

**A
GUIDE FOR
TRANS PEOPLE
BORN IN
NEW ZEALAND**

**NEW ZEALAND
FAMILY COURT
AND IMMIGRATION**



Changeling Aspects

This is a double whammy, as those New Zealanders living in Australia will have to apply via two government systems as did I via the United Kingdom, my birth Country. First you have to amend your birth certificate in New Zealand and then come to terms with all the documentation in Australia that then has to be amended.

The Australian documentation to be amended is contained in *A Guide for Trans People in Australia* which covers *Residency, Citizenship and Passport* and it is on our web site at:

www.changelingaspects.com

“kathy noble” <knoble@iinet.net.au> 12/06/09 08:08 >>>

Good Morning,

My group has contact with many Kiwis now living in Australia and especially in the Brisbane/Gold Coast area. These people are Transsexuals who have either had surgery or are leading up to it. Many have taken out Australian Citizenship and have Australian passports too. Their problems are in concern to their New Zealand Birth Certificates and how they go about amending them.

From the point of view of the Family Court, do they have to return to New Zealand to appear before the Family Court, or would they be treated as an ‘Exceptional circumstance’?

Would they also have to present to the BDMR in New Zealand, or can this also be done under the ‘exceptional circumstances’ situation?

With regard to their New Zealand passport, how do they go about amending that?

In all instances, do they have to be over 18, single (Read divorced) and have had SRS?

I await your replies, so that I can inform them how and what is required in order to amend their documentation. What forms and documentation are required.

I have been in touch with your HRC, and Jack Byrne who has sent me your details of contact.

The attached is from Jack Byrne at HRC.

Here's some details from Rosslyn Noonan's speech to the Agender conference, explaining that some guys have applied successfully without all surgeries.

Citizenship / legal recognition:

- In late January a significant legislative change came into force, enabling people born overseas to make applications to the Family Court for a declaration changing their sex details. At least one application has already been granted.
- We understand there have been teething problems as it has taken time for Family Courts and Judges to become aware of the new provisions. A practice note (or guideline issued by the Court) on how these applications are to be handled may be useful in overcoming these difficulties.
- In addition, this time last year an important legal case *Re Michael* clarified that trans men do not necessarily need to have had all gender reassignment surgeries in order to be recognised by the Family Court as male.

Applications by trans women who have not had SRS will be very helpful in:

- further clarifying the legal threshold and
- identifying those groups who may still face barriers in gaining legal recognition under the current legislation.
- The Inquiry's recommendation, based on international case law and human rights standards, is that:
the ability to get a Family Court declaration and therefore change important documentation should be available to any trans person who "has taken decisive steps to live fully and permanently" in their gender identity"

Jack

Kathy Anne Noble
President, Changeling Aspects.
PO Box 897 Cleveland
Queensland 4163
Australia

Dear Kathy

Thank you for your enquiry.

The Births, Deaths, Marriages and Relationships Registration Act 1995 defines who are eligible persons to make an application to the Family Court:

In sections 28 and 29,—

eligible adult means a person—

- (a) who is any of the following:
 - (i) a person whose birth is registered:
 - (ii) a person whose birth is registrable under this Act but is not yet registered:
 - (iii) a person who is a New Zealand citizen or is entitled, under the Immigration Act 1987, to be in New Zealand indefinitely; and
- (b) who—
 - (i) is 18 years of age or older; or
 - (ii) is younger than 18 years of age but who is or has been in a marriage, in a civil union, or in a de facto relationship

eligible child means a person—

- (a) who is any of the following:
 - (i) a person whose birth is registered:
 - (ii) a person whose birth is registrable under this Act but is not yet registered:
 - (iii) a person who is a New Zealand citizen or is entitled, under the Immigration Act 1987, to be in New Zealand indefinitely; and
- (b) who—
 - (i) has not attained the age of 18 years; and
 - (ii) has never been in a marriage, in a civil union, or in a de facto relationship.

