

A
GUIDE FOR
TRANS PEOPLE
IN AUSTRALIA

RESIDENCY,
STATUS
AND PASSPORT



Changeling Aspects

INTRODUCTION

We have tried to make what follows easy and user friendly.

For Trans people to be able to amend documentation can be very frustrating, due to the very involved requirements that we have to follow. We will be concentrating on the requirements of the Department of Immigration and Citizenship (DIAC) and the Department of Foreign Affairs and Trade (DFAT) that includes the Australian Passport Office (APO)

Please remember that the people at all levels in these departments are very approachable. Don't be aggressive, as they are only too happy to explain what they can do to help!

The reason for this is that there is a natural flow on from Immigration FOI to Citizenship and then to Passport Office for those of us born off shore.

DIAC

Department of Immigration and Citizenship

There are two distinct areas dealt with in this department:

- 1. Immigration*
and
- 2. Citizenship*

Within *Immigration* is the
Freedom of Information (FOI) section.

IMMIGRATION AND FOI DEPARTMENT

Q How are we affected by Immigration?

A Required by States and Territories to establish residency status if born off shore.

Q What do we do to amend our residency status if born off shore?

A Apply to Immigration FOI as below.

Quote from Department of Immigration and Citizenship, dated 30-01 2008.

The Freedom of Information Act 1982 (the FOI Act) provides a mechanism for the amendment and annotation of personal records held by Commonwealth Government agencies. Where clients consider that the Department of Immigration and Citizenship (the Department) has recorded their details incorrectly they may request under the FOI Act that the Department amends their details. To seek such amendment/s of personal records as held by the Department, they will need to complete a Form 424C (copy attached) and provide evidence of their correct details as explained by the form. There is no fee to lodge an amendment request

Once the amendment/s have been made, the next step is to apply for Certificate of Evidence of Residency Status (CERS). This application is made on a Form 164 (copy attached) and has an application fee of \$70. This fee was increased in July 2008 to \$100.00.

In respect of the visa/residency status of a person after gender reassignment, it is unlikely that their visa/residency status would change. The visa/residency held by the client is granted because the client has met criteria associated with that visa. If the visa holder continues to meet these requirements, their visa/residency status will not change.

Difficulties encountered by clients who may be permanent residents, but arrived on parental passports relate mainly to difficulties in locating the record of the original arrival in Australia. These difficulties arise due to the age of the records. For example, the records may not be held electronically or in some instances may have been destroyed. These difficulties, while regrettable, are likely to be encountered by any client who ar-

rived in Australia in the same circumstances.

Q Why should we do this?

A We entered Australia as a male, underwent SRS to become female, or vice versa, so our residency status needs to be up dated to show our new name. After submitting form 164 we are issued with form 283 Certificate of Evidence of Residency Status (CERS) This has our new name back dated to when we originally entered Australia. This is imperative for Trans people. This is based on our interview with the Immigration Department at 26 Lee Street Sydney. There is no mention of sex on this form.

Quote from letter from DIAC dated 25 August 2008

Requirements for change of documentation with Australian government departments

Currently, we in the Trans community are the only group that has to change every piece of documentation, in order to be recognised.

Because of this, I believe that we are a special case, due to the amount of documentation we are forced to amend, and should therefore be aided in doing so by Government at all levels and across Departments and Agencies.

Currently our biggest problems are awareness and understanding of the requirements to lawfully amend records and identity documentation.

At present it would appear that the onus is on the Trans community to find out how we are affected and the required documentation. Each Government department has their own set of requirements and this causes frustration when trying to have documentation amended.

Below is a summary of the types of documentation which a Trans community member may need to have amended and the associated level of government.

