Impacts of Trans Activism on the Human Rights of Women and Girls

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1. Introduction and background

Within Australia there is a mounting campaign for transgender people to be able to alter the sex stated on their birth certificates, even without having had gender reassignment surgery or having to obtain a court approval.1 The ACT2 and South Australia3 have been the first to introduce legislation with this effect. However, the Victorian Parliament narrowly voted down a similar bill following a speech by the MP Louise Staley opposing it on feminist grounds – rejecting the idea as ‘postmodern mumbo jumbo’ and an example of ‘mansplaining, telling women what really makes a woman’.4 Similar measures have also been suggested in the United Kingdom, where a Parliamentary Women and Equalities Committee has recommended a simple online form procedure for change of gender.5 This procedure is available to all individuals even if they have not undergone gender reassignment surgery, and has also been criticised by MPs as having ‘a profound impact on the rights of others to maintain sex-based boundaries, protections and rights’.6

Tension in relation to transgenderism has also been evident in the anxiety surrounding the Safe Schools Program.7 This opposition extends beyond the Christian lobby and conservative forces. Many feminists who are otherwise supportive of anti-bullying programs that challenge gender stereotypes and broaden acceptance of diverse sexuality, have raised concerns about the content being taught in relation to transgenderism.8 There are concerns that the use of puberty blockers and early hormone treatment may in fact constitute a form of child abuse and that promoting these measures to children is anything but safe.9

However, internationally feminists who have spoken out raising concerns about issues relating to transgenderism, such as Germaine Greer and Shelia Jeffreys, have been labelled

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2 Births, Deaths and Marriages Registration Amendment Act 2014 (ACT), amending Births, Deaths and Marriages Registration Act 1997 (ACT).
3 Births, Deaths and Marriages Registration (Gender Identity) Amendment Bill 2016 (SA) pt 2, amending Births, Deaths and Marriages Registration Act 1996 (SA).
8 See, eg, Laura McNally, ‘Gender Neutrality or Enforcement? “Safe Schools” Isn’t as Progressive as it Seems”, ABC Religion and Ethics (online), 24 March 2015 <http://www.abc.net.au/religion/articles/2015/03/24/4204018.htm>.
TERFS’ (Trans Exclusionary Radical Feminists) and subjected to boycotts, abuse and death threats. For example, in September 2017, a feminist debate about transgender issues in Hyde Park in the UK was interrupted by trans activists who were reported to have harassed attendees and assaulted a woman attempting to film them. This is particularly concerning given the history of this location as a ‘home of free speech’. Indeed, in the same month, Bath Spa University refused funding to psychotherapist James Caspian for a study about people who regret gender reassignment surgery. As Caspian noted, this is worrying as ‘a university exists to encourage discussion, research, dissent even, to challenge ideas that are out of date or not particularly useful’. All of this has arguably impeded further open and critical discussion of trans activism. Despite this some commentators have continued to speak out, with Camille Paglia recently stating publicly:

The cold biological truth is that sex changes are impossible. Every single cell of the human body remains coded with one’s birth gender for life. Intersex ambiguities can occur, but they are developmental anomalies that represent a tiny proportion of all human births.

Paglia added: ‘Like Germaine Greer and Sheila Jeffreys, I reject state-sponsored coercion to call someone a ‘woman’ or a ‘man’ simply on the basis of his or her subjective feeling about it.’ Feminists have long argued that ‘sex’ refers to physiological differences while ‘gender’ describes socially constructed characteristics. Ironically radical feminists who led the way in challenging gender stereotypes that exaggerate the differences between the sexes, now find themselves under attack for maintaining that some biological sex differences are real and not just determined by ‘feelings’.

This paper will explore some of the reasons for feminist concerns and opposition to conflating sex and gender, by considering the impacts of these changes to the law on the human rights of women and girls. These views, though perhaps not popular with some, and with which some may disagree and take issue, nevertheless do raise important issues relevant to the human rights of women and girls.

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2. Impact on Safety

a. Loss of women’s safe spaces

One of the major concerns held by feminists about the impact of trans activism is the loss of safe spaces for women and girls generally.\(^\text{15}\) This includes not only traditionally sex segregated spaces such as bathrooms, change rooms and hospital wards, but also hard-won concessions achieved by the women’s liberation movement such as women's refuges, women’s health centres, courthouse safe rooms, women’s libraries and women’s rooms at universities. These exclusively female spaces and services are under threat and in many cases, have been or are being actively dismantled as a result of combined pressure from men’s rights groups and transgender activists.\(^\text{16}\) Concerns have also been raised by those operating homeless shelters that laws forcing them to disregard complaints of shelter residents about living with someone who is transgender would mean in some circumstances subjecting women who have frequently been abused by male domestic partners to feelings of insecurity in what is supposed to be a ‘safe haven’.\(^\text{17}\)

