *Discussion Paper: Modernisation of  
the Anti-Discrimination Act, September 2017.***

**From**

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## **About the Australian Family Association**

The Australian Family Association (AFA), as an interested organisation with members in the Northern Territory and across Australia, welcomes the opportunity to make comment on the NT Discussion Paper on Modernisation of the Anti-Discrimination Act.

The Australian Family Association (AFA) is a voluntary, ecumenical, non-party political organisation.

The AFA holds that the family is the basic unit on which human societies are built and that the binary, biological nature of human sexual identity, as male and female, is fundamental to the formation of the family.

In pursuance of its objectives therefore the AFA has an interest in the matters raised by the Discussion paper and makes the following Submission.

## Definitions and terms

**ADA** Northern Territory Anti-Discrimination Act.

**SDA** Federal Sex Discrimination Act 1984.

**Cisgender** (cis male and cis female) relates to how a person *aligns* their self-chosen gender identity with their birth sex, as distinct from a person regarding their sex as self-evident, fixed, immutable, biological male or female and not a matter of choice.

**Gender identity** means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.<sup>1</sup>

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<sup>1</sup> *Sex Discrimination Act 1984*, Section 4.

## Recommendation

**Recommendation** regarding Q 2: *Should the attribute of "gender identity" be included in the Act?*

Gender identity should not be inserted into the ADA. Gender identity is a subjective social construct. It is ambiguous, mutable and cannot be objectively determined. Introducing ambiguity into law creates uncertainty in law, risking injustices across wide areas of society.

**Recommendation** regarding Q 20: *Should definitions of "man" and "woman" be repealed?*

The definitions of man as a member of the male sex and woman as member of the female sex should be retained in the ADA. Man and woman are self-evident terms, defined by their complimentary reproductive functions. In contrast, gender identity is an ambiguous term, "man" and "woman" are objective, mutable, fixed and certain terms. "Man" and "woman" create certainty in law.

**Recommendation** regarding Q 4: *Should vilification provisions be included in the Act?*

"Offend, insult or humiliate are very low, subjective, thresholds for an offence and should not be included in the ADA. The current test for discrimination in the ADA should be retained.

**Recommendation** regarding Q 14: *Should any exemptions for religious or cultural bodies be removed?*

These exemptions should not be removed. Removal would extend the areas where ambiguous gender identity would have potential to create injustices across wide areas of society.

## This submission examines the meaning and implications of writing “gender identity” into the ADA

This submission addresses with the following issues raised in the Discussion Paper’s “Summary of Questions (pgs. 7-8):

- Q 2. Should the attribute of “gender identity” be included in the Act?
- Q 20. Should definitions of “man” and “woman” be repealed?
- Q 4. Should vilification provisions be included in the Act?
- Q 14. Should any exemptions for religious or cultural bodies be removed?

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### Gender identity

The Discussion Paper says:

Gender is not limited to biological sex assignment; it takes into account appearance, mannerisms and the social identity a person chooses for themselves, including to be something other than male or female. Gender refers to the way a person presents and is recognised within the community. A person’s gender might include outward social markers, including their name, outward appearance, mannerisms and dress. It also recognises that a person’s assigned biological sex and gender may not necessarily be the same. Some people may identify as a different gender to their assigned biological birth sex and some people may identify as neither male nor female.<sup>2</sup>

The Federal *Sex Discrimination Act 1984* (the SDA), as amended in 2013, provides a definition that would reflect the Discussion Paper’s understanding of gender identity as proposed for the NT Anti-Discrimination Act (the ADA). The SDA defines gender identity as

the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.<sup>3</sup>

This definition allows for a person to self-identify with their own self-defined, fluid gender identity.

<sup>2</sup> *Discussion Paper: Modernisation of the Anti-Discrimination Act*, Department of the Attorney-General and Justice, NT Government, September 2017, pg. 10.  
[https://justice.nt.gov.au/data/assets/pdf\\_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf](https://justice.nt.gov.au/data/assets/pdf_file/0006/445281/anti-discrimination-act-discussion-paper-september-2017.pdf)

<sup>3</sup> *Sex Discrimination Act 1984*, as compiled on 1 July, 2016, Section 4.