Note: S = State or Territory, F = Federal

BORN IN AUSTRALIA

S Change of name

S Driver's Licence

S Evidence over 18, single or divorced

S Birth Certificate

S & F Evidence of Surgery, or Recognised Details Certificate, if available

F Passport

BORN OFF SHORE

S Change of name

S Driver's Licence

S Evidence over 18, single or divorced

S Evidence of Surgery, or Recognised Details Certificate, if available

S Evidence of residency of minimum 12 months in the State that you reside in

F Change of details in Immigration and Citizenship records under FOI

F New evidence of Australian Citizenship

F Passport

F Evidence over 18, single or divorced

In the interests of assisting Trans community members who wish to make applications the Department of Immigration and Citizenship has provided the following summary of documentary requirements for some specific applications.

To apply to have departmental records amended under Freedom of Information provisions a person must make an application. *Form 424C - Request for amendment or annotation to personal records under the Freedom of Information Act 1982*. There is no application fee for this application. Please note: all cases are assessed on a case by case basis.

- Recognised Details Certificate, issued in Australia by Office of Births, Deaths and Marriages (RBDM) in States or Territories,
OR
- Equivalent overseas document,
OR
- Evidence such as surgeon's and/or psychiatrists statement
- Change of Name Certificate, if applicable, issued in Australia by RBDM (as no previous names are recorded on the RDC)
- Evidence of when and how you arrived, such as entry stamp in passport or details of ship or flight.

Australian temporary or permanent residents may be required to provide evidence of the status to State or Territory authorities in the form of a certificate of evidence of resident status. To must make this application on a *Form 164 - Certificate of evidence of residence status* (also known as a form 283) and pay a \$70.00 application fee. This certificate is not required for citizenship application purposes. Fee now \$100.00

CITIZENSHIP

Q How are we affected by Citizenship?

A We need to amend citizenship, as it is regarded as a cardinal document, by the Passport Office. This can be used if we are unable to amend our birth certificate in our Country of birth.

Q What do we do to amend our Citizenship Certificate?

A It is desirable that the evidence of Australian citizenship reflects the person's new identity. Australian citizens applying for new evidence of citizenship should apply on *Form 119 – Application for evidence of Australian citizenship* and pay \$55.00 application fee. The following documentation should be provided in addition to those that are required for all applications:

- Recognised Details Certificate, issued in Australia by Office of Births, Deaths and Marriages (RBDM) in States or Territories,
OR
- Equivalent overseas document,
OR
- Evidence such as surgeon's and/or psychiatrists letters
- Original citizenship certificate (which is to be cancelled and retained by the department)
- Change of Name Certificate, if applicable, issued in Australia by RBDM (as no previous names are recorded on the RDC)

Note: the surgeon's statement would contain information such as confirmation that the person has undergone a full gender re-assignment procedure. The psychiatrist's statement would provide confirmation that the person is living as their chosen gender of identity, has undergone hormone treatment and shows no intention of reverting to their original gender

In cases of gender reassignment, it is desirable that the evidence of Australian citizenship reflects the person's new identity. Applicants should enclose with their application:

a Recognised Details Certificate (RDC); or either,

a statement from their surgeon confirming the full gender re-assignment procedure or a statement from their doctor/counsellor confirming that the person is living as their chosen gender of identity, has undergone hormone treatment and shows no intention of reverting to their original gender; and

their original citizenship certificate (which is to be cancelled and retained by the department); and if applicable, evidence to support a name change.

- Accept details of residency from Immigration FOI as Citizenship will already know if an applicant is a permanent resident
- Form 164 to be completed at a cost of \$70.00 Fee now \$100.00
- Send in existing Citizenship certificate if you have become a citizen already
- Issue new Citizenship Certificate back dated to when it was taken out and in new name

New Citizen, never taken out citizenship

- As above in red
- RDC from either Australia or off shore
- Change of name certificate
- Drivers licence.
- Confirmation of residency
- Form 164 to be completed at a cost of \$70.00. Fee now \$100.00
- Form 119 –Application for evidence of Australian citizenship and pay \$55.00 application fee

If a person who has not had SRS can provide the above documents, then yes, they can apply.

These are the letters that have gone between myself and DIAC

Please note that the Citizenship Certificate does not note sex.