The bathroom wars have been raging in the United States for some time.\(^\text{18}\) Transgender activists claim there is no impact on the safety of women and girls in giving access to public


bathroom spaces and services to any individual who claims to be female. This ignores the reality of voyeurs, exhibitionists, rapists and pedophiles that actively use these changes in the law as an opportunity to engage in sexual misconduct targeting women and children. There are in fact reports of sex offenders who assume a female identity to commit sexual offences against women and girls and/or to evade detection.\(^\text{19}\) For example, in March 2016, Toronto man Christopher Hanbrook was arrested for sexually assaulting several women in a women’s shelter after he gained access to the shelter and its shower facilities as ‘Jessica’. \(^\text{20}\) In October 2015 The University of Toronto had to change its gender-neutral bathrooms after male students were caught holding their cellphones over female students’ shower stalls and filming them as they showered.\(^\text{21}\) However, feminists alone seem to be keeping track of these transgressions on sites such as This Never Happens (Australia)\(^\text{22}\) and Gender Identity Watch (US)\(^\text{23}\), the Decide for Yourself videos on You Tube,\(^\text{24}\) and the Woman means something campaign (Canada).\(^\text{25}\)

There are similar concerns in relation to extending women-only benefits and scholarships to transgender people. This issue was raised in an amicus curiae brief tendered in the US by Women’s Liberation Front and Family Policy Alliance in a trial concerning the right for a trans man to use the male high school bathrooms. It was argued that ‘one of the primary means by which women are trying to overcome the centuries – millennia – of being denied education’ would be lost, that is, preferences afforded to women in the form of scholarships, especially for traditionally male-dominated areas of education such as law and science. The rationale was that there was a risk that some males would identify themselves as female solely for the purposes of applying for female-only scholarships, meaning many women could lose the opportunity to achieve equality in education.\(^\text{26}\) This logic can be extended to other forms of preferential treatment for groups of persons treated as second-class. Rebecca Reilly-Cooper, political theorist at University of Warwick, argues that it would be an ‘extraordinary amount


22 An archive of content relating to violent and sexual crimes committed by ‘males posing as or claiming to be women’, that is intended for public viewing: Malinda Q Magpie, This Never Happens, 2016 https://www.facebook.com/groups/1722756661380462.


24 Women: Decide for Yourselves (Created by Jane Williams, YouTube, 12 March 2016). <https://www.youtube.com/watch?v=uzwMJAFWLtQ>; Decide for Yourself: Transgender Crime (Jane Williams) (Created by BabyradfemTV, YouTube, 11 August 2016) <https://www.youtube.com/watch?v=qzfwANtnmnc>.


of naïveté or wilful blindness’ to believe that some men will not exploit looser legal protections and access spaces and privileges set aside for women.\(^{27}\)

Enabling the alteration of birth certificates in any manner amounts to a changing of history - always something that should be carefully considered - but in the manner proposed\(^{28}\) it will have the consequence that individuals who were born men, and who now identify as female, with or without male genitals, will have the right to be accepted as women in all contexts and all respects. Aside from anything else, a loosening of requirements for the alteration of birth certificates makes it impossible to preserve women only spaces and protect women from abusive or criminal intentions. This open access to women’s spaces has significant consequences in many contexts.

Aside from the fact that these changes to the law could arguably appear to facilitate the commission of sexual crimes, there is also the question of whether the comfort and security of women should generally be compromised in this manner. Many women have histories of traumatic experiences at the hands of men and consequently seek out exclusively women only community spaces for this reason.\(^{29}\) This change in the law effectively deprives these women of ‘penis free zones’ in which they can find some refuge. In a society in which so many spaces are dominated by men and masculine culture, is it fair or just for women to be denied some spaces where they can meet in the absence of men? It has been argued that the human rights of transgender people to feel accepted have eclipsed the rights of women and girls to feel safe, and secure rather than constantly on guard.\(^{30}\)

\textbf{b. Women’s prisons}

One particular concern that has been raised is the safety of women prisoners. There are increasing demands by male prisoners who identify as women to be transferred from a male to a female prison. Calls for the placement of transgender individuals in a prison of their choosing arguably ignores the safety implications for female inmates and the gendered nature of violent and sexual crime.\(^{31}\) The danger to female inmates was demonstrated earlier this year in Britain when a double rapist Martin Ponting, now identifying as Jessica Winfield, was transferred to a female prison despite still having a penis intact. The prisoner was

\(^{27}\) Rebecca Reilly-Cooper, ‘Equality for Trans People Must Not Come at the Expense of Women’s Safety’, Politics.co.uk (online), 26 January 2016 <http://www.politics.co.uk/comment-analysis/2016/01/26/equality-for-trans-people-must-not-come-at-the-expense-of-wo>

\(^{28}\) In Queensland, one of the jurisdictions considering changes to its Births, Deaths and Marriages Registration Act 2003, a person who has not undergone sex affirmation surgery, including genital surgery, currently cannot apply to change their birth certificate to reflect their sex identity. By contrast, the ACT (s 24(1)) and SA (s 29K) Acts now only require “appropriate clinical treatment”, which can fall short of surgery.