This can be

- a biological man, with or without medical intervention, who identifies more as a woman, or a biological woman, with or without medical intervention, who socially identifies more as a man; or
- a person who identifies with any of the non-binary 58 gender identities listed on Facebook (see appendix 1);<sup>4</sup> or
- a person who identifies at a point on a spectrum from 100 percent male to 100 percent female, allowing all 24 million Australians to have their own unique gender identity; or
- a person who identifies as genderless, i.e. having no sex or gender identity; or

Note: the original objective of the SDA was to implement protections for biological women. The SDA's protections for women were based on the characteristics by which women were discriminated in employment: pregnancy, potential pregnancy, breast feeding and primary carer of children.

The original objective of the SDA fundamentally changed with the 2013 changes to the SDA. These

- removed the definitions of man "as a member of male sex, regardless of age," and woman "as a member of female sex, regardless of age," (see the 2012 version of the SDA v's the post 2013 changes to the SDA);<sup>5</sup>
- Inserted the definition of gender identity as "the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth;"<sup>6</sup> and
- Many other related changes.

Shortly after the SDA was amended, the federal Attorney General's Department issued the *Australia Government Guidelines on the Recognition of Sex and Gender* (2013), requiring that all federal government documents (including passports, Medicare forms and taxation forms) to carry the sex identifier Male, Female, X(Indeterminate, Unspecified, Intersex), or Male, Female, X.

Soon after, the ACT changed their birth registration law to recognise a person as Male or Female or Indeterminate or Unspecified or Intersex.<sup>7</sup>

The changes to the SDA allow a man to self-identify as a woman and claim all the protections and privileges granted previously only to biological women. This has undermined the original objective of the SDA, the protection of women against discrimination.

The proposed amendments to the ADA are similar to the 2013 changes to the SDA and are likely to have similar consequences, as examined below.

<sup>4</sup> Russell Goldman, "Here's a List of 58 Gender Options for Facebook Users," American ABC News, February 13, 2014. <http://abcnews.go.com/blogs/headlines/2014/02/heres-a-list-of-58-gender-options-for-facebook-users/> Accessed 21 July, 2015.

<sup>5</sup> *Sex Discrimination Act 1984*, Act No. 4 of 1984 as Registered 21/Mar/2012, Section 4.

*Sex Discrimination Act 1984*, as compiled on 1 July, 2016, Section 4.

<sup>6</sup> *Sex Discrimination Act 1984*, as compiled on 1 July, 2016, Section 4.

<sup>7</sup> Birth Registration Statement," Australian Capital Territory.

[https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/2214/~/births%2C-deaths-and-marriages-forms-and-fees](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2214/~/births%2C-deaths-and-marriages-forms-and-fees)

## Vilification clause

The Discussion Paper suggests the ADA could

make it unlawful for a person to do an act, other than in private (for example at home), if the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and the act is done because of a characteristic of that person or they are a members of the group on the basis of race, disability, sexual orientation, religious belief, gender identity or intersex status.<sup>8</sup>

Offend, insult, or humiliate are very low, subjective thresholds for an offence. What does it mean to be “offended?”

Imagine that person A is a biological male who as a chosen a gender identity that is 30% male and 70% female. If person A is “offended” because person B misnames them, or uses an pronoun that does not fit their gender identity, or writes about them as being male, according to their birth sex, is this going to be grounds for an anti-discrimination complaint? If so and if person B is a teacher and is found guilty of an offence, will this mean that person B’s professional registration will be brought into question or cancelled for committing such and offence?

**Recommendation** regarding Q 4: *Should vilification provisions be included in the Act? Should vilification be prohibited for attributes other than on the basis of race, such as disability, sexual orientation, religious belief, gender identity or intersex status?*

Offend, insult or humiliate are very low, subjective thresholds for an offence and should not be included in the ADA. The current test for discrimination in the ADA should be retained.

## Exemptions to the ADA?

The Discussion Paper says the ADA proposes making few or no exemptions for clubs, associations, accommodation, religious and cultural organisations and police.

## 13 Questions

What are the implications of defining gender identity in law, particularly in the context of the proposal to remove the definition of “man” and “woman” from the ADA, with few or with no exemptions and a low threshold for vilification?

<sup>8</sup> Discussion Paper: Modernisation of the Anti-Discrimination Act, Op. Cit., pg. 11.

