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Submission on the matter of procedures for gender recognition for transgender people in Australia

We, the Board of Directors of the World Professional Association for Transgender Health (WPATH) and the Australian and New Zealand Professional Association for Transgender Health (ANZPATH) jointly submit our associations professional view on the matter of legal gender recognition for transgender people in Australia.

WPATH is the only international, interdisciplinary professional association dedicated to the scientific study of gender dysphoria and the evidence-based best practices in transgender health. We are a global non-profit educational professional association with over 1500 members in the fields of medicine, mental health, law and ethics, and scientific research.¹ Formed in 1979 for the purpose of bringing scientists and medical providers together to exchange knowledge about the field, we are the creators of the internationally accepted *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People*, now in its 7th edition (SOC v7), and available in 18 languages on the WPATH website.² We have also advised many sovereign states (at their request) with respect to transgender health and human and civil rights, and submitted numerous educational briefs to courts of law adjudicating cases involving transgender people in many different countries.

In drawing up this submission we use the term *transgender* as an adjective to describe all those who *identify in a gender other than the one that matches the sex they were assigned at birth*. The term, used in this simple way, includes persons who seek gender affirming medical services, as well as those who do not. It includes persons who identify using labels other than *transgender*, and who are described by others by way of other terms (for example, by way of the term *transsexual* or *gender diverse*). It includes persons who identify as male or female, as well as those who identify as both or neither, and who therefore find male and female gender markers inadequate in describing who they are.

As professionals involved in provision of healthcare to this population, we recognize the crucial importance, for the purposes of transgender people's health and wellbeing, of their being able to obtain key documents that reflect their gender identity. However, we are aware that in Australia transgender people experience very different challenges in changing gender markers, depending on what documents are involved and under which jurisdiction those documents are administered. First, federally-administered documents (e.g. passports) often impose requirements very different from those for

¹ <http://www.wpath.org/>

²

http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351



documents administered at state and territory level (e.g. birth certificates). Second, the procedures and requirements in regard to birth certificates vary greatly across State and Territory jurisdictions. The result is that: a. many transgender people are able to change the gender marker on only some of their key documents; and b. the documents any one transgender person is able to change may depend on where they live. As health professionals we believe this is unsatisfactory.

Across Australia, apart from in South Australia and the Australian Capital Territory, transgender people who are already married and seek to change their birth certificate must first divorce. The Marriage Equality Act, recently enacted at Federal level, has prompted a need to review those legal provisions. We support such a review, noting that the UN Human Rights Committee in June 2017 took the view in the case of *G v Australia* that such requirements violated international human rights law.³

However, we believe that current reviews of gender recognition procedures should go beyond the mandatory divorce requirements and birth certificates. We emphasize that transgender people in Australia are a marginalized community, and commonly experience depression and anxiety, engage in self harm, and encounter other mental health challenges.⁴ These problems are aggravated when key documents do not match the gender identity of the person concerned. We therefore believe that States and Territories (including South Australia and Australian Capital Territory) should use this opportunity to examine other requirements that prevent transgender people from amending birth certificates to match their gender identity, and which therefore impact on their health and wellbeing. We note that some of those requirements (those concerning surgery being the most egregious) have been judged to breach international human rights law.⁵

³[http://tbinternet.ohchr.org/Treaties/CCPR/Shared Documents/AUS/CCPR_C_119_D_2172_2012_25976_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared/Documents/AUS/CCPR_C_119_D_2172_2012_25976_E.pdf)

⁴ For recent examples of research in this area, see (a) the *First Australian National Trans Mental Health Study* of Hyde et al (2013), available at https://www.beyondblue.org.au/docs/default-source/research-project-files/bw0288_the-first-australian-national-trans-mental-health-study---summary-of-results.pdf?sfvrsn=2; and (b) the *From Blues to Rainbows* report of Smith et al (2014), available at <https://www.beyondblue.org.au/docs/default-source/research-project-files/bw0268-from-blues-to-rainbows-report-final-report.pdf?sfvrsn=2>; and (c) the national *Transpathways* Study of Strauss et al (2017), available at <https://www.telethonkids.org.au/globalassets/media/documents/brain-behaviour/trans-pathwayreport-web.pdf>.