\(^{29}\) Women Analysing Policy on Women, above n 11.


segregated after making inappropriate advances to female prisoners.\textsuperscript{32} Another example is provided in Australia by Paul or ‘Paula’ Denyer, a serial killer who in 1993 was convicted of murdering three women in that year.\textsuperscript{33} Denyer has sought a transfer to a women’s prison on the basis that he is now a woman and has defied court orders not to wear female clothing and cosmetics.\textsuperscript{34} This request has to date been denied as has Denyer’s attempts to seek to have taxpayer-funded reassignment surgery and a name change.\textsuperscript{35} Similarly, in February 2017, the murderer Paris Green (formerly Peter Laing) was removed from a female wing in an Edinburgh prison after sexual advances toward the inmates. Green had also been removed from the Cornton Vale women’s prison in 2013 after similar incidents.\textsuperscript{36} In 2014, a transgender girl at a juvenile female facility in Connecticut was transferred to an adult female prison after concerns about assaults on girls and female staff members.\textsuperscript{37} Campaigning to further the safety and well-being of transgender inmates, who identify as women, while down playing or ignoring the potential for human rights transgressions against the female prison population, arguably smacks of hypocrisy.\textsuperscript{38}

There is concern that transgender activism can often be a disguised form of men’s rights activism that it is largely focused on the liberation of males from oppressive masculinity – regardless of the cost to women.\textsuperscript{39} The concerns expressed in this paper focus largely on


impacts of male to female transgenderism, since female to male transgenderism poses a risk only to the safety and well-being of the individual themselves rather than to others. For obvious physiological reasons, few men hold fears when a woman identifying as a man enters a male bathroom or change room or chooses to compete against them in a male sport. Unsurprisingly there is also no clamouring of transgender female to male individuals to be accommodated in male correctional centres.

c. Skewing of crime statistics & community perceptions

It has been reported that violent crimes committed by women are increasing. As women are responsible for only a very small proportion of these offences overall, it does not take much to achieve a significant increase in this crime rate. However, one contributing factor may be the attribution to women of violent crimes committed by men who identify as women, with a Swedish study finding that sex-reassigned male-to-female individuals had a higher risk for all criminal convictions (including violent crimes) than female controls. For example, the woman responsible for a recent terrifying axe attack in a 7-Eleven was actually a man named Karl until a sex change operation two years ago. Much of this crime perpetrated by transgender or transsexual persons is in part a consequence of their strong risk of homelessness, poor socioeconomic status, historical criminalisation of their identities, unemployment and poverty, violence and victimisation, and institutional discrimination. Nevertheless, for the most part mainstream media did not report that the attacker was transgender, but attributed the violence to a young woman.


Cecilia Dhejne et al, ‘Long-Term Follow-Up of Transsexual Persons Undergoing Sex Reassignment Surgery: Cohort Study in Sweden’ (2011) 6(2) PLOS One e16885.


The failure to attribute these crimes accurately has a potentially negative impact on community perceptions of female violence. Due to the exaggerated media representation of women committing violent crimes, the community already has a distorted perception in relation to female criminality.\textsuperscript{45} The sensationalist reporting of the few violent crimes actually committed by women results in a widespread lack of appreciation of the extent to which violent crime is committed by men and thereby further mutes community outcry over male violence.\textsuperscript{46}

In combating the mistreatment of transgender individuals, there has also arguably been a failure to acknowledge that transgender individuals also suffer, not at the hands of questioning feminists, but from male violence.\textsuperscript{47} Meanwhile by representing all transgender individuals as exclusively harmless victims, we are exposing women and children to risk by encouraging an approach of unquestioning acceptance in circumstances where it is sensible to exercise some degree of caution.\textsuperscript{48} Evidence indicates that transgender male to female individuals may continue to act like men even following hormone treatment and gender reassignment surgery.\textsuperscript{49}