## Does changing sex mean a person also change their race, age?

Q 1. If a person can change their sex to identify as a member of the opposite sex, or as being on a spectrum of male to female, or as non-binary or genderless, can a person change their race or age, or claim a disability they don't have? If race and age are fixed, immutable, isn't sex also fixed, immutable?

Q2. What does it mean to self-chosen gender identity based on feelings a person has about their "appearance or mannerisms or other gender-related characteristics"? Feelings can be deep and profound, vague and subject to moods, permanent, occasional or fleeting, past or present, different in the future. Changing one's appearance can involve a total change of appearance to identify as a different gender, or partial change, or minimal change. Appearance changes can be permanent, temporary or only for social occasions; they can be a fashion statement of "the new black," or it can be an identity politics statement in opposition to the state identifying people as male or female only.

## Will birth certificates change?

Q 3. If the ADA is amended to make gender identity a protected attribute, will NT government make the sex identifier on official Territory government forms record Male, Female, Indeterminate, Unspecified, Intersex? This sex identifier was introduced on all federal government official forms after the SDA was changed in 2013. Does the NT government further propose changing birth registration forms to make the sex identifier Male, Female, Indeterminate, Unspecified, Intersex?

Case study: In 2014 the ACT made the sex identifier on birth certificates. Male, Female, Indeterminate, Unspecified, Intersex. Feminists successfully opposed such changes in Victoria and Tasmania.

"Indeterminate" refers to

someone whose biological sex cannot be unambiguously determined or someone who identifies as neither male nor female. Many terms are used to recognise people who do not fall within the traditional binary notions of sex and gender (male and female), including non-binary, gender diverse, gender queer, pan-gendered, androgynous and inter-gender.<sup>9</sup>

It also covers people who are on point on a spectrum from 100% male to 100% female.

"Unspecified" appears to apply

in circumstances where a person in the process of changing their identity from one sex and gender to another ('transitioning') or does not identify as having a sex.<sup>10</sup>

<sup>9</sup> Australian Government Guidelines on the Recognition of Sex and Gender (July 2013, Updated Nov 2015)., Key Terms, pg. 9.

<https://www.ag.gov.au/Publications/Documents/AustralianGovernmentGuidelinesontheRecognitionofSexandGender/AustralianGovernmentGuidelinesontheRecognitionofSexandGender.PDF>

<sup>10</sup> "Beyond the Binary: Legal Recognition of Sex and Gender Diversity in the ACT," The ACT Law Reform Advisory Council (LRAC), 21 December, 2012, pg. 36, 38. <http://www.justice.act.gov.au/publication/view/1897/title/beyond-the-binary-legal-recognition> cited in Theodore Bennett, 'No Man's Land:' non-binary sex identification in Australian Law and Policy, *UNSW Law Journal* Volume 37(3), 2014, pg. 861.

[http://www.unswlawjournal.unsw.edu.au/sites/default/files/g2\\_bennett.pdf](http://www.unswlawjournal.unsw.edu.au/sites/default/files/g2_bennett.pdf) Accessed 30 May, 2017.



“Intersex” refers to people with disorder of sexual development. Arguably, intersex is out of place in the X category, given that most people with DSD identify with their sex assigned/recorded at birth. The few who choose to change their sex identifier usually identify with the opposite to their sex recorded at birth. As most intersex people identify as either male or female, intersex is not grounds for claiming that fluid gender identities, should be recognised in law. The nature of intersex conditions is discussed below.

### **Biological males accessing women’s showers, toilets, change rooms**

Q 4. If a biological man identifies more as a woman, with or without sex change surgery, will this biological male be given access to women’s showers, toilets, change rooms under the proposed changes to the ADA? Will it be an offence for biological women to object to his biological man using women’s showers, toilets, change rooms? Will it be an offence for swimming pool staff to refuse a man who identifies more as a woman, with or without sex change surgery, access to the girls’ and women’s change rooms?

### **Conflicts in kindergartens and schools**

Q 5. Will all kindergartens and schools be required to allow a boy who identifies as a girl access to women’s showers, toilets, change rooms, camps and sports? Will teachers, or other staff members or parents, be in breach of the ADA for opposing such a biological boy from accessing girls’ showers, toilets, change rooms, camps and sports? Will a transgender child only have to be “offended” to bring a charge of discrimination?

