

# TENI Community Forum

26 July 2011

## Discussion of GRAG Report

Transgender Equality Network Ireland (TENI) held a Community Forum on 26 July. The goal of the Forum was to gather feedback on the criteria for gender recognition as recommended in the Report by the Gender Recognition Advisory Group (GRAG). We also wanted to use the Forum to discuss how we can best lobby and advocate for inclusive gender recognition.

Over 70 individuals attended the Community Forum including members from the trans community, LGBT organisations and other allies. There were many questions, comments, and concerns voiced over the evening and we have compiled notes to reflect these discussions.

The Community Forum was broken into two parts:

- (1) Open floor discussion/questions on the contents and criteria of the GRAG report.
- (2) Breakout groups and priorities for change.

### (1) ISSUES RAISED IN THE OPEN FLOOR DISCUSSION

The first part of the Community Forum was an open floor discussion where people discussed and asked questions on the content of the GRAG Report.

#### **FORMAL DIAGNOSIS OF GENDER IDENTITY DISORDER**

##### **(1) ...and Intersex**

Questions:

- >Does the Gender Identity Disorder (GID) criteria exclude intersex?
- >Could some intersex people be included as having had gender reassignment surgery?

>How are intersex people included?

Answers:

>Intersex is not included at all in proposed legislation.

>For a diagnosis of GID, you cannot have a concurrent intersex condition.

>In terms of surgery, it is open to interpretation. Intersex people have Gender Assignment Surgery (vs Reassignment Surgery) – the proposed criteria states Reassignment Surgery.

## **(2) ...and separation of criteria between medical and psychiatric strands**

>Medical criteria – not only going through psychiatric process. Then referred for surgery, then back to psychiatric process again. Some healthcare professionals insist that the 2 year real life test start from the time that they intervene.

## **(3) ...and competency**

>Competent to know what you are choosing due to mental GID criteria. Can you be debarred due to mental health? Issue of competency.

>Fear that you have some other disorder that prevents you from being aware of the decision you're making.

(underlines the problem of having GID as a requirement in the first place)

## **(4) ... and transsexualism**

>GRAG criteria have a very transsexual point of view (vs. transgender or more inclusive approach). Need to clarify.

## **(5) ... and healthcare professionals**

Questions:

>Who is qualified to diagnose GID in Ireland?

>What is the 'qualification'? (e.g. psychiatrists? Clinical psychologists?)

## **(6) ...why**

Question:

>Why GID? Why is a psychiatric diagnosis necessary?

## **AGE LIMIT**

Comments:

>The current GRAG criteria excludes those under 18.

>However, there are other things you can do at 16, including consenting to surgery.

>Rationalisation may be that 18 is seen as the age of majority / entering into sworn contract with the State.

## **IRISH RESIDENT**

Question:

>I was born in the North. Does my birth certificate count here?

Answer:

>Must be ordinarily resident here.

## **TIMELINE FOR THE BILL**

Comments:

>Timeline is unclear. Minister Burton has said that legislation will come “within a year”.

>Realistically the legislative process may take 2+ years.

>Comment from facilitator: The more important thing is to be able to engage with Minister Burton, rather than timeline. If it means extending by a year or two to get the desired result, it's a better choice.

## **DIVORCE**

Issues raised:

### **(1)...and Irish legislation**

>Means 4 years living apart

### **(2)...and Annulment**

>It's possible that being transgender could be grounds for an annulment (as in the UK).

### **(3)...and Constitutional Rights**

- > 'forcing' divorce may be unconstitutional.
- > Question raised: What about the rights of children / family / individual?
- > Comment: Surely the constitution should protect my family as well?

### **(4)...and Feasibility**

- > To divorce, both partners must have mentally resolved that the relationship is at an end. If they actually don't wish to divorce/dissolve civil partnership, they may not be able to meet the conditions.

### **(5)...and RLT**

Question raised: If someone is married/civil partnership – when can the real life test 'start'?

### **(6)...and Same Sex Marriage**

Possible argument against forced divorce: At the time of marriage, the partners were technically legally of the opposite sex.

## **2 YEAR REAL LIFE TEST (RLT)**

Questions:

- > Is the RLT necessary?
- > RLT is what exactly?
- > What 'proof' would be required?
- > RLT before surgery?

Comment: Could provide Passport – only issued for 2 year period.

Comment: The HSE does not currently have a formal procedure to document the RLT (some practitioners ask people to do it while others do not).