3. Impact on sex based inequity

3a. Impact on women’s participation in sport & culture

In January 2016, the International Olympic Committee (IOC) announced changes to its policy so that transgender athletes are now able to compete in women’s competitions, even without undergoing sex reassignment surgery.\textsuperscript{50} Two-time Olympic gold medallist Caster Semenya from South Africa has been at the centre of related controversy. Semenya was raised a girl and a woman but has hyperandrogenism, a condition in which testosterone levels are far greater than the majority of women. In 2009 Semenya was forced to undergo ‘gender testing’

\textsuperscript{45} Australia’s National Research Organisation for Women’s Safety and Our Watch, \textit{Media Representations of Violence against Women and Their Children} (Report, November 2015) 14.


after dominating her field and after concerns about her unusual advantage were raised.\textsuperscript{51} Semenya is an intersex person, as someone who does not fit into typical binary notions of male or female bodies, and is not a transgender person.\textsuperscript{52} Nevertheless her case demonstrates the advantages that transgender women would have over female competitors if allowed to compete in these events, given their similar advantages in testosterone levels.

The now reformed IOC Guidelines require transgender competitors to have identified as female for four years and to have reduced testosterone levels only for twelve months prior to competition.\textsuperscript{53} However, a 2017 study in \textit{Sports Medicine} found this rule was an arbitrary one. At the moment there has not been sufficient enquiry into the exact measures needed to level out transgender athletes’ athletic advantage. Other sports medicine professionals have noted an ‘urgent need’ for research in the area.\textsuperscript{54} However, as all of these articles conclude, male-to-female transgender athletes will have, relative to height and build, in almost all cases, a physiological advantage in terms of greater size and strength.\textsuperscript{55} This change in policy will have strong impacts on women’s sports, and arguably impacts adversely only on women’s sport, not men’s competition. Female athletes already face huge disadvantages in pay compared to men, and this disparity has deeply entrenched causes: significantly in a 2016 study of the 129 National Olympic Committees governing Olympic sports, women made up only 16.6 percent of the boards.\textsuperscript{56}

This issue has also gained attention in Australia in the case of transgender woman Hannah Mouncey applying for eligibility to take part in the AFL Women’s competition 2018 draft. The AFL rejected the application, considering ‘transgender strength, stamina, physique’, though perhaps exemplifying the lack of clarity over this issue, Mouncey has played several games in the ACT’s women’s AFL competition in 2017.\textsuperscript{57}

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The recognition of the rights of transgender individuals will necessarily mean that many women will effectively have to give up their dreams of achievement in high level sport and of Olympic success.\(^{58}\) This impact is being felt in all other levels of sport as well.

There are certainly increasing reports that transgender athletes are having an adverse impact on women’s sport by dominating female events as a consequence of their physiological advantage.\(^{59}\) However, enabling transgender athletes to compete in women’s sports is not only potentially very unfair in terms of competition to women, but it also exposes them to increased risks. Athletes in team sports and contact sports such as martial arts are already reporting being overpowered and injured by the unusual strength of their transgender adversaries.\(^{60}\) Women’s sport has been unfairly overlooked for a long time. It is troubling that just as it is finally starting to gain widespread cultural participation and approval, this issue threatens to discourage women from participating for fear of injury and injustice.

In advocating for this change transgender activists have also arguably avoided countenancing the possibility that this policy will be exploited by ambitious male athletes and unscrupulous nations. The Iranian football team, for example, reportedly already boasts eight men who claim to be awaiting sex change operations.\(^{61}\) The Iranian state since a 1986 fatwa has considered gender-confirmation surgery and hormone-replacement therapy religiously acceptable, and today it allows trans citizens to have their gender identity recognised by law and even subsidises sex reassignment, as a ‘medical solution’ to outlawed homosexual and trans identities.\(^{62}\)

It should also be noted that some men’s rights groups are actively encouraging members to identify as transgender women with the express purpose of undermining feminism by obscuring sex based inequalities and sabotaging any affirmative action measures.\(^{63}\) There is arguably an increasing trend to nominate transgender individuals for leadership positions, awards and honours, including those specifically created to benefit women.\(^{64}\) One such

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62 Neha Thirani Bagri, “Everyone treated me like a saint”—In Iran, there’s only one way to survive as a transgender person’, Quartz (online), 19 April 2017 <https://qz.com/889548/everyone-treated-me-like-a-saint-in-iran-theres-only-one-way-to-survive-as-a-transgender-person/>.

63 MGTOW: The Solution: Part 2: Immediate Solutions (Created by Turd Flinging Monkey, YouTube, 2 Jan 2016) <https://www.youtube.com/watch?v=oVkeV0nV1Xc>.

example is Cate McGregor AM (formerly Malcolm McGregor), a former Lieutenant Colonel and speechwriter for Chief of Army David Morrison AO, who in 2013 publically announced that she was transgender and in 2014 was named 48 on the *The Australian Women’s Weekly* Power List. McGregor has since taken up women’s first grade cricket and hopes to play in the Women’s Big Bash League.