DFAT

**Department of
Foreign Affairs
and
Trade**

PASSPORT OFFICE. APO

Amended details from both Immigration FOI and Citizenship can be accepted by the APO to amend a passport or to use when applying for a new passport.

Email from APO dated 18 June 2008

Dear Kathy Anne,

Thank you for the opportunity to discuss passport policy and clarify our requirements for issuing of Australian passports to transgender applicants.

As discussed, the Australia Passport Office (APO) does not play a role in registering identities in the Australian community. The Registry of Births, Deaths and Marriages (RBDM) and the Department of Immigration and Citizenship (DIAC) have this responsibility and the APO relies on information provided by these authorities to determine a person's identity and entitlement to an Australian passport. The document required (known as cardinal document) is either a RBDM birth certificate (for Australian born applicants) or a DIAC citizenship certificate (for overseas born applicants). All passport applicants regardless of gender, or whether they are transgender, must present one of these documents in support of their application for an Australian travel document.

The Department therefore responds directly to what RBDM or DIAC agree to include on the birth or citizenship register. Provided the applicant can provide a birth or citizenship certificate in the reassigned gender, and meets all other passport application requirements (such as completing the application form correctly, paying the appropriate fee and providing RBDM evidence of name change if necessary) then an Australia passport will be issued in that gender. Where transgender applicants remain married, the APO will consider applications on a case by case basis.

Regards

Jane Luckhurst

Q How are we affected if born on or off shore?

A We need an amended passport in order to travel abroad for every day reasons, or for going off shore for surgery. There are various ways of achieving this amendment even if remaining married after SRS. Please see the attached from the APO.

Travelling for the purpose of gender reassignment

People travelling overseas for the specific purpose of gender reassignment surgery may be issued with:

- A full validity passport which indicates their gender at birth as recorded on their birth certificate or citizenship record (as confirmed by DIAC), or
- A limited validity passport (LVP) in their intended gender with sufficient validity to meet return travel needs up to a maximum validity of 12 months, whichever is the lesser, or
- A Document of Identity, with a maximum validity of 12 months and the gender field left blank.

Limited Validity Passport (LVP)

Applicants issued with a LVP in the intended gender are required to:

- Provide appropriate medical evidence from a registered medical practitioner, including that gender affirmation surgery is scheduled to take place.
- Sign a statement acknowledging that difficulties crossing international borders may still be encountered due to the fact that the gender in the passport does not match the physical gender of the client, and that the passport has been issued in the intended gender at the client's request.

Note - The LVP may be replaced gratis with a passport valid for the remainder of the 10 year period in reassigned gender only when the applicant submits a cardinal document reflecting the changed sex, evidence of a change of name registered with RBDM as well as other usual passport requirements

Document of Identity

Applicants issued with a Document of Identity in these circumstances should be advised in writing that:

- Australian Documents of Identity are widely, although not universally, recognised as a valid travel document and the applicant should check with the relevant country's diplomatic representative, prior to their departure from Australia, as to whether a Document of Identity will be accepted for entry to and exit from that country.

Note - For LVPs and DOIs, the applicant must acknowledge the following in writing:

- Their receipt of the letter from DFAT; and
- Their agreement to the issue of a Document of Identity.

Change of Name

All applicants who have undergone gender reassignment and wish their passport to include a new name must provide the normal RBDM change of name/revised birth certificate to support the change of name. Applicants travelling for the purpose of gender reassignment surgery and who request a different name on the travel document must provide the normal RBDM name change documentation to support the change of name, before it can be included in a travel document.

Full validity passports issued in new gender

Applicants must provide

- For applicants born in Australia - a birth certificate from their state/territory RBDM showing the gender of reassignment;
- For applicants born overseas - a revised citizenship certificate to reflect their new identity, or given current citizenship certificates no longer record a person's gender, formal evidence from DIAC that it has accepted the reassigned gender and amended its citizenship records to reflect the new gender.