Q 6. Given the proposal to make “gender Identity” a protected attribute in the ADA, will schools be required to teach children that they can change their gender identity? Will a school and a family be required to support a child to transition to another sex/gender identity, or face discrimination complaints for offending or insulting the child by not supporting them to transition?

Q 7. Will a boys’ only school face discrimination charges for refusing to enrol a girl who identifies as a boy? Will a girls’ only schools face discrimination charges for refusing to enrol a boy who identifies as a girl?

### **Undermining women’s affirmative action**

Q 8. Will an organisation that refuses the application of a biological male – who identifies more as a woman, with or without sex change surgery – for women’s jobs, women’s scholarships, or for preselection to parliament under affirmative action programs?

Q 9. Will an organisation like Labor’s Emily’s List association be obliged to accept the membership of a biological man who identifies more as a woman, with or without sex change surgery, if this person accepts and agrees with the objects of the organisation? Would such an association face discrimination charges for failing to accept such a person as a member?

## Loss of women's safe spaces and privacy

Q 10. Would women's only associations and clubs like gyms, women's shelters, domestic violence shelters, lesbian clubs, etc. face discrimination charges for refusing access/membership to a biological man who identifies more as a woman, with or without sex change surgery.

Case study, The Victorian Civil and Administrative Tribunal, 2007: The Tribunal was called on to allow a women's organization to exclude male-female transsexuals from their facilities. In *Hanover Welfare Services Ltd (Anti-Discrimination Exemption) [2007]*,<sup>11</sup> an organisation offering assistance to the homeless people was forced to seek an exemption from Victorian law when a male who identified as a male-female transsexual was accommodated in a women's only accommodation service. The person behaved inappropriately and walked naked within the accommodation facility displaying male genitalia. The women accommodated in the facility felt great trauma and distress and because of this, resulting from their past experiences and fear.

Q 11. Will a woman having a pap smear in a medical clinic face discrimination charges for offending a trans male-to-female nurse by asking for a biological female nurse to take the pap smear?

Case study, Newsweek January 1, 2018: A U.K. woman said that she was "embarrassed and distressed" when a transsexual nurse with stubble and tattoos was sent to perform her pap smear in September. *The Sunday Times* reported ... that the woman had requested a female nurse during the appointment and chose not to go through with the procedure, once faced with the nurse's "obviously male appearance."

The female patient told *The Sunday Times* that the nurse had a deep voice and stubble but did not identify as a man, making the patient uncomfortable. "My gender is not male. I'm a transsexual," the nurse allegedly said during the visit.

The patient, though, claims her complaint was not about the nurse's gender or physical appearance. "People who are not comfortable about this are presented as bigots and this is...kind of how I was made to feel about it," the patient told *The Times* about the formal complaint.<sup>12</sup>

Q 12. Will a woman seeking a waxing service in a beauty salon clinic face discrimination charges for offending a trans male-to-female member of the staff by asking for a biological female member of staff to provide the waxing service?

## Undermining prison safety for biological women

Q 13. Will a biological man who identifies more as a woman, with or without sex change surgery, and who is serving a prison sentence, be entitled to accommodation in a women's prison? If such a person is entitled to accommodation in a women's prison, under the 2017 amendment to the

<sup>11</sup> Hanover Welfare Services Ltd (Anti Discrimination Exemption) [2007] VCAT 640 (20 April 2007) Last Updated: 24 April 2007. <http://www.austlii.edu.au/au/cases/vic/VCAT/2007/640.html>

<sup>12</sup> U.K. PATIENT "DISTRESSED" BY TRANSSEXUAL NURSE WITH STUBBLE, *Newsweek* (UK Edition), January 1, 2018. <http://www.newsweek.com/uk-patient-distressed-transsexual-nurse-stubble-767385>

*Marriage Act 1961*, will they be able to marry a biological female prisoner, be recognised as being in a lesbian marriage and start a family in prison?

**Case study NSW:** Maddison Hall (born Noel Crompton in 1964) shot and killed hitchhiker Lyn Saunders at Gol Gol, New South Wales, in 1987. After being convicted in 1989, Hall began hormone treatment while in prison, and was transferred to the women's Mulawa Correctional Centre in 1999, where it was alleged that Hall had sexual relations with several female prisoners.