Instead of women directing their focus on providing much needed support and recognition to their sisters, they are now frequently preoccupied instead with providing reassurance and acknowledgement to transgender individuals. This focus, it may be argued, is resulting in the advancement and liberation of transgender individuals at the expense of women. Once offered a position of influence, transgender individuals may pursue a very different agenda from women – for example arguing that abortion and other issues associated with reproductive rights are not women’s issues because not inclusive of all who claim to be women. The centring of transgenderism therefore has the effect of derailing feminist political discourse altogether.

**b. Erasure of lesbian community**

Even amongst LGBTI people, there is a diversity of views in relation to transgenderism. It is important to recognise that not all transgender individuals adopt the same position, but have views as diverse as those held by feminists in relation to this issue. It should not be assumed that the most vociferous necessarily represent the majority. There are male to female transgender individuals who regard ‘woman’ as an honorific and do not insist on it as a

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65 See e.g. Lindsay King-Miller, ‘The Reproductive Justice Movement Has a Gender Inclusion Problem’, *The Establishment* (online), 2 August 2017 [https://theestablishment.co/the-reproductive-justice-movement-has-a-gender-inclusion-problem-cf88e3a4ce61].

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These individuals distance themselves from trans activism. They view gender dysphoria as a mental disorder and do not support the transitioning of children. Similarly, radical feminists have always supported gender non-conforming individuals and continue to do so, but do not agree with the denial of biological realities and sterilization of non-conforming children.

It should also be considered that there is strong opposition on the grounds that transgenderism is eroding the rights of lesbians – particularly their freedom of assembly and association. Certainly there are arguments that transgenderism and homosexuality are essentially incompatible. Although these views in no way detract from support for the protection of transgender and gender non-conforming individuals from violence and humiliation, the inclusion of ‘gender identity’ as a distinct category in relation to discrimination laws, arguably creates difficulty.

Protection on the basis of sexual orientation should be contained in federal anti-discrimination laws prohibiting discrimination. However, the inclusion of the category of ‘gender identity’ is undesirable unless it is able to provide equal protection for all identities and does not privilege one identity over another, thus inadvertently providing a context where the rights of one group violate the rights of another. At present, the inclusion of ‘gender identity’ in the proposed anti-discrimination legislation excludes, or works against, women who are born with female bodies and raised female.

One difficulty has been the reports of transgendered male to female individuals who enter exclusively female spaces, including lesbian groups, where they make sexual advances on others and claim discrimination when they find themselves rejected. They refer to their difficulties as ‘the cotton ceiling’.

Sheila Jeffreys argues that legislation that legitimises gender identity and allows men who seek to be women to have all the rights of women, directly conflicts with the rights of women born and raised as females. Certainly it is making it virtually impossible for women to meet

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71 See, eg, Transwomen Are Not Women: A Chat with Miranda Yardley (Created by HeyThisIsRya, YouTube, 30 June 2017) <https://www.youtube.com/watch?v=PyUNuDBWUSY&feature=share>; also There Are Only Two Gender (Created by Blaire White, 31 October 2016) <https://www.youtube.com/watch?v=rnQbgtb6r8>.
72 https://www.youtube.com/watch?v=wUOjuiAikrU; https://www.youtube.com/watch?v=h9VihbrehGc
75 Can Transgender Ideology and Gayness Go Together? (Created by Charlie Rae, YouTube, 13 July 2017) <https://www.youtube.com/watch?v=lD8ksTD2kTs&sns=fb>.
76 Erinyes, above n 70.
78 Jeffreys, above n 30.
in the absence of individuals with male genitals, as was seen in the closing down of the much loved Michigan Womyn's Music Festival.\textsuperscript{79}

\textit{The expansion of the definition of women has also resulted in women born and raised female being denied the freedom to choose to associate specifically with other women born and raised female in certain circumstances such as festivals, counselling groups, women’s refuges, spiritual practices, sporting teams, and Lesbian social support groups.}\textsuperscript{80}

While there are now protections against the vilification of transgender individuals,\textsuperscript{81} there continues to be no protection against the vilification of women and girls. Women who want to maintain their right to meet in the absence of individuals who are biologically male, are subject to boycotts and extreme levels of harassment and abuse including rape and death threats.\textsuperscript{82} A number of legal challenges have also been made by transgendered individuals against the right of lesbians to meet in their absence.