### **...and link to age limit**

Question raised:

- > when would the RLT be dated from if transition began pre-18?

## **PANEL**

Questions:

- > Why a panel in the first place?
- > Who would make up the legal / medical / layperson?

## **...and Expertise**

Questions:

- >What constitutes a legal expert & a medical expert?
- >What constitutes a layperson?

Answers:

- >Medical expert = qualified doctor
- >Need not necessarily be experts. But if they do mean 'expert in trans' there are only 2 doctors in Ireland. This is problematic because the same doctor will be writing the report and then gauging if the report is acceptable.
- >Need for training of professionals. If a member of the panel is not an expert in trans issues then there is a question of authority of the people on the panel to overrule evidence
- >Legal expert = solicitor for 7 years / barrister for 5 years
- > Very few legal experts in this area (e.g. FLAC)
- >Layperson - someone with an interest? / representative of the trans community?

Comment:

- >TENI could recommend that for best legislation, expert means expert  
Medical Council & Bar Council could attest to expertise.

## **...and APPEALS**

- >Appeals process is problematic due to cost and inexperience of the Family Court on these matters.

Comment:

- >If you're not happy with the judgement of the panel, you can appeal to the Family Court part of the Circuit Court but this will involve a cost.

## **GENDER RECOGNITION CERTIFICATES**

### **(1)...why?**

Questions:

- >Why a certificate?
- >Why not just need new birth cert?

### **(2)...and birth certificates**

Questions:

- >After the certificate has been issued, how is the birth cert changed?
- >Is the process automatic or is there a secondary process?

### **(3)...and passports**

Questions:

- >Are they going to take away the passport until the cert is issued?
- >If you haven't already attained your certificate when renewing passport, do they revert until it is issued?

Comment:

- >Gender Cert issued, passed on to passport office – a lot of people have changed the gender on their passport.
- >At the moment, passports being granted for 2 years.

### **...and cost**

- >The process is free – but fulfilling the criteria (divorce, diagnosis, etc) will all cost money.

### **...and revoking / correcting**

- >Revocation/Correction – making space for a certificate to be revoked

Questions:

- >Who will have the power to revoke the certificate?
- >Affected / unaffected third party – could they ask to revoke the certificate?).
- >How would it be corrected?

Comments:

- >Not clear from the report what it means. Not enough information in the report.
- >'Safeguards' – provisions simply for the sake of provisions. To allay fears of other people.
- >EG. If a trans man were to become pregnant, would that be grounds for revoking?

## **Other questions:**

## Family rights

Question:

>What is legal connection to a child conceived after/before transition & recognition?

Answer:

>GR cert won't undo any legal thing that you went through before. IE, still "father" of the children.

## Equality legislation

Comments:

- >The GRAG report declared the current equality legislation 'sufficient'
- >Space between current practice and new system – limbo.
- >Benefits – how social welfare office / passport office will join up?

Comment from facilitators:

- >These questions are great, but not necessarily what's going to be in the Bill. Think wider than the Bill. What you want rather than what's been offered.
- >Consider the inclusivity of trans experience vs what is being proposed in the GRAG Report.
- >We must consider what is better for the breadth of the community; what is better for the majority of the community; challenging for us.

## BREAK OUT GROUPS AND PRIORITIES FOR CHANGE

In the second half of the Forum we asked participants to enter small groups (4–6 people) and answer the following two questions:

(1) Of the criteria listed in the GRAG report, what are the top 2 issues that TENI should be advocating for change on?

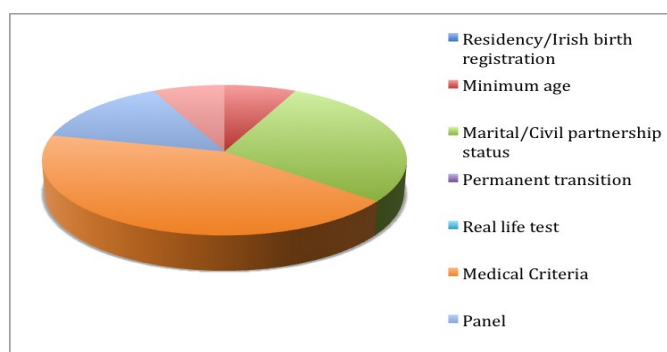
(2) Next steps? What can individuals/organisations/TENI do to influence this legislation?

