



GOVERNMENT OF MALTA

Gender Identity, Gender Expression and Sex Characteristics Act

Submissions Report

January 2015

*Ministry for Social Dialogue, Consumer Affairs and Civil Liberties
Barriera Wharf, Valletta VLT 1971, Malta*

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Published by the Ministry of Social Dialogue, Consumer Affairs and Civil Liberties

Contents

Executive Summary.....	4
Introduction and overview.....	4
Responses to the consultation and process used to seek stakeholder views.....	6
Summary of responses and decisions.....	7
Implementation.....	7
Contact Details	8
Detailed overview of responses and the Government’s response.....	9
Overview and Main Outcomes from the Consultation Submissions	9
Conclusion and way forward	11
Annex A: List of respondents.....	12

Executive Summary

Introduction and overview

This document provides an overview of the submissions received from this consultation and sets the Government's next steps on the *Gender Identity, Gender Expression and Sex Characteristics (GIGESC) Act*.

1. A brief introduction about the subject

In 2013, following a change of government, the Maltese government reached an out-of-court settlement with Joanne Cassar who until then had no other choice but to fight a legal battle all the way to the European Court of Human Rights for the respect of her right to marry ([Application No. 36982/11](#)). Subsequently it went on to amend the Civil Code to allow trans people to be fully recognised in the acquired gender and be able to marry their opposite sex partner through the *Civil Code (Amendment) Act, 2013* ([ACT No. VII of 2013](#)). During 2014, the Maltese government adopted another three laws that directly improved the legal protection afforded to trans people, namely:

- *Constitution of Malta (Amendment) Act, 2014* ([ACT No. X of 2014](#)), which introduced the ground of 'gender identity' in the list of grounds of non-discrimination found in the Constitution, unanimously approved by the Maltese Parliament;
- *Procedural Standards in Examining Applications for Refugee Status (Amendment) Regulations, 2014* ([L.N. 161 of 2014](#)) including 'gender identity' within the definition of a particular social group for asylum purposes;
- *Equal Treatment in Employment (Amendment) Regulations, 2014* ([L.N. 274 of 2014](#)) including the ground of 'gender reassignment' for purposes of sick leave and other rights and protections afforded under the *Employment and Industrial Relations Act*.

2. The public consultation date, objective and purpose of the public consultation

On 29th October 2014, an online consultation was launched by the Government on www.socialdialogue.gov.mt/gigesc with the aim to collect input from the general public, civil society organisations, trade unions, business organisations, political parties, governmental institutions and all others that would like to contribute towards this process towards enacted the GIGESC Act.

3. This consultation sought views on the proposed Gender Identity, Gender Expression and Sex Characteristics Act

The Government Programme clearly states that the government intends to introduce a law that allows trans people to have their self determined identity respected by law. The Programme also states that government wants to introduce a policy against discrimination across the whole Public Service.

This Bill was thus developed by the LGBTI Consultative Council to meet this goal. In the process, consultations were held with various local and international institutions and organisations to ensure that the law meets current standards and protects trans, genderqueer and intersex people against discrimination.

In a nutshell, the proposal:

- Introduces a right to gender identity for all persons;
 - Regulates the procedure for change of legal gender for minors and adults alike;
 - Recognises foreign decisions regarding gender identity by a competent court or responsible authority;
 - Allows for amendments of gendered characteristics on all official documents (such as the ID card and the passport) or certificates;
 - Provides for the privacy of the person whose gender has been rectified on official documents;
 - Introduces a positive obligation on government entities to ensure that their services meet the objectives of this Act;
 - Provides parents with the possibility to postpone the entry of a gender marker on their children's birth certificate;
 - Introduces a right to bodily integrity and physical autonomy for all persons;
 - Makes non-medically necessary treatment on the sex characteristics of a person without informed consent unlawful;
 - Provides for psychosocial counselling, support and medical interventions related to sex and/or gender;
 - Provides for a revision of the protocol regulating sex assignment treatment and/or surgical interventions on the sex characteristics of a person;
 - Introduces 'gender expression' and 'sex characteristics' within the list of grounds for aggravated circumstances under the Criminal Code; and
 - Introduces 'gender expression' and 'sex characteristics' within the scope of the *Equality for Men and Women Act*.
4. This document is the Government Response to this consultation and sets out the Government's decisions on this matter.

Responses to the consultation and process used to seek stakeholder views

- 5. The closing date of the public consultation, methods used to receive the feedback, the total amount of responses and the respondents*

The online consultation was open until 30th November 2014. The consultation document and the reply form were available online, and responses were accepted electronically and on paper.

In total the Ministry for Social Dialogue, Consumer Affairs and Civil Liberties (MSDC) received 26 submissions from individuals, civil society organisations, national and international institutions. A list of respondents can be found in **Annex A**.

- 6. Meetings with stakeholders*

Meetings were held with:

- Office of the Attorney General
- Public Registry Directorate
- Malta Information Technology Agency (MITA)
- Kunsill Nutarili ta' Malta
- Ministry for Justice, Culture and Local Government
- Ministry for Energy and Health
- Paediatric Outpatients Clinic (Mater Dei Hospital)
- LGBTI Consultative Council

7. The following is a summary of the consultation responses received. We would like to thank all those who took the time to respond to the consultation and participate in stakeholder meetings around the consultation exercise.

Summary of responses and decisions

8. Results of feedback received

All the submissions received acknowledged the sensitivity around gender identity issues, and the need to address trans and intersex people's rights in Malta.

