

# Gender Recognition Act Review Submission

## ISSUES RELEVANT TO OPERATION OF CURRENT LEGISLATIVE PROVISIONS

### 1. Limitations of the Review

1.1. This current Review is hasty, has not been adequately advertised and given its implicit impact on **all** women it is untimely as the Repeal the 8<sup>th</sup> Campaign is consuming the undivided attention of all women at this time.

1.2. There is an underlying presumption that the only stakeholders in this legislation are persons who experience gender dysphoria. Given that this legislation seeks to re-define the premise upon which the legal definitions of male and female are premised, which heretofore have been based on sex, this legislation impacts on every man and woman and any rights assigned to them or any protection of law assigned to them by virtue of their sex.

1.3. The Terms of Reference for the Review Group are inadequate. The specified criteria under which submissions are solicited are restrictive and fail to provide for any and all legal impact on any and all persons who are not seeking to have their legal identity amended. Given that all persons have a biological sex and all persons have a gender identity it follows that all persons are impacted by any legal change which attempts to redefine the legal basis of either. The criteria under which submissions are solicited presumes that only persons experiencing Gender Dysphoria are legitimate stakeholders in this process which is not in fact, the case. This Review must seek submissions from all persons on a range of criteria beyond those specified

1.4. Given that women have (and continue) to experience sex-based oppression for millennia, and in recent times have been accorded protection from sex based discrimination, women are more vulnerable to regressive impact from legislation which seeks to re-define their sex based status of adult females. Whilst all Trans people, whether they identify as transexual or transgender, should be afforded every legal protection from discrimination, their protection should not be negotiated or acquired on the legal premise that women (all adult human females) must relinquish their legal protection or concede their legal status. It is arguable that such abuses of women's protected status are already under threat and it is evident that any attempts by women to protect their status are branded as transphobic. The rights of women (adult human females) and the rights of trans-identified women (transwomen) are mutually exclusive as the rights afforded women (adult human females) are based on sex and the rights of transidentified women (transwomen) are based on gender identity and/or medical reassignment.

1.5. It appears that this Review process is targeted at specific interests as opposed to being an open consultation. It is beyond the scope of most citizens to engage with this process in a meaningful manner and it is arguable that sharp practice is being employed in its execution. The scope is narrow and exclusive, the limited public consciousness based on mis-information and all public discourse silenced under threats of transphobia. The GRA 2015 was enacted under the public radar as the Marriage Equality Campaign occupied the foreground and this review is now being

overshadowed by the Repeal the 8<sup>th</sup> Campaign. I submit that this Review be extended to September 2018 and that a strategy of engagement be undertaken with a cross section of women's and feminist interests including those who subscribe to Radical Feminism, Liberal Feminism and Intersectional and Identity Politics feminism. I also submit that the opinions of Transwomen who express reservations about the GRA be solicited for input as these women are shunned and excluded from Trans Activist organisations.

Whilst a judicial review of the legislation may well be merited, a civil review should be submitted for consideration by the Citizen's Assembly and a full public consultation undertaken with all citizens.

## 2. CONTEXT AND PROCESS FOR GENDER RECOGNITION ACT 2015

2.1. The Lydia Foy case which gave rise to the examination of Irish legislation and breaches of human rights, was premised on the rights of TranSEXUAL people (not TransGENDER) and was premised on the right of persons who had been medically diagnosed with Dysphoria and undergone sex-reassignment surgery, to acquire legal documentation to reflected their acquired presentation. All public consciousness leading up the Gender Recognition Act 2015 was based upon this understanding therefore no public discourse took place on the matter.

2.2. The Terms of Reference for the Gender Recognition Advisory Group (GRAG) states specifically that the group "was established by the Minister for Social Protection in May, 2010, following a High Court ruling that Ireland is in breach of the European Convention on Human Rights in not having **a process to legally recognise the acquired gender of *transsexual persons***. Its terms of reference were to advise the Minister on the legislation required to provide for legal recognition of the changed gender of transsexuals.

2.3. According to their Report published 15<sup>th</sup> June 2011, their work "was based entirely on the research available on issues relating to transsexualism in Ireland and internationally – particularly the condition known as Gender Identity Disorder (GID). According to their Report The group "Consulted with medical and mental health experts and other stakeholders in Ireland, and with the authorities responsible for the operation of the Gender Recognition Act in the United Kingdom together with leading academics and the Registrar General for England and Wales, and issued a public consultation document in August, 2010.

There was a response from 14 organisations and 26 individuals. The Group met with selected organisations and individuals in follow-up bilateral meetings and conducted a review of legislation and schemes in other countries and international bodies as well as relevant European court cases. The group also analysed issues that took into account the input of experts, stakeholders, respondents to the public consultation as well as domestic and international legal frameworks."

2.4. The aforementioned Report (no longer available from your Department's website) then set out a series of recommendations for the GRA 2015. Following intense lobbying from the groups and individuals advocating change in this area

the recommendations of the *Gender Recognition Advisory Group* were abandoned in their entirety. Following a process of Private Members Bill and Oireachtas Committee deliberation, where only the interests of Trans activist and Human Rights groups were consulted, an Argentinian model of Self Declaration was enacted. Argentina has one of the most liberal legal frameworks for transgender rights despite having one of the worst records for human rights and most particularly, a horrendous record on women's rights. These paradigms are indeed interconnected

### 3. LEGAL CONFLATION OF SEX AND GENDER

3.1. **SEX** is the classification of people as male or female based on biological characteristics such as chromosomes, hormones, internal reproductive organs, and genitalia. **HUMANS** reproduce **SEX**ually, with both parents contributing half of the genetic make-up of their offspring via **SEX** cells or *gametes*. **GAMETES** produced by the male parent are called spermatozoa (commonly called sperm cells), and *female gametes* are Oocytes (commonly referred to as ova or eggs). A **WOMAN** is defined as an adult human female. **GENDER IDENTITY** is one's internal, personal **sense** of being either a man or woman or neither.

