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## A PASSPORT IDENTIFIES WHO A PERSON IS

This is in regard to the article in Polare, the Gender Centre magazine number 88. This article is reprinted from the Scavenger with permission from the author, Marcelle.

I applaud her tenacity for taking on the Passport Office, and the result she obtained after her appeal to the Federal Government Administrative Appeals Tribunal (A.A.T.) as a result of that appeal and her victory, are the following assumptions correct?

- Is this decision to be accepted in the same way as the Grace Abrams appeal result Decisions and Reasons for Decision [2007] AATA 1816. Administrative Appeals Tribunal No 2007/0955?
- Can this decision be utilised by everyone on a “Case by Case Basis?”
- Is it to be used solely as a *Precedent*?
- Will it be listed on the Passport Office’s web site as per the outcome of the Abrams decision for those staying married after sex affirmation surgery?
- Is it an amendment to the rules and regulations currently in existence?

Currently, the situation in regard to legislation concerning Trans people is looking increasingly messy. Far from removing too many laws, we are now faced with a mish mash of precedents/amendments. Also, in the last few months due to the reviews of the “Sex Discrimination Act and the Aviation and Maritime Act” outcomes, we are now very much worse off.

The 15 recommendations contained in “Sex Files” now look positively minimal due to all of these additional problems that have surfaced due to these 2 reviews. We are in danger of being submerged in a plethora of amendments/precedents, when what is needed is a complete overhaul of legislation with regard to Trans people. We need to catch up with the advances made in the World in general, by slashing the number of laws that weigh down the Trans community in Australia. We are drowning in legislation, with it creating more anomalies, rather than cutting the numbers.

We are sorely in need of laws that are Nation wide, not State and Territory orientated. Great damage is done to the health and welfare of Trans people who think they are not considered, approached for their input or even interviewed about their concerns. Many consider, that far from being understood and our needs met, we are looked upon as nothing to worry about, as we are supposedly a minority group.

Since the launch of “Sex Files” on the 17 March 2009, much has been made of the fact that SCAG is working to implement some or all of the 15 recommendations. Until now nothing has been done. The truth is that far from lowering the number of problems faced by the Trans community, they are being added to on a regular basis, as per the problems that we now are confronted with in regard to the “Sex Discrimination Act and the Aviation and Maritime Reviews”

I would finally ask, what more is there to come, that we will have to suffer before people in authority realise the harm they are inflicting on Trans people?

Kathy Anne Noble  
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From: Janine.Mclennan@dfat.gov.au  
[mailto:Janine.Mclennan@dfat.gov.au] On Behalf Of  
passports\_policy@dfat.gov.au  
Sent: Monday, 1 August 2011 4:10 PM  
To: Kathy Knoble  
Cc: passports\_policy@dfat.gov.au  
Subject: Re: FW: Emailing: A Passport Identifies who a person is 2  
[SEC=UNCLASSIFIED]

Dear Kathy

Thank you for your letter. We will get back to you soon with a response to your questions.

Regards  
Janine

## ***STOP PRESS***

*Further to the story about Marcelle and her seven month struggle to obtain a passport which would represent her accurately, without having to go through gender affirmation surgery (p.16J, it appears that the situation is not quite as resolved as we had hoped.*

*Delilah Slack-Smith, whose story on self-defence skills appears on p.21 attempted to use Marcelle's experience as a precedent but when she contacted the Passport Office was confronted with a lot of invasive questions and no cooperation and the person from the Passport Office finally hung up on Del.*

*When Del applied to the Administrative Appeals Tribunal in order to use what she believed to be a ruling in Marcelle's favour it turned out to be a settlement on mutually agreed terms, not binding on other cases.*

*If the Passport Office is going to issue passports on a case-by-case basis it will be a long struggle to obtain the common-sense goal of a passport that describes how a person is, not how they were.*

**KC**

Polare page 3 I

July-September 2011

Hi Janine,

I have just had this sent to me.

## ***STOP PRESS***

*Further to the story about Marcelle and her seven month struggle to obtain a passport which would represent her accurately, without having to go through gender affirmation surgery (p.16), it appears that the situation is not quite as resolved as we had hoped.*

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*If the Passport Office is going to issue passports on a case-by-case basis it will be a long struggle to obtain the common-sense goal of a passport that describes how a person is, not how they were.*

If this is true, then it is a bad decision, as it leads to discrimination against everyone else in a similar situation. I personally know of many who cannot, because of the current rules obtaining to an amended passport in their female gender, because they have not had surgery. Many of my friends have been living with this for years, not months.