After three months, Hall was alleged to have raped a woman and was returned to a male prison. Hall was charged with rape, but charges were dropped after the alleged victim was released, returned to New Zealand and refused to press charges.

After being in male prison, Hall sued the state of NSW and received an out of court settlement for \$25,000, which was used to fund Hall's sex reassignment surgery in 2003.<sup>13</sup>

**Recommendation** regarding Q 2: *Should the attribute of "gender identity" be included in the Act?*

Gender identity should not be inserted into the ADA. Gender identity is a subjective social construct. It is ambiguous, mutable and cannot be objectively determined. Introducing ambiguity into law creates uncertainty in law, risking injustices across wide areas of society.

## Removing the definitions of man and woman in the ADA

If the proposed definition of "gender identity" is written into the ADA, what will be the meaning of "sex," "man" and "woman" in NT law?

The vast majority of Australians would believe "sex," "man" and "woman" to mean fixed, immutable biological male and female sex, as recognised and recorded at birth.

However, it is arguable that the meaning of sex is fundamentally changed if "gender identity" is written into the ADA, and the definitions of "man" and "woman" are removed from the Act.

Consider you are filling out an NT government form and the sex identifier says you can identify as Male, Female X (Indeterminate, Unspecified, Intersex). The X term means that a person whose birth sex is Male or Female has the option to change from their sex to X, a non-binary gender

<sup>13</sup> "Prisoner Noel Crompton, Known as Maddison Hall," *NSW Parliament Hansard*, 21/09/2006.

[http://23.101.218.132/Prod/parliament/hansart.nsf/V3Key/LC20060921025?open&refNavID=HA8\\_1](http://23.101.218.132/Prod/parliament/hansart.nsf/V3Key/LC20060921025?open&refNavID=HA8_1)

"Male criminals who become women behind bars," *The Advertiser*, April 11, 2013.

<http://www.adelaidenow.com.au/news/weird/call-me-michelle-the-killers-who-become-women-behind-bars/news-story/99e8bebf0bcf70579f9173ea21ab9424?sv=69e959af0483bfe72029975427920727>

"Did Hall get fellow prisoner pregnant?" *Sydney Morning Herald*, September 21, 2006.

<http://www.smh.com.au/news/national/did-hall-get-fellow-prisoner-pregnant/2006/09/21/1158431837244.html>

"Sex change killer Maddison Hall to be free as a bird," *Daily Telegraph*, April 3, 2010.

<https://sslcam.news.com.au/cam/authorise?channel=pc&url=http%3a%2f%2fwww.dailytelegraph.com.au%2fnews%2fnews%2fsex-change-killer-to-be-free-as-a-bird%2fnews-story%2fb1fecc9a9a4717607de6e980980e0ba5%3fsv%3de95663cd723e2f8ffa0c%25E2%2580%25A6>

identity. Under federal regulations, a person only requires “a statement from a Registered Medical Practitioner or a Registered Psychologist which specifies their gender”<sup>14</sup> to make such a change.

Automatically, the terms Male or Female are no longer fixed, immutable statements of a person biological sex as recorded at birth. Instead, they become optional terms. The X marker changes Male to cismale and Female into cisfemale terms that a person “choose” to identify with, not statements of biological fact. Cis means choosing to “align” with. Identifying as “Male” or “Female” become a person’s choice, not a statement of biological fact.

The Discussion Paper says that the terms “male and female will allow for the ordinary meaning of “man” and “woman” to be applied to the” ADA. What does this mean? At the very least it is ambiguous, if not incorrect. Indeed, the *Australian Government Guidelines on the Recognition of Sex and Gender* (2013) admits that when “gender identity” is written into law, the terms sex and gender identity become interchangeable, blurring, confusing and diluting the meaning of sex. The federal *Guidelines* say that,

[a]lthough sex and gender are conceptually distinct, these terms are commonly used interchangeably, including in legislation.<sup>15</sup>

This ambiguity dissolves the meaning of sex, man and woman. Gender identity is a term so broad that it’s open to idiosyncratic interpretations that risks descending into legal and cultural incoherence.

If the Discussion Paper regards sex as difficult to define, then gender identity is infinitely more difficult to define, as every person on earth can have their own self-defined gender identity.