⁵ See for example: World Health Organisation's (2015) *Sexual Health, Human Rights and the Law*, available at http://apps.who.int/iris/bitstream/10665/175556/1/9789241564984_eng.pdf?ua=1; and the report of six UN agencies headed by the Office of



In view of the above, we share the WPATH Identity Recognition Statement (issued November 15th, 2017). The Statement is also available on the WPATH website. We believe the Statement carries implications for legislative changes that should now be considered in the various current reviews of gender recognition procedures in Australia.⁶

WPATH Identity Recognition Statement.⁷

The World Professional Association for Transgender Health (WPATH) recognizes that, for optimal physical and mental health, persons must be able to freely express their gender identity, whether or not that identity conforms to the expectations of others. WPATH further recognizes the right of all people to identity documents consistent with their gender identity, including those documents which confer legal gender status. Such documents are essential to the ability of all people to enjoy rights and opportunities equal to those available to others; to access accommodation, education, employment, and health care; to travel; to navigate everyday transactions; and to enjoy safety. Transgender people, regardless of how they identify or appear, should enjoy the gender recognition all persons expect and deserve.

Medical and other barriers to gender recognition for transgender individuals may harm physical and mental health. WPATH opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents. These include requirements for diagnosis, counseling or therapy, puberty blockers, hormones, any form of surgery (including that which involves sterilization), or any other requirements for any form of clinical treatment or letters from doctors. WPATH argues that marital and parental status should not be barriers to recognition of gender change, and opposes requirements for persons to undergo periods living in their affirmed gender, or for enforced waiting or 'cooling off' periods after applying for a change in documents. Further, court and judicial hearings can produce psychological, as well as financial and logistical barriers to legal gender change, and may also violate personal privacy rights or needs.

WPATH advocates that appropriate gender recognition should be available

the UN High Commissioner for Human Rights, and entitled *Eliminating Forced, Coercive and Otherwise Involuntary Sterilization: An Interagency Statement*, available at http://apps.who.int/iris/bitstream/10665/112848/1/9789241507325_eng.pdf?ua=1

⁶ We also believe it may be an appropriate time for Federal Government to examine its policies for changing gender markers on passports, with the aim of removing requirements for a letter from a clinician.

⁷ This Statement was also endorsed on 20th February 2018 by the Executive Committee of ANZPATH, the Australian Professional Association for Transgender Health.



to transgender youth, including those who are under the age of majority, as well as to individuals who are incarcerated or institutionalized. WPATH recognizes that there is a spectrum of gender identities, and that choices of identity limited to Male or Female may be inadequate to reflect all gender identities. An option of X, NB (non-binary), or Other (as examples) should be available for individuals who so choose.

WPATH urges governments to eliminate barriers to gender recognition, and to institute transparent, affordable and otherwise accessible administrative procedures affirming self-determination, when gender markers on identity documents are considered necessary. These procedures should be based in law and protect privacy.⁸

For the avoidance of my misunderstanding on this matter, WPATH's view is that gender recognition can have an important influence on the health and wellbeing of all people, and that it is particularly important for transgender people to have their gender identity recognized on key identity documentation; regardless of what gender affirming healthcare they have accessed, or what their demographics may be. As WPATH's Board of Directors, we recommend the enactment of gender recognition laws in Australia that are comprehensive and inclusive, extending gender recognition on all key documents and for all transgender people, with barriers removed. We stress that this is an important health and wellbeing issue. We urge the relevant Government authorities, as well as health and rights agencies, to work with representatives of the Australian transgender community in order to bring about change in this area.

We hope the relevant Australian authorities find our submission helpful in moving forward. Please direct any questions to Sue O' Sullivan, WPATH's Executive Director, at sue@wpath.org.

Respectfully submitted on behalf of the full Board of Directors of WPATH.

Dr. Gail Knudson
MD, MPE, FRCPC
President, WPATH

⁸ https://s3.amazonaws.com/amo_hub_content/Association140/files/wpath-identity-recognition-statement-11_15_17.pdf