**(1) What are the top 2 issues that TENI should be advocating for change on?**

This table illustrates the seven group's priorities to change (first and second choice)

| Group | Residency/Irish birth registration | Minimum age | Marital/Civil partnership status | Permanent transition | Real life test | Medical Criteria | Panel | Equality Legislation |
|-------|------------------------------------|-------------|----------------------------------|----------------------|----------------|------------------|-------|----------------------|
| (1)   |                                    |             |                                  |                      |                | 1                | 2     |                      |
| (2)   |                                    |             | 1                                |                      |                | 2                |       |                      |
| (3)   |                                    |             | 1                                |                      |                | 2                |       |                      |
| (4)   |                                    |             | 2                                |                      |                |                  | 1     |                      |
| (5)   |                                    | 1           |                                  |                      |                | 2                |       |                      |
| (6)   |                                    |             |                                  |                      |                | 2                |       | 1                    |
| (7)   |                                    |             | 1                                |                      |                | 2                |       |                      |

This chart is a visual representation of the above table:



Please note that the top two issues that were highlighted by the groups were the medical criteria and marital/civil partnership status.



## **(2) Next steps? What can individuals/organisations/TENI do to influence this legislation?**

Campaign of TENI:

- >General education
- >Media
- >Engagement with legislators and policy makers
- >Response to report
- >Draft a bill
- >Awareness raising ... TDs etc.

Other suggestion for next steps:

- >Get media on board
- >Website plugin. Poster / Proforma letter to TDs etc.
- >Cabinet analysis
- >Name and shame – show that there is a ‘cost to opposing equality’
- >Use a human Rights framework / Be clear and show what is best international practice in terms of gender recognition.
- >Build relationships with civil servants
- >Praise/work with the civil servants
- >Meeting your TD
- >Alternative report and with Q&A to their concerns
- >Develop allies: AI / IMC / ICPG
- >Make the argument that this legislation is cost neutral
- >Bringing the widest T input possible
- >Use human interest stories
- >Policy briefing for parliamentary staff
- >Strategic campaign
- >Everyone should share contacts/resources with TENI

Appendix One

# BREAK OUT SESSION NOTES

These are the written notes from each break out session. Please note that these appear as they were written and have not been edited.

## —Group One—

(1) GID Diagnosis

- what if GID is removed from DSMV?
- does that force surgery?
- exclusion of intersex
- what medical professionals qualified?
- limited number of medical professionals

Sworn Affidavit

(2 years apart)

Panel / Judicial / Non-admin

GID

Divorce

Age

Mental Health

Revocation

No Intersex

RLT

No Refugee

(2) PANEL

‘Song & dance’

Should be admin only

Panel make up

WANT

Sworn affidavit

SETTLE

Trans\* presence on panel and TENI-trained other members

## —Group Two—

ISSUES

\*Single requirement

Entire criteria

\*Formal diagnosis of GID → Mental disorder → Competence

Economic / class issues

Language outdated?

Clarify benefits / legal status?

2 year life test

## —GROUP Three—

1) Criteria top 2 to change

#3 – marriage/divorce

#6 – medical requirements

2) For #6

sworn affidavit of RLT + intent to live

the rest of criteria:

add more ORS

ie: GID or Surgery or Letter from Counsellor or Changed passport & deed poll or letters from other professionals or Intersex diagnosis

(2) For #3

People shouldn't have to dissolve marriage or cp

Those in marriage/cp prior to GR can remain

## —GROUP Four—

Panel – shouldn't be one

If there is it should have the best people on it and there should be trans representation

Divorce – (1) legislate for same-sex couples

(2) mechanism to downgrade to CP

(3) recognising the marriage as valid from when it took place

## —GROUP Five—

(1) AGE CRITERIA

→ more generally, lack of resources and pathways

→ identity of an individual under is not respected

Article 2 (UN Children's Convention)

PROPOSED: No age limit

(2) MEDICAL CRITERIA / INTERSEX

→ Hardwire diagnosis to DSM is problematic

## —GROUP Six—

(1) Equality Legislation and Privacy

Amend to include 'gender identity and/or gender expression'

(2) Medicalisation / pathologisation

Remove diagnosis

Self-identification

## —GROUP Seven—

Our criteria for change:

(1) DIVORCE

→ simply delete 'Divorce/Civil Partnership' as a requirement to change Birth certificate

→ refer to German rules around divorce. See page 57/58 of GRAG report.

(2) DIAGNOSIS

We need to identify the diagnostic criteria that we (as a community) agree with.