Consequently, policies that allocated rights on the basis of biological sex are thrown into conflict with new rights derived from the legal recognition of gender identity. The 13 questions above illustrate these wide areas of conflict.

## Claims that sex cannot be defined are incorrect

### **Is the fact that some people are intersex i.e. have a disorder of sexual development, grounds for recognising all people by their fluid gender identity?**

The Discussion Paper says that that “sex” fails to “recognise that some people are born with both male and female biological features... [As] ‘Gender’ is a broader concept”<sup>16</sup> that should be incorporated into the ADA.

Similarly, the Australian Human Rights Commission, has argued that sex cannot be defined because some people are “intersex.”<sup>17</sup>

<sup>14</sup> *Australian Government Guidelines on the Recognition of Sex and Gender*, Op. cit., pg. 5.

<sup>15</sup> *Ibid.*, pg.4.

<sup>16</sup> *Discussion Paper: Modernisation of the Anti-Discrimination Act*, Department of the Attorney-General and Justice, NT Government, September 2017, pg. 10.

<sup>17</sup> *Sex Files: the legal recognition of sex in documents and government records*, Australian Human Rights Commission 2009, pg. 13, 14. <https://www.humanrights.gov.au/our-work/sexual-orientation-sex-gender-identity/publications/sex-files-legal-recognition-sex> Accessed 5 June, 2017.

These statements suggest that intersex people are other than male or female and that intersex is grounds for wider recognition people as having a gender identity other than male or female.

This is incorrect. Intersex is not grounds for recognising fluid gender identities in law.

Intersex covers a number of rare “disorders of sexual development” (DSD). The Intersex Society of North America (ISNA) states that one in 1,666 people are different from XX female and XY male and roughly one-in-100 people have anomalies that make their bodies differ in some biological way from standard male or female.<sup>18</sup> ISNA defined DSDs as including “anomalies of the sex chromosomes, the gonads, the reproductive ducts, and the genitalia.”<sup>19</sup> These disorders can make identification of a new born’s sex difficult in some cases.

However, ISNA also makes it clear that, while these disorders result in more intersex people changing their sex identity later in life than the overall population, overwhelmingly, the majority of intersex people identify with their sex as recorded at birth.<sup>20</sup> Mostly, the small group of intersex people who don’t identify with their birth sex identify as the opposite sex to their sex at birth. Overwhelmingly, intersex people identify with their sex at birth. Hence, intersex is not grounds for legal recognition of fluid gender identities.

### **Do cases of people identifying as transsexual mean that should be recognised by their fluid gender identity?**

An influential advocate for recognising people by their fluid gender identity, theorist Judith Butler, says that intersex<sup>21</sup> and transsexual<sup>22</sup> people are evidence that sex is not a fixed essence of human beings. She says that intersex and transsexual people are evidence that people can change their sex and adopt their own self-defined gender identity separate from, or in place of, their biological sex.

A transsexual is a person who undergoes sex change surgery, hormonal and other treatments to legally identify as a person opposite to their sex at birth. Sex change surgery renders a person infertile. In some jurisdictions, the term transsexual also includes a person who socially identifies, by way of dress, mannerisms and other characteristics, as opposite to their birth sex, without medical intervention. (See definition of gender identity proposed for the ADA, above).

While medical interventions may allow a transsexual to have *legal* recognition as a person opposite sex to their sex at birth, these procedures can sterilise a person but they cannot *biologically* change a person’s reproductive functions, which defines sex. Sex is biologically fixed, immutable. Consequently, transsexualism is not an argument for claiming that a person can have a sex other than their sex recorded at birth.

<sup>18</sup> “How common is intersex?” Intersex Society of North America. <http://www.isna.org/faq/frequency> Accessed, March 17, 2017.