While to date, these challenges in Australia have been won by lesbians, the effort and expense of defending these cases is a financial and emotional drain on the women involved and is a traumatizing experience.\textsuperscript{83} Already going to great lengths to carve out what little safe spaces they can for themselves, having to defend their legitimacy is an insult to injury. Moreover, there are indications these victories will become more and more difficult to achieve. South Australia has recently passed legislation that will allow trans adults to change their gender on their birth certificate if they can show that they have consulted a doctor, without any reassignment surgery or court process.\textsuperscript{84} There is a prospect of lesbian-positive events being forced to go ‘underground’ to avoid persons who are biologically male from attending. This will mean lesbians who are not already connected to lesbian networks will struggle to gain access, a development that would marginalise especially those from vulnerable socioeconomic groups.

**Impact on reproductive rights**

\textbf{c. Dangers of hormone interventions for children}

Overseas there is an emerging trend in which decisions about the care of children who have been identified as transgender have been taken away from parents, and are instead being made by the state and the medical profession.\textsuperscript{85} The Canadian province of Ontario has

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\textsuperscript{79} Trudy Ring, ‘This Year’s Michigan Womyn’s Music Festival Will Be the Last’, \textit{The Advocate} (online), 21 April 2015 <https://www.advocate.com/michfest/2015/04/21/years-michigan-womyns-music-festival-will-be-last>.

\textsuperscript{80} Erinyes, above n 70, 5.

\textsuperscript{81} See \textit{Anti-Discrimination Act 1977} (NSW) pt 3A div 5; \textit{Anti-Discrimination Act 1991} (Qld) s 124A; \textit{Discrimination Act 1991} (ACT) s 67A; \textit{Anti-Discrimination Act 1998} (Tas) s 19.

\textsuperscript{82} TERF is a slur, above n 8.


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recently passed a law that will give the government the right to take a child away from parents that do not accept their child’s chosen gender identity. However, in other cases it is the parents who are the driving force, demanding acknowledgement of their child’s right to choose their gender. This latter path appears to be the direction that Australia is taking, as the Federal Court was recently asked to reconsider the need of court approval before hormone replacement treatment. But regardless of whether it is the state, the medical profession, the parents or the children themselves who are driving the decision – there is no doubt there are major ramifications.

In the past, gender non-conforming individuals were often labelled homosexual. However, increasingly the same behaviour is now being interpreted as evidence of transgenderism. This in some cases can reinforce traditional conceptions that there is a set way of being ‘female’ and a set way of being ‘male’. Gender stereotypes are frequently conflated with gender identity, though it is equally important to recognise that transgender individuals often critically reflect on problems of gender norms and conventional conceptions of men and women and do not by definition strengthen patriarchal power structures, as is often asserted or implied. One cannot consider all children who do not conform to cultural notions of gender as one group. Feminists have long pointed out that all gender identities are social constructs and studies have suggested that the relationship between childhood gender non-conformity and adult sexuality or gender identity is subject to the meaning with which the individual imbues their non-conformity. Gender Dysphoria is a condition recognized by the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, 5th edition (‘DSM 5’). It refers to clinically significant distress that can result when a person’s

89 Bronwyn Winter, ‘Tomboys and Sissies: Where We’re Going Wrong’ The Age, 1 March 2016.
gender identity differs from the person’s assumed gender at birth. If left untreated, Gender Dysphoria may result in profound psychological distress, anxiety, depression, and even self-harm or suicidal ideation.\(^4\) It is these risks that are used to justify radical medical intervention in the case of individuals identified as transgender. Such intervention is advocated despite evidence that transgendering a child may not be the most effective way of treating gender dysphoria. For example, in the *amicus curiae* brief submitted to the United States Supreme Court (mentioned above), three psychiatrists were asked to evaluate ‘gender-affirming’ policies and practices within schools. They argued that these policies were likely to confuse gender dysphoric children and cause distress to other children (for example, girls encountering boys in a female bathroom). They concluded that ‘conditioning children into believing that a lifetime of impersonating someone of the opposite sex, achievable only through chemical and surgical interventions, is a form of child abuse’. This was also the view of the American College of Pediatricians.\(^5\) The American Psychological Association indicates that between 12 to 50 percent of children diagnosed with gender dysphoria continue to identify as transgender when reaching late adolescence and young adulthood.\(^6\) Nevertheless, Ehrensaft points out that there is frequently a double standard in the acceptance of a child’s ability to self-identify gender, where cisgender children are frequently assumed to know their own gender from the age of six, whereas children who ‘deviate’ from the sex assigned to them at birth are assumed to be suffering from gender confusion or gender disorder.\(^7\)

There continue to be concerns that the mutilation of healthy bodies to align with a socially constructed ideal is also a violation of human rights. This is particularly highlighted by comparisons drawn with the transabled persons, able-bodied individuals who wish to acquire an impairment so that they can become ‘transabled’.\(^8\) The DSM-5 currently lists transability, or ‘body integrity identity disorder’, in its emerging measures and models appendix.\(^9\)

This is clearly a complex area with difficult issues to navigate with respect to choice and consent. However, there are particular concerns about the use of medical interventions in the case of children, including the safety of using puberty blockers and hormones.\(^10\) There is


\(^{5}\) Brief of Dr Paul R. McHugh, Dr Paul Kruz, and Dr Lawrence Mayer as Amicus Curiae, Gloucester County School Board v G.G, 16-273, 4th Cir. (2017).

