



**Organisation Intersex International Australia Limited**  
**For intersex human rights, information, and peer support**

PO Box 46, Newtown, NSW 2042, Australia  
+61 405 615 942 info@oii.org.au  
oii.org.au

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

29 November 2014

Dear Sir/Madam

**GIGESC Consultation**

Organisation Intersex International Australia Limited ("*OII Australia*") congratulates the Maltese government on publication for public consultation of the proposed Gender Identity, Gender Expression And Sex Characteristics Act ("*GIGESC Bill*").

OII Australia is an intersex-led, volunteer-run organisation that promotes the bodily autonomy of people born with intersex variations, i.e. variations in sex characteristics. OII Australia also provides information, education and peer support. The parents of a prominent intersex activist and member of OII Australia were born and raised in Malta, and we take a keen interest in the actions of the Maltese government.

In 2013, the Australian government enacted legislation to add the attributes of "*Gender Identity*" and "*Intersex Status*" to the *Sex Discrimination Act*. The proposed GIGESC Bill will achieve a similar objective to the goals of the Australian government. However, the Maltese proposals go beyond Australian legislation in several key areas, and we welcome the leadership of the Maltese government in this matter.

In particular, we warmly welcome the creation of a new "*right to bodily integrity and physical autonomy for all persons*", and proposals to make "*non-medically necessary treatment on the sex characteristics of a person without informed consent unlawful*".

In 2013, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment identified that torture and other forms of ill-treatment are routinely carried out against intersex persons to "*fix*" sex characteristics<sup>1</sup>. A joint UN interagency statement on forced sterilisation has this

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<sup>1</sup> OHCHR (1 February 2013) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*,

year raised specific concerns about how intersex children are subject to “sex normalizing” treatments with lifelong consequences, without their fully informed consent or that of their parents<sup>2</sup>. The Council of Europe has adopted *Resolution 1952 (2013) on “Children’s right to physical integrity”*, stating in paragraph 7.5.3 that member States should:

*ensure that no-one is subjected to unnecessary medical or surgical treatment that is cosmetic rather than vital for health during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to persons concerned, and provide families with intersex children with adequate counselling and support*<sup>3</sup>

Both the Australian Senate Community Affairs References Committee and the Swiss National Advisory Commission on Biomedical Ethics recognise that intersex variations, diverse sex characteristics, frequently do not require medical treatment<sup>4</sup>. The proposed Bill is a powerful method of tackling the issues raised by these national and international institutions.

We note the proposed definition of “sex characteristics”:

*“sex characteristics” refers to the chromosomal, gonadal and anatomical features of a person, which include primary characteristics such as reproductive organs and genitalia and, or in chromosomal structures and hormones; and secondary characteristics such as muscle mass, hair distribution, breasts and, or stature*<sup>5</sup>.

The “*Objects and Reasons*” for the Bill acknowledge that “*the sex characteristics of a person vary in nature*”. We believe that the proposed language around “sex characteristics” would benefit from either the additional inclusion of a legal definition of “intersex”, or mention of “*people with intersex variations*” in the “*Objects and Reasons*”. Either approach would promote legal and societal clarity

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[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf), accessed 7 February 2013.

<sup>2</sup> WHO, OHCHR, UN Women, UNAIDS, UNDP, UNFPA and UNICEF (May 2014) *Eliminating forced, coercive and otherwise involuntary sterilization*

[http://www.who.int/reproductivehealth/publications/gender\\_rights/eliminating-forced-sterilization/en/](http://www.who.int/reproductivehealth/publications/gender_rights/eliminating-forced-sterilization/en/), accessed 30 May 2014.

<sup>3</sup> Council of Europe, Parliamentary Assembly, and Marlene Rupprecht, *Children’s Right to Physical Integrity: Resolution 1952 (2013)*, *Resolution*, vol. 1952 (2013), 2013, <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20174&lang=en>.

<sup>4</sup> See paragraph 2.4, Australia et al., *Involuntary or Coerced Sterilisation of Intersex People in Australia* (Canberra: Community Affairs References Committee, 2013), and Swiss National Advisory Commission on Biomedical Ethics NEK-CNE, *On the Management of Differences of Sex Development. Ethical Issues Relating to “intersexuality”*. *Opinion No. 20/2012*, 2012 20 (Berne, 2012), [http://www.bag.admin.ch/nek-cne/04229/04232/index.html?lang=en&download=NHZLpZeg7t,Inp6I0NTU042I2Z6In1ad1Izn4Z2qZpnO2Yuq2Z6gpJCKfX96f2ym162epYbg2c\\_JjKbNoKSn6A--](http://www.bag.admin.ch/nek-cne/04229/04232/index.html?lang=en&download=NHZLpZeg7t,Inp6I0NTU042I2Z6In1ad1Izn4Z2qZpnO2Yuq2Z6gpJCKfX96f2ym162epYbg2c_JjKbNoKSn6A--).

<sup>5</sup> Malta and Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, “Gender Identity, Gender Expression And Sex Characteristics Act: Exposure Draft” (Ministry for Social Dialogue, Consumer Affairs and Civil Liberties, October 29, 2014), [http://msdc.gov.mt/en/Public\\_Consultations/MSDC/Pages/Consultations/GIGESC.aspx](http://msdc.gov.mt/en/Public_Consultations/MSDC/Pages/Consultations/GIGESC.aspx).

about the full diversity of sex characteristics of people that arise in nature. Such a move would also establish a connection in human rights jurisprudence between the resolutions and statements of UN agencies and the Council of Europe and the laws of national parliaments.

Additionally, we recommend to the Maltese government that it review the necessity for sex or gender to appear on official documents, such as the ID card, and in application and license forms. In 2013, the Australian government adopted guidelines on the collection of sex and gender data, stating:

*26. Consistent with Information Privacy Principle 1, all departments and agencies that collect sex and/or gender information should closely examine whether such information is necessary to perform their specific function or for broader government statistical or administrative purposes. Where such information is not necessary, this category of information should be removed from forms or documents<sup>6</sup>.*

Information Privacy Principle 1 states:


*Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:*

- a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and*
- b) the collection of the information is necessary for or directly related to that purpose.*

We commend these guidelines to you.

We thank you again for publishing and consulting on the GIGESC proposals. We welcome and support the proposed Bill, and we also commend the proposed Bill to the Australian government.

Yours sincerely,



Morgan Carpenter  
President, OII Australia  
<http://oii.org.au>  
+61 405 615 942

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<sup>6</sup> Australia and Attorney General's Department, *Australian Government Guidelines on the Recognition of Sex and Gender*, 2013.