An absolute majority of respondents commend the government for the proposed Act, and support the proposed legislation for its strong foundation in established human rights standards. Three submissions agreed with these principles of the law but had a few technical arguments about the law. Five submissions, whilst agreeing on the need to address the rights of trans persons, expressed concerns or had contentions with certain aspects of the law.

Those who agreed and those who expressed concern focused on similar issues, mainly:

- The law's objective
- No requirements for surgical, medical, psychological, hormonal or any other treatment
- An easier procedure to changing one's gender identity on legal document
- Inclusion of minors / children
- Education / schools
- Inclusion of sex characteristics in the law

The respondents identified a number of issues in their submissions regarding procedures. Submissions also included recommendations that address these gaps. The amendments to the proposed bill following the consultation will be presented during the next step in Parliament.

9. Assessment and Government's decision

Having reviewed the submissions on the proposed GIGESC Act, our assessment remains that this legislation will improve trans and intersex people's lives in accordance with established human rights standards and will contribute towards equal treatment and acceptance of individuals regardless of their gender identity, gender expression and sex characteristics.

The Government has decided to propose a number of amendments emerging from the consultation exercise, that is, both from the submissions received and the meetings held with the relevant stakeholder with the objective to strengthening the proposed legislation whilst maintaining the highest standards of human rights particularly towards trans and intersex people in Malta.

Implementation

10. Implementation of decisions

The Ministry for Social Dialogue, Consumer Affairs and Civil Liberties analysed all submissions and will be presenting amendments based on the recommendations made during the consultation process.

The amended Act, based on this input and as approved by the government, will be presented during the Second Reading in Parliament and for approval during the Third Reading.

Subject to Parliamentary approval, government will implement the decision on the *Gender Identity, Gender Expression and Sex Characteristics Act*.

Contact Details

If you have any questions regarding this response, please contact: integration.msdc@gov.mt

Detailed overview of responses and the Government's response

The following section provides a brief summary of the initial proposals and the responses received.

Overview and Main Outcomes from the Consultation Submissions

All the submissions received acknowledged the sensitivity around gender identity issues, and the need to address trans and intersex people's rights in Malta.

All the submissions received acknowledged the sensitivity around gender identity and sex characteristics issues, and the need to address trans and intersex people's rights in Malta.

An absolute majority of respondents commend the government for the proposed Act, and support the proposed legislation for its strong foundation in established human rights standards. Three submissions agreed with these principles of the law but had a few technical arguments about the law. Five submissions, whilst agreeing on the need to address the rights of trans persons, expressed concerns or had contentions with certain aspects of the law.

It should be pointed out that those who agreed and those who expressed concerns focus on similar issues, mainly:

- The law's objective
- No requirements for surgical, medical, psychological, hormonal or any other treatment
- An easier procedure to changing one's gender identity on legal document
- Inclusion of minors / children
- Education / schools
- Inclusion of sex characteristics in the law

The respondents identified a number of issues in their submissions regarding procedures. Submissions also included recommendations that address these gaps. The amendments to the proposed bill following the consultation will be presented during the next step in Parliament.

Final decision

- 1.1 Having considered the issues raised in the submissions, Government remains committed to offer legal protections on the basis of gender identity, gender expression and sex characteristics.
- 1.2 We have considered very carefully the arguments presented and the issues raised. We acknowledge that the matters being discussed might be perceived to be of a sensitive nature; however we also acknowledge that these are matters that affect the daily lives of several individuals and their families.
- 1.3 These lives and their well-being matter to this Government, and therefore we have decided to propose a number of amendments emerging from the consultation exercise, that is, both from the submissions received and the meetings held with the relevant stakeholder with the objective to strengthening the proposed legislation whilst maintaining the highest standards of human rights particularly towards trans and intersex people in Malta.

Conclusion and way forward

We intend to using the outcomes of this consultation for the following actions:

- Put forward amendments in Parliament based on the recommendations, which will be presented during the Second Reading and proposed formally during the Committee Stage.

Annex A: List of respondents

Type of Submission	No. of Submissions	Name
Individuals	9	<ol style="list-style-type: none"> 1. Jack Byrne (New Zealand) 2. Kristina Mizzi and Rose Galea Testaferrata 3. Louise Anne Pulis 4. Nicholas Briffa 5. Peter Cassar Torreggiani 6. Rosario Mizzi 7. Suzanne Vella and Martha Fitz 8. Tony Briffa (Australia) 9. Various Signatories
Local Civil Society Organisations	7	<ol style="list-style-type: none"> 10. aditus Foundation 11. Kunsill Nutarili ta' Malta 12. Kunsill Studenti Universitarji 13. Life Network & Gift of Life 14. Malta Humanist Association 15. Malta Gay Rights Movement¹ 16. The Church in Malta
International Civil Society Organisations	7	<ol style="list-style-type: none"> 17. European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) 18. Global Action for Trans Equality (GATE) 19. Organisation Intersex International Australia (OII Australia) 20. Organisation Intersex International Europe (OII Europe) 21. STP, International Campaign Stop Trans Pathologisation 22. Transgender Europe (TGEU) 23. United Nations High Commissioner for Refugees Malta (UNHCR Malta)
National Institutions	2	<ol style="list-style-type: none"> 24. Commissioner for Children and Maltese Paediatrics Association 25. National Commission for the Promotion of Equality (NCPE)
International Institutions	1	<ol style="list-style-type: none"> 26. Council of Europe, Sexual Orientation and Gender Identity Unit

¹ Malta Gay Rights Movement. (2010). *A proposed Gender Identity Bill*.