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The Expert Panel on Religious Freedom
C/O Department of the Prime Minister and Cabinet
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Submission to the Expert Panel on Religious Freedom Protections in Australia regarding People with Biological Intersex Variations

Dear Panel Members,

In recent years several Parliaments in Australia have introduced laws providing religious exemptions permitting discrimination against people born with various biological variations even though these exemptions were not sought by religious organisations. These exemptions came about as a result of misrepresentation by various groups who assumed intersex relates to sexual orientation, gender identity or a “third sex”.

People born with variations of sex characteristics (also sometimes referred to as “intersex” variations) are born with innate biological variations. Our variations are about biology, not sexual orientation or gender identity. Most people with intersex variations are heterosexual and identify in the sex they were raised; either female or male. Intersex is not a “third sex”.

The United Nations Office of the High Commissioner for Human Rights:

Intersex people are born with physical or biological sex characteristics (such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that do not fit the typical definitions for male or female bodies. For some intersex people these traits are apparent at birth, while for others they emerge later in life, often at puberty.¹

¹ Office of the High Commissioner for Human Rights, African Commission on Human and Peoples’ Rights, Council of Europe, Office of the Commissioner for Human Rights, Inter-American Commission on Human Rights, Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, et al. Intersex Awareness Day – Wednesday 26 October. End violence and harmful medical practices on intersex children and adults, UN and regional experts urge [Internet]. Office of the High Commissioner for Human Rights; 2016 [cited
Many forms of intersex variations exist; it is a spectrum or umbrella term, rather than a single category. At least 30 or 40 different variations are known to science; most are genetically determined. Since 2006, clinicians frequently use a stigmatising label, “Disorders of Sex Development” or “DSD”, to refer to intersex variations.

Intersex variations can include differences in the number of sex chromosomes, different tissue responses to sex hormones, or a different hormone balance. Examples of intersex variations include androgen insensitivity syndrome (AIS), congenital adrenal hyperplasia (CAH), and sex chromosome differences such as 47,XXY (often diagnosed as Klinefelter syndrome) and 45,X0 (often diagnosed as Turner syndrome).

Some common intersex variations are diagnosed prenatally. Many persons do not have clear genetic diagnoses. We are aware of many situations where individuals have received multiple different diagnoses over time.

Most intersex people do not disclose their intersex variation to family and friends, let alone to the public. This is because there is much shame and stigma about being intersex due to the lack of community understanding about what intersex is, the fear of being seen differently, and early medical mistreatment. There often also isn’t a need to disclose one’s intersex variation as it is a personal matter and is not apparent publicly in the majority of cases.

Australians have not previously experienced systemic discrimination by religious organisations on the basis of having an intersex variation. Indeed, religious organisations understand that people with intersex variations are born this way.

Australian laws do not generally permit people to be subjected to discrimination based on biological attributes they were born with, whether that be the colour of their skin, physical appearance or a medical condition. Indeed, many of these attributes are specifically protected against discrimination with no religious exemptions. Unfortunately, due to misrepresentations about intersex variations by gay, lesbian and/or trans groups, laws were introduced in recent years that permit religious organisations to discriminate against people born with biological intersex variations.

As an example, the recent changes to the Marriage Act 1961 (Cth) allow religious celebrants to discriminate against people with intersex variations wanting to be married. This was not an exemption sought by religious celebrants or religious organisations, and disregards the


2 Hiort O. I-03 DSNet: Formation of an open world-wide network on DSD at clinician conference, “4th I-DSD Symposium”; 2013: “DSD comprise a heterogeneous group of differences of sex development with at least 40 different entities of which most are genetically determined. An exact diagnosis is lacking in 10 to 80% of the cases”, [cited 1 Jul 2013]. Available from http://www.gla.ac.uk/media/media_279274_en.pdf

fact most people with intersex variations are heterosexual and have been marrying in churches, synagogues, mosques, temples and other places of worship by religious celebrants since these religious established themselves in Australia.

It is therefore our strong recommendation that there should not be any exemptions in Australian law allowing discrimination against people born with intersex variations. There are no religious grounds for discrimination against people born with intersex variations, and the current newly created exemptions were a result of unfortunate misrepresentation by other groups who have little understanding of what intersex variations are.

As a Catholic person – and a person born with an intersex variation who was married in a Catholic Church – I appreciate and respect religious freedoms, but religious exemptions should only exist if they are based on genuine and established religious grounds. This is not the case with exemptions allowing discrimination against people born with intersex variations such as myself.

I would appreciate the opportunity to present to the panel to provide further details of intersex variations, the lived experiences of people affected by intersex variations, experiences within a religious context in Australia, and why I believe religious exemptions are not relevant and should not be permitted in Australian law.

Sincerely,

Cr. Tony Briffa JP
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Councillor, Hobsons Bay City Council (Elected 2008, 2012 and 2016)
Former Mayor, Hobsons Bay City Council (2011-12)
Co-Executive Director, Organisation Intersex International (OII) Australia
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