\(^{6}\) Ryan Kost, ‘Research on transgender children still in its infancy’ (online), 18 June 2017 <http://projects.sfchronicle.com/2017/transgender-child/research/>; See also:


\(^{7}\) Diane Ehrensaft, ‘We trust children to know what gender they are – until they go against the norm’ (online), 26 May 2015 <https://theconversation.com/we-trust-children-to-know-what-gender-they-are-until-they-go-against-the-norm-42093>.


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an emerging cultural practice of placing children who have been identified as transgender on puberty delaying drugs until they are 16 years old and then cross-sex hormones until they are 18 years old, when they may choose to have their sexual organs surgically removed or altered.\textsuperscript{101} Male-to-female sex reassignment involves removal of the testicles and most of the penis, with skin being refashioned into a ‘largely functional’ vagina and parts of the penis being used to form a ‘neoclitoris’.\textsuperscript{102} Female-to-male reassignment is more difficult and riskier: breasts, uterus and ovaries are removed, a ‘neophallus’ is constructed using tissue from parts of the body that allow sexual sensation, and the urethra is extended.\textsuperscript{103} This practice impacts on both girls and boys and at root arises from the imposition of the same stereotypical notions of gender that have been used to oppress women for generations. Jeffreys argues persuasively that this practice constitutes a ‘custom or practice’ which constitutes discrimination on the basis of sex (although not only against women) and is based on ideas of ‘stereotyped roles for men and women.’\textsuperscript{104} As such, it constitutes a breach of the Convention on the Elimination of All Forms of Discrimination against Women.\textsuperscript{105}

The damaging effects of this medical intervention are manifold, of which the most obvious is that it renders the individual sterile.\textsuperscript{106} Sterilization of those too young to give consent has long been a human rights concern, although more typically in relation to girls with an intellectual disability.\textsuperscript{107} The campaign must now also be extended to oppose the sterilization of children through transgendering them. In countries such as Finland individuals wishing to change gender must be sterile by law.\textsuperscript{108} The Finnish law requires a person to present a medical statement stating that they permanently feel that they belong to the opposite gender, and that ‘he or she has been sterilised or is for some other reason infertile’.\textsuperscript{109} This sterilisation must be ‘irreversible’.\textsuperscript{110}


\textsuperscript{103} ibid.


\textsuperscript{106} Hruz, Mayer and McHugh, above n 59, 25.

\textsuperscript{107} See, eg, Secretary, Department of Health and Community Services v JWB (‘Marion’s Case’) (1992) CLR 218, where the High Court of Australia held that sterilising an intellectually disabled girl was outside the scope of parental authorisation.


\textsuperscript{109} Act on Legal Recognition of the Gender of Transsexuals, No. 563/2002 2 § para 1.

Transgendering further damages bone health, alters height and in girls may lead to early hysterectomy and premature menopause. The lifelong administration of drugs required to sustain a transgender identity also has other harmful health consequences such as cancer of the liver. Genital surgery, if undertaken, may additionally interfere with the ability to experience sexual sensation. While puberty blockers, as the first step usually recommended in this cascade of medical interventions, are promoted as harmless, there is in fact inadequate research available to be able to predict the long-term effects. Research on the use of puberty suppressants is still in its infancy, particularly concerning the effects on brain development.

There is certainly a risk that children who are not allowed to experience puberty will be sterile, regardless of what other interventions take place. The practice of effectively sterilizing children to ensure they conform with gender stereotypes is also an issue for many intersex people who have a very different experience and agenda to that of transgender individuals. Increasing numbers of them are speaking out to protest damaging medical interventions undertaken while they were still infants and children to ensure that they conformed with society’s rigid notions of gender. ‘Normalising’ operations conducted on babies with ambiguous genitalia to ensure they can tick the box ‘male’ or ‘female’ have had devastating life-long consequences. Intersex individuals are now lobbying to have cosmetic and gender assignment surgeries on infants banned, so that they can decide for themselves later in life what course to take. Perhaps guided by this lobbying, the Parliamentary Assembly of the Council of Europe in 2013 adopted resolution 1952 that under the framework of the ‘right to bodily integrity’ sought to ensure in para. 7.5.3 that ‘no-one is subjected to unnecessary medical or surgical treatment that is cosmetic rather than vital for health during infancy or childhood’. However, Francesca Ammaturo points out that conceptions of bodily integrity,

