

From: Morgan Carpenter
To: [SPSC SPSC](#)
Subject: Submission by Intersex Human Rights Australia
Date: Wednesday, 14 November 2018 10:59:36 AM
Attachments: [Carpenter 2018 Legal Status.pdf](#)
[HHRJ 2018 20\(2\) Carpenter.pdf](#)

Dear Secretary

In my role as co-executive director of Intersex Human Rights Australia, I advise you that an Australian - Aotearoa/New Zealand intersex community consensus statement, the "Darlington Statement" makes the following statements:

"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.

"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."

The current proposals in the Births, Deaths and Marriages Registration and Other Legislation Amendment Bill 2018 unfortunately do not comply with these statements - and risk inflicting harm.

The ACT government created a third category, including the term intersex, for children in 2014. To date, no children have been assigned to that category. Despite suggestions at the time that a new category would address parental rights issues and reduce risk of surgical interventions to make the bodies of children with intersex variations conform to binary sex norms, this appears to be a significant policy failure, a failure that fails to (a) take account of actual processes of sex assignment in hospitals and (b) the stigmatisation of intersex bodies. In this connection, we note that the current reform proposals make no recommendations about medical interventions on intersex children, and do not offer protections to intersex people from stigmatisation and discrimination.

We strongly recommend that the Northern Territory government:

- do not create a sex/gender identity category called intersex.
- do not create new classifications applicable to infants and children.
- protect all people (including intersex people) from discrimination and harmful practices on grounds of sex characteristics.

In recent years, we have made similar submissions to the ACT, SA, WA and QLD governments, and the Commonwealth Attorney General's Department.

This submission may be published.

I draw the Committee's attention to the following papers, which elucidate many of the contradictions and flaws in current Australian policy responses to the situation of people born with intersex variations:

Carpenter, Morgan. 2018a. 'Intersex Variations, Human Rights, and the International Classification of Diseases'. Health and Human Rights 20 (2). <https://www.hhrjournal.org/2018/08/intersex-variations-human-rights-and-the-international-classification-of-diseases/>

———. 2018b. 'The "Normalisation" of Intersex Bodies and "Othering" of Intersex Identities'. In The Legal Status of Intersex Persons, edited by Jens Scherpe, Anatol Dutta, and Tobias Helms, 445–514. Cambridge, England: Intersentia. <http://intersentia.com/en/the-legal-status-of-intersex-persons.html>

The book chapter is attached with permission from the book's editor for private use; the peer-reviewed journal article is open access. I request that neither be published on the government's website.

The Darlington Statement is available at <https://darlington.org.au/statement>

kind regards
Morgan

Morgan Carpenter

Co-executive director, Intersex Human Rights Australia (formerly OII Australia), <https://ihra.org.au>

Justice of the Peace in NSW (No. 223963)

M.Bioeth (Sydney); PhD candidate, Sydney Health Ethics, School of Public Health, University of Sydney

Recent publications:

Carpenter, Morgan. 2018a. 'The "Normalisation" of Intersex Bodies and "Othering" of Intersex Identities'. In The Legal Status of Intersex Persons, edited by Jens Scherpe, Anatol Dutta, and Tobias Helms, 445–514. Cambridge, England: Intersentia. <http://intersentia.com/en/the-legal-status-of-intersex-persons.html>

———. 2018b. 'The "Normalization" of Intersex Bodies and "Othering" of Intersex Identities in Australia'. Journal of Bioethical Inquiry, May, 1–9. <https://doi.org/10.1007/s11673-018-9855-8>

———. 2018c. 'Intersex Variations, Human Rights, and the International Classification of Diseases'. Health and Human Rights 20 (2). <https://www.hhrjournal.org/2018/08/intersex-variations-human-rights-and-the-international-classification-of-diseases/>

morgan.carpenter@ihra.org.au
+61 405 615 942

I acknowledge the traditional custodians of country, bear witness to their strength and resilience, and honour elders past and present.