**Below is what was sent to me from the Passport Office in Canberra**

**Applicants who have not completed gender reassignment:**

Applications will be considered on a Case by Case basis by the APO where an applicant claims they are unable to obtain an cardinal document in their preferred gender because they are **unable to complete gender reassignment surgery** due to a pre-existing medical condition or because the surgery in the applicant's case carries a higher than

normal risk, with the result that completion of the surgery in the applicant's case is considered by a relevant medical practitioner to be dangerous or life threatening. The following documentation should accompany the application:

1. Documentary evidence that the applicant has approached the relevant body in their State or Territory seeking recognition of their change of gender, and the body's written advice as to why it has declined to recognise a change in gender.
2. A statement from the client's medical practitioner providing the following information: confirmation that hormone-therapy treatment has been on-going for at least two years; evidence of any initial surgery completed (e.g. mastectomy); details of the pre-existing health condition and advice why surgery carries a higher than normal risk; confirmation that completion of sexual reassignment surgery would be dangerous or life-threatening for the particular applicant.
3. Documentary evidence from the client confirming that they live in the community in their reassigned gender, e.g. driving licence, Medicare card, credit card.

#### Other

Other cases will be considered on a Case by Case basis by the APO. (Note: This exception policy would generally be used for children who are indeterminate sex and unable to undergo surgery due to their age).

Applicants who claim that they are unable to meet requirements because of unique circumstances, including a failure to meet the requirements of the relevant state or territory legislation or by DIAC, should provide the following supporting documentation,

- Statement (B11) of reason why the applicant cannot meet requirements;
- Medical practitioner's statement, where relevant, providing reasons for the applicant's inability to undergo gender reassignment;
- Evidence of living in the character of the other gender such as driver's licence, Medicare card, Centrelink card, rates notices (or other PIDS documents);
- Original Birth Certificate;
- Name change certificate;
- Passport Office Manager's recommendation.

The relevant body in each State or Territory for recognising gender reassignment is listed in the table below:

The above was sent to me as it was to be put onto your designated web page for Trans people. I did point out that

- At 3 above and also in "Evidence of living in the character of the other gender such as driver's licence, Medicare card, Centrelink card, rates notices (or other PIDS documents)" That this could and has led to many who have not had surgery, as they are unable to due to cost, or not wishing to, but live in their preferred gender, believing that they could amend their passport by using the above mentioned documentation.
- I also asked about an orchidectomy as evidence of surgery, as Queensland will now issue an amended birth certificate for this operation on a case by case basis.
- An orchidectomy is the complete removal of the male reproductive organs, as required by each State and Territory. A penis is not a reproductive organ, it is a delivery system.

I feel that we are moving too fast for some items, and not fast enough in others. I look forward to your answers.

Sincerely  
Kathy Anne Noble  
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**Australian Government**  
**Department of Foreign Affairs and Trade**

9 August 2011

Ms Kathy Anne Noble  
PO Box 897  
CLEVELAND QLD 4163

(knoble@iinet.net.au)

Dear Ms Noble

Thank you for your email of 1 August to the Passport Strategy, Policy and Coordination Section of the Department of Foreign Affairs and Trade (DFAT) and attached letter regarding passport policy for transgender persons and the article in *Polare* concerning an application to the Administrative Appeals Tribunal (AAT) appealing a decision made by DFAT.

In that particular case, DFAT and the applicant settled prior to the AAT making a decision by reaching an agreement through alternative dispute resolution. As such, DFAT continues to assess applications from transgender persons on a case-by-case basis using current policy. We do however take into account previous decisions when assessing similar applications.

You may be interested to know that, at Mr Rudd's direction, DFAT is currently reviewing its policy for transgender persons and the broader sex and gender diverse community. In this regard, we welcome your input on how DFAT can better meet the needs of applicants seeking a passport in a preferred gender.

I will ensure your feedback is taken into account.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Kolobaric'.

Mauro Kolobaric  
Assistant Secretary  
Passport Client Services Branch  
Australian Passport Office