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111 Hruz, Mayer and McHugh, above n 59, 11.
including operations on intersex children, are ‘significantly mediated by cultural, social and religious factors’, which complicates the relationship between human rights and intersex surgeries.\textsuperscript{120}

Trans activists often disregard the many accounts of individuals who go on to regret their transition and opt to cease hormone treatments and live their lives as their birth sex.\textsuperscript{121} There are estimates that up to 20% of individuals regret their transition,\textsuperscript{122} although clearly further longitudinal studies will need to be conducted that are not sponsored by pharmaceutical companies with a vested interest in this lucrative new industry. However, as mentioned above in the case of James Caspian at Bath Spa University, it can be difficult for such studies to receive funding. Caspian has stated his proposed study on gender change regret was refused funding, on the basis that it might generate social media criticism of the university, and because ‘it [was] better not to offend people’.\textsuperscript{123} This decision was surprising given Caspian’s sixteen years of experience in counselling transitioning individuals and his position as trustee of the Beaumont trust, an English charity for transgender persons. As he notes, he ‘just wanted to find out’ about the experiences of those who regret their transition.\textsuperscript{124}

Despite the paucity of research, there are indications of a real risk that self-esteem issues and suicidal tendencies may in fact increase rather than abate following transition.\textsuperscript{125} A 2011 Swedish study found significant risk of mortality from suicide and depression in post-sex reassignment patients, and that even after controlling for psychiatric hospitalisation prior to sex reassignment, there was an increased risk of psychiatric hospitalisation after sex reassignment.\textsuperscript{126}

4. Conclusion

There is no doubt this discussion paper presents some arguments that depart from current trends. However, the fact that a movement is de rigueur does not make it right. There have been many fashionable movements throughout history that have been strongly marketed to and implemented by women despite being designed to control and oppress them - from foot binding and traditional female genital circumcision to the current craze in hair removal and

\textsuperscript{120} Ammaturo, above n 119, 600.
\textsuperscript{121} https://www.facebook.com/60Minutes9/videos/1375839655818679/?hc_ref=ARRIPbCG_KddnQXPlAawTOLdpcZCTjXUDi4O-wFYIzwxONzK0ZIhZKM1muwK04bTnl&ref=gas&dtt=1593450017593722&hc_location=group.
\textsuperscript{126} Cecilia Dhejne et al, above n 41, 6.
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cosmetic surgery. In their anxiety to win the male approval required for survival and success, there is sadly a long history of women willing to subject themselves and their offspring to extensively cruel treatment.

The current framing of these issues within a narrative of ‘choice’ arguably disguises the fact that these decisions are often made in a context of sexism which renders the concept of choice problematic to say the least. Despite the work of second wave feminists, the pressure to comply with gender stereotypes (for both men and women) is now greater than ever, so that many individuals feel there is no option but to resort to drastic measures to ensure conformity. Transitioning to the opposite ‘gender’ arguably needs to be understood within this context.

There have always been individuals who do not comply with rigid notions of what is a man or what is a woman – whether due to diverse physiology or alternative thinking. Feminists, above all others, have championed and celebrated these individuals for their non-conformity. However, now that pharmaceutical and medical industries have the technology available to exploit this opportunity, forcible steps are being taken to curb these departures from gender norms. It may be argued that tomboys and sissies, butch lesbians and transvestites are now being targeted for ‘corrective’ medical intervention, sometimes with the effect of sterilising them.

Enabling men who wish to identify as women to be treated in all respects as women by law, risks undermining institutions and laws that have been hard fought for and established over time for the express purpose of protecting the human rights of women and girls. These changes to law and policy fail to acknowledge the ongoing reality of male violence. These changes also deny women the right to have meetings and spaces exclusively for women who were born and raised female and will thereby impede their ability to organize politically and advance feminist causes. They will undermine temporary special measures or affirmative action strategies that have been put in place to redress the disadvantages experienced by females, and may work to reverse progress made in terms of women’s participation in political and cultural life through sport and leadership positions. Finally, the promotion of medical interventions likely to result in the sterilization of children who are gender non-conforming is a major breach of human rights. It is also likely to have ramifications into the future by placing additional pressure to commodify women’s reproductive capacities.

For all these reasons we need to seriously step back and put considerable time and energy, including consultation with women’s rights activists, into very carefully considering the impacts of laws promoting transgenderism on the human rights of women and girls.
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