3.2. A legal conflation has arisen between the words sex and gender. Legislation which protects the rights of women based on their sex are variously referred to in law as 'gender' rights. Such rights can no longer be assumed in law. Likewise for example the sex crime of rape which could only physically and in law be perpetrated by a man against a woman, may now under the replacement of sex with gender, be attributed to a 'woman'. Women cannot rape, this is an incontrovertible fact. Women and men who are raped are victims of a sex based crime committed by a man. It is a gross injustice to 50% of the population who can only be the victims of such a crime, to create a legal permit which classifies rape as an act which may now be committed by a woman.

3.3. Humans are not assigned gender at birth, they are classified according to their sexual organs. If Birth Certificates are no longer a record of sex but of gender, and gender is self-identified, then the State can no longer record any person as either male or female.

3.4. The State needs to consider the legitimate purpose for which either sex or gender or both or neither should be recorded on any legal documents, why they should be distinguished in law and how society functions better or benefits from the official acknowledgement of a persons sex or their gender. The legitimacy of purpose of the record is a matter for all citizens to consider and the impact of any defining legislation a matter of public interest and common good.

### 4. RESPONSES TO SPECIFIED CRITERIA

Without prejudice to that outlined heretofore, and in the event that the foregoing is deemed inadmissible, I wish to make the following contributions within the confines specified:

#### 4.1. Arrangements for children aged 16 to 17 years;

Children of any age including those aged 16yr to 17yrs are unable to change their

sex. Their gender identity is an entirely personal matter. All children should be supported in law to any and all expressions of their gender identity. Declaration of gender identity is not a tenet for sexual re-assignment as this is not biologically possible. Under no circumstance should Gender Self Identity imply or be interpreted as Sexual Self Identity as this is not biologically possible. Gender Self Declaration has no legitimacy as a basis for any medical intervention, either by the minor teen child or their legal guardian, where such medical intervention seeks to administer hormones or perform any surgical procedure which attempts to mutilate either primary or secondary sexual organs; interfere with any primary or secondary sexual functions or adjust any characteristic determined by sex hormones. All teen minors who present with either Gender Dysphoria or Gender Identity Disorder should be afforded unencumbered access to all medical, psychiatric and psychological services to ensure access to the best international medical expertise on these conditions. All children, with or without gender identity dysphoria, should be afforded protection under all legislation to any and all expressions of gender.

#### **4.2. Arrangements for children aged under 16 years;**

Children of any age including those aged under 16yrs are unable to change their sex. All babies and children are gender nonconforming until such time as they are socialised to assume societal gender norms. Conformity to societal gender norms can both enhance and militate against a child's experiences, expectations and life opportunities. All young children should be nurtured in both home and educational environments to encourage free gender expression and every child should be afforded protection from enforced or institutional conformity of expression (e.g. coerced differentiated school uniforms, differentiated hair length rules etc). All children should be supported in any and all expressions of gender. As gender identity and sex are mutually exclusive, gender expression or a declaration of identity from either the minor child or their legal guardian, has no legitimacy as a basis for any medical intervention which seeks to medically re-assign the sex of the child.

Neither the minor child, nor their legal guardian, or any third-party Guardian Ad Litem, should be permitted in law to authorise any medical intervention which seeks to medically re-assign the sexual characteristics of the person, including but not exclusively the performing of a surgical procedure which attempts to mutilate either primary or secondary sexual organs; administer hormones which attempts to interfere with any primary or secondary sexual functions or adjust any characteristic determined by sex hormone; or any procedure or treatment which aims to suspend the sexual maturity of the child or harvest their sperm or ova. Any such interventions should be viewed as a gross invasion of the bodily autonomy of the child and a Human Rights abuse comparable to Female Genital Mutilation or Circumcision.

#### **4.3. Arrangements for non-binary persons**

The legal conflation of sex with gender compels all persons to a binary gender conformity. It is in essence a Statute which attempts to assimilate all trans identified people, and none, into a sex binary. There are only two sexes but many expressions of gender. The GRA 2015 is unfit for purpose as it fails to create a legal distinction between sex and gender et ergo there is no provision in law for a classification of non binary persons. Provision for non-binary persons can only be provided for by repealing the GRA 2015 and replacing it with Statute that legally distinguishes sex from gender

#### **4.4. Arrangements for intersex people**

Intersex is a biological and unique sex anomaly. Intersex people should be afforded legal recourse to having their sex recorded as either male, female or intersex. The legal status of intersex persons should not be provided for under the GRA as the biological anomaly is sex based not gender based. One option is to make special regard for intersex people in an amendment to the *Births Deaths and Marriages Registration Act 1972* where such amendment may provide for the recording at birth of an intersex person as 'intersex' and such original entry may, if desired, be amended by the named person upon reaching the age of 18yrs, to either the designation of 'male' or 'female' or may be left as 'intersex'. In Dec 2017 in Germany, a law was enacted which provides for official recognition of intersex people as a third sex and is to be denoted by the letter 'X'.