Exceptions Full validity passport to be issued in new gender

Married Applicants

Applicants who claim that they are unable to obtain an amended cardinal document because they are married should provide the following documentation (note, this only applies to RBDM documents as DIAC will amend its records for married persons):

- A statement from the relevant RBDM/Gender Reassignment Board that they have met all requirements for their reassigned gender to be recognised, except that they are married or medical evidence as set down in the relevant state or territory Registry of Births, Deaths and Marriages;
- Evidence of living in the character of the other gender such as driver's licence, medicare card, centrelink card, rates notices (or other P] DS documents);
- Original birth certificate;
- RBDM name change certificate;
- Marriage certificate;
- Statutory declaration stating that marriage has not been annulled.

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 (Bi 1) 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.

State or Territory	Responsible Body	Contact Details
Australian Capital Territory	Births, Deaths and Marriages Unit	http://www.ors.act.gov.au/bdm/index.html (02) 62070 460
New South Wales	Registry of Births Deaths and Marriages	www.bdm.nsw.gov.au 1300 655 236
Northern Territory	Registry of Births Deaths and Marriages	www.bdm.nt.gov.au (08) 8999 6119/(08) 8951 5339
Queensland	Registry of Births Deaths and Marriages	www.justice.gld.qov.au/16.htm 1300 366 430
South Australia	Magistrates Court of South Australia	http://www.courts.sa.gov.au/courts/magistrates/index.html (www.ocba.sa.gov.au/bdm/) (08) 8204 2444 ((08) 8204 9599)
Tasmania	Registry of Births, Deaths and Marriages	www.justice.tas.gov.au 1300 135 513
Victoria	Registry of Births, Deaths and Marriages	https://online.justice.vic.gov.au/bdm/home 1300 369 367
Western Australia	Gender Reassignment Board	www.bdm.dotag.wa.gov.au (08) 9219 3020

Hi Susan,

On page 2 under 'Applicants who have not completed gender reassignment' at 2 "Evidence of any initial surgery completed (e.g. mastectomy)" Would also an orchidectomy be considered if the person met all other requirements?

I am pleased that those who cannot have surgery because it could be life threatening are included. There are two other categories that need to be looked at. They are, those who choose not to have surgery, but would meet all other criteria, and those who cannot afford surgery, but would meet all other criteria. I know of many Trans people who live full time in their preferred gender, but fall into the two categories that I have outlined. Can they be included in the above mentioned section?

It is gratifying to see that the children who maybe Trans are being considered as well. There are many of these coming out, and our feelings are, that there will be many more. It is understood that many who may consider themselves to be Trans will later retreat from that feeling and revert to their original gender/sex. This is now very much in the news with Re-Alex and puberty blockers to consider.

Once again, thank you for your help, and I will certainly keep in touch if any other problems arise.

Love and Peace, Kathy

Hi Kathy

All applications that do not meet the 'general' policy where RBDM or DIAC have issued a certificate in the new gender would be looked upon on a case by case basis and a decision made on the evidence/documentation/information provided (including any gender reassignment surgery already performed) and any other 'unique circumstances affecting that person.

As far as I am aware, there are no current plans to extend the exceptions to those that cannot afford surgery or choose not to have surgery.

Susan

Thank you Susan. We will have to live in hope that there will be a change so that those people who live in the preferred gender/sex by either choice, or lack of funds that they will be able to amend passports in the future. Many travel on their passport in their birth gender/sex and this can be hairy in some countries.

Love and Peace, Kathy

Q What do we have to do?

A We need an amended Cardinal document, such as an amended birth certificate if born in Australia, or an amended birth certificate from our Country of birth if offered or an amended Citizenship Certificate. This is the direct flow on from DIAC as mentioned above.

Q Why do we need to amend our passport?

A Because this enables us to have a “Normal life” after SRS. It can also make life easier for those travelling off shore for surgery and for those who are unable to undergo SRS for health reasons. At present there is no thought of allowing those who choose not to have SRS, or cannot afford to have SRS to be able to amend their passport

Kathy Anne Noble

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Telephone: (07) 3286 9155

Mobile: 0417 738 491

email: knoble@iinet.net.au

website: www.changelingaspects.com