

From: Catherine Carol [REDACTED]
Sent: Tuesday, 1 March 2022 4:48 PM
To: ADARReview
Subject: QHRC ADA Review - submission by Dr Catherine Carol
Attachments: Consent Form - Dr Catherine Carol.pdf

Categories: [REDACTED]

Dear Sir/Madam

Please find the submission below, and the attached consent form.

Submission in response to Discussion Question 26: Should there be a new definition of gender identity, and if so, what definition should be included in the Act?

The definition of “gender identity” should not be separated from biological sex, it should be understood as “sexed identity”. The recent cultural phenomenon (circa mid-20th century) separating sex and the concept of gender originally served as a terminological distinction for political purposes (particularly for the feminist movement). Namely, it was to shed light on the personal and social experiences of being a particular sexed embodiment, i.e. the experiences of girls and women, and how their sexed embodiment was lived by them in their society, as different from male sexed embodiment. The grammatical distinction did not mean that a person could choose their sexed embodiment (as some form of pure social construct and/or personal projection), or that the concept of gender was separate from sex. The present definition of “gender identity” in the *Anti-Discrimination Act 1991 (Qld)* (the ‘Act’) incorporates a gender binary position, it also envisages a separation of sex and gender by referring those who *choose* to live as one of the dual (two) genders. Should gender be used as a definition it must be synonymous with biological sex, without this re-definition anyone can choose their gender, whether female or male. There are serious consequences which arise from this position, and these have already surfaced regarding the safety of girls and women, access to services and female only spaces, and incorrect collation of data (particularly criminal data) in the Queensland community.

A realistic position would be to prevent the perpetuation of the idea that human beings are somehow separate from their bodies (disembodied minds), and that our bodies are a product of human thoughts, which is plainly contrary to reality. The biological differences between the sexes exist at the biochemical and cellular levels of every human being: every human being is sexed. The *Yogyakarta Principles* cited in the discussion paper (page 97) are simply incorrect “...Gender identity, of a person, is the person’s internal and individual experience of gender, whether or not it corresponds with the sex assigned to the person at birth...” It is not possible for one sexed body to have an internal feeling of another sexed body. One can *imagine* what it might be like, but that is limited to one’s imagination and is not the actual experience of being a male or female body, regardless of what pronouns and applications of language are instituted, a human being can never ‘escape’ one’s bodily (and sexed) lived reality. It is important not to conflate, nor indulge, impossibilities such as this, and it is imprudent of the QHRC to consider the *Yogyakarta Principles* as “settled”. (It is also with great concern that the *Public Health Act 2005 (Qld)* reflects these principles).

The discussion paper states “many equality jurisdictions now have a more inclusive gender identity definition” (page 96). In fact, this definition is not “more inclusive”. We have witnessed how the competition of boys and men in women’s sports serves to exclude girls and women from their expectation that they can perform in their chosen sport. The way this definition lends to excluding girls and women manifest in feelings of not being safe in their community, of not being able to access dressing rooms, bathroom facilities etc, nor to participate in women’s only groups, or for parents to choose single sex educational or other spaces for their girls and boys. Given the purpose of the Act is to mitigate these harms perpetuated against girls and women, it is imperative that gender is left connected to biological sex, which allows human beings to attend to their material reality, and which is recognised and supported by the law.

Recommendation

The QHRC should propose to re-define the definition of “gender identity” as “sexed identity” in the Act. If this is not QHRC’s position at this point, the definition should be left as it presently stands.

Thank you for your time.

Kind regards,

Dr Catherine Carol, Academic