



# HUMAN RIGHTS & DISCRIMINATION COMMISSIONER

## ACT Human Rights Commission

### Gender Rights Art Exhibition

16 November 2009

I am speaking on behalf of the ACT Human Rights and Discrimination Commissioner, Dr Helen Watchirs, who is sorry not to be able to attend tonight. I am honoured to be here in Helen's place to open this important exhibition. The works of the talented artists on display here provide personal and challenging insights into the daily reality of discrimination and prejudice experienced by people of diverse gender, but also into the wit, compassion, intelligence and solidarity of the sex and gender diverse community.

The title of this exhibition: Gender Rights are Human Rights, recognises an essential truth that should have particular significance in the ACT, where the Government prides itself on having passed the first legislative bill of rights in Australia, the Human Rights Act 2004.

The Human Rights Act is an important statement of the rights of people in this Territory. Yet it means little if the Government that passed this Act is not prepared to apply human rights in a principled way to reform its existing laws and policies. Formal equality is not enough to rectify systemic and inherent discrimination against the gender diverse community.

The ACT Government has taken an active approach to promoting the human rights of gay and lesbian Canberrans, in particular through its civil partnerships laws, and through a range of other laws and policies. One example is the policy of allowing lesbian couples to name both partners as parents on their childrens' birth certificates, which is respectful and inclusive, and makes a real difference to the lives of those families.

However, this progressive and enlightened approach has not been as obvious in the Government's dealings with the gender diverse community, particularly in the recognition of sex in official documents such as birth certificates.

Under the Births, Deaths and Marriages Registration Act, an ACT birth certificate will only be amended to reflect a person's change of sex where that person has undergone "sexual reassignment surgery" on their reproductive organs. This highly medicalised and prescriptive approach negates the lived experience of gender diversity, the range of ways in which people may choose to make a gender transition, and the social cost involved in expressing a gender identity different from their birth sex, which means that the decision is never one taken lightly. Under this ACT law, even a man who has gone a range of irreversible procedures such as hormone therapy and a mastectomy will not be recognised as a man until he undergoes internal sterilisation surgery which has no bearing on his social recognition as a man.

In the Commissioner's view this law is inconsistent with the human rights to equality and recognition before the law and the right to privacy, which are protected under the *Human*

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*Rights Act.* The Yogyakarta principles on the application of human rights law to gender identity provide that “no one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity.”

There are a range of other areas in need of reform, such as the limited protection currently provided in the Discrimination Act, which makes it unlawful to discriminate against a person because of their transsexual status, which does not specifically prohibit discrimination on the grounds of intersex status or expressions of gender identity more broadly.

The Human Rights and Discrimination Commissioner strongly supports law reform to promote the equality rights of gender diverse people in the ACT. The Commissioner wrote to the Attorney-General Simon Corbell following the release of the Australian Human Rights Commission Sex Files report, seeking a commitment to implement the recommendations of this groundbreaking report.

We will continue to advocate for urgent law reform on issues of gender diversity to give the Human Rights Act real meaning for all people in the Territory.

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