<sup>19</sup> *Clinical Guidelines for the Management of Disorders of Sex Development in Childhood*, Consortium the Management of Disorders of Sex Development, 2006 Intersex Society of North America, 2006 pg. 2. <http://www.dsdguidelines.org/files/clinical.pdf>

<sup>20</sup> Ibid. ISNA cites two particular studies of intersex conditions: Arianne B. Dessens, Froukje M. E. Slijper, Stenvert L. S. Drop, “Gender Dysphoria and Gender Change in Chromosomal Females with Congenital Adrenal Hyperplasia,” *Archives of Sexual Behaviour*, 2005, 34: 389. <https://link.springer.com/article/10.1007%2Fs10508-005-4338-5?LI=true>; and Tom Mazur, “Gender Dysphoria and Gender Change in Androgen Insensitivity or Micropenis,” *Archive of Sexual Behaviour*, 2005, 34: 411. <https://link.springer.com/article/10.1007%2Fs10508-005-4341-x?LI=true>

<sup>21</sup> Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, London, Routledge, 1990, pg. 122.

<sup>22</sup> Ibid., pg. xi.

It is incorrect to suggest that intersex and transsexual people are evidence that people can be biologically other than male or female.

It would be a retrograde step removing the definitions of man and woman from the ADA (given that sex can objectively be defined), while inserting the subjective, ambiguous, mutable definition of gender identity.

## Sex can be defined

Male and female sex has been taken as self-evident and defined by one thing, a person's reproductive function. Reproductive function, in turn, is determined by sex chromosomes (males have 23 pairs of XY chromosomes and female have 23 pairs of XX), gonads, reproductive ducts and genitalia.

While intersex conditions show that that people can have variations in the number of chromosomes, hormonal variations and differences in physical appearances, in the end, reproductive function alone that determines a person as male or female.

The complimentary biological nature of men and women is the means of reproduction and the continuation of the human race. Every person is the product of one man and one woman.

### **Recommendation** regarding Q 20: *Should definitions of "man" and "woman" be repealed?*

The definitions of man as a member of the male sex and woman as member of the female sex should be retained in the ADA. Man and woman are self-evident terms, defined by their complimentary reproductive functions. In contrast, gender identity is an ambiguous term, "man" and "woman" are objective, mutable, fixed and certain terms. "Man" and "woman" create certainty in law.

## Removal of exemptions for cultural and religious bodies

### **Recommendation** regarding Q 14: *Should any exemptions for religious or cultural bodies be removed?*

These exemptions should not be removed. Removal would extend the areas where ambiguous gender identity would have potential to create injustices across wide areas of society.

## Appendix 1

### Facebooks 58 gender identities

The American ABC News has provided a list of 58 Facebook gender identities, saying:

“Previously, users had to identify themselves as male or female. They were also given the option of not answering or keeping their gender private.

“User’s can now select a "custom" gender option.

“There's going to be a lot of people for whom this is going to mean nothing, but for the few it does impact, it means the world,’ Facebook software engineer Brielle Harrison told the Associated Press. Harrison, who worked on the project, is in the process of gender transition, from male to female...”<sup>23</sup>

ABC News provided the following list:

1. Agender
2. Androgyne
3. Androgynous
4. Bigender
5. Cis
6. Cisgender
7. Cis Female
8. Cis Male
9. Cis Man
10. Cis Woman
11. Cisgender Female
12. Cisgender Male
13. Cisgender Man
14. Cisgender Woman
15. Female to Male
16. FTM
17. Gender Fluid
18. Gender Nonconforming
19. Gender Questioning
20. Gender Variant
21. Genderqueer
22. Intersex
23. Male to Female
24. MTF
25. Neither

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<sup>23</sup> Russell Goldman, “Here's a List of 58 Gender Options for Facebook Users,” American ABC News, February 13, 2014. <http://abcnews.go.com/blogs/headlines/2014/02/heres-a-list-of-58-gender-options-for-facebook-users/> Accessed 21 July, 2015.

26. Neutrois
27. Non-binary
28. Other
29. Pangender
30. Trans
31. Trans\*
32. Trans Female
33. Trans\* Female
34. Trans Male
35. Trans\* Male
36. Trans Man
37. Trans\* Man
38. Trans Person
39. Trans\* Person
40. Trans Woman
41. Trans\* Woman
42. Transfeminine
43. Transgender
44. Transgender Female
45. Transgender Male
46. Transgender Man
47. Transgender Person
48. Transgender Woman
49. Transmasculine
50. Transsexual
51. Transsexual Female
52. Transsexual Male
53. Transsexual Man
54. Transsexual Person
55. Transsexual Woman
56. Two-Spirit

In addition, 57 and 58 are "him" and "her".