It would be up to the individual Judge considering each application as to whether or not the applicant was required to appear before the Court in person.

I hope this answers your questions.

Kind Regards

Michelle Haigh

Acting Principal Analyst | Family/Civil Jurisdiction

District Courts

Ministry of Justice | Tahu o te Ture

DDI +64 4 918 8570 | Ext 58570

Vogel Centre | 16 Kate Sheppard Place | Box 180 | Wellington

www.justice.govt.nz

Kim Williams has suggested that I contact you on these last areas of concern. I have also learnt from my friends in NZ, that they only now need to submit an Affidavit to the Court along with their details required. Is this correct, as it would save the people here having to return to NZ for a Court appearance? They could submit Statutory Declarations to the Court, in the same way as Affidavits are now allowed.

Yours Sincerely, Kathy Anne Noble.

President, Changeling Aspects

Dear Kathy 02-07-2009

It would be something that was up to the Judge dealing with the case to decide. Many Judges may be comfortable dealing with an affidavit or statutory declaration instead of an in-person appearance for these cases, however as it is a matter of judicial discretion, I am unable to confirm what the process would be in every case.

Regards

Michelle Haigh (née Moffat)

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Immigration Act 1987 No 74 (as at 01 August 2008), Public Act

Act by section

- **Contents**
- **Part 1 Exemptions, visas, and permits**

28 Minister may require applicant for temporary permit to have sponsor

- (1) Without limiting the Minister's discretion under section 27 of this Act, the Minister may, before granting a temporary permit, require the applicant to supply a written undertaking, in a form approved by the Minister, by any person acceptable to the Minister (in subsection (2) of this section called the sponsor) who is a New Zealand citizen or the holder of a residence permit or is exempt under section 12(1) of this Act from the requirement to hold a permit, relating to the employment, accommodation, maintenance (including the costs of any social services of a kind for which benefits are provided by the State), or repatriation of the applicant and any dependants of the applicant in New Zealand, or to any 2 or more of those matters, or to any other matter or matters specified by the Minister, and otherwise upon such conditions as the Minister may require.

(2) In the event of the sponsor failing to comply with the whole or any part of the undertaking, the sponsor shall be liable to pay to the Crown all costs and expenses reasonably incurred by the Crown in respect of that failure.

Subsection (1) was amended, as from 18 November 1991, by section 15 Immigration Amendment Act 1991 (1991 No 113) by inserting "(including the costs of any social services of a kind for which benefits are provided by the State)".

Immigration Act 1987 No 74 (as at 01 August 2008), Public Act

Act by section

- **Contents**
- **Part 1 Exemptions, visas, and permits**

29 Change of temporary permit

- (1) Any person who is the holder of a temporary permit (other than a temporary permit that is subject to the condition specified in section 27A(2) of this Act) may, at any time before the date on which the permit will expire, apply in the prescribed manner for a temporary permit of another type.
(2) If a temporary permit of another type is granted on an application made under this section, the current temporary permit shall be deemed to be cancelled as from the date on which the new one comes into force.
Subsection (1) was amended, as from 1 April 1993, by section 3(5) Immigration Amendment Act 1992 (1992 No 88) by inserting “(other than a temporary permit that is subject to the condition specified in section 27A(2) of this Act)”.

FROM DEPARTMENT OF INTERNAL AFFAIRS

Dear Kathy

Thank you for your email of 12 June regarding Kiwi Transsexuals who have either had surgery or leading up to it.

All applicants must:

Be 18 years of age or have not married
have had their birth registered in New Zealand
not be legally married to a person of the nominated sex.

Applications can be made through any nominated Family Court in New Zealand. I am unable to advise you whether or not the applicant has to return to New Zealand to appear before the court as I am unaware of the Court procedures. You would need to contact someone in the Courts to provide the Court procedures you have requested.

You can go into our website www.dia.govt.nz for information on how to amend their passport.

This is a must view as to how to amend your passport

I am not aware of any successful applications where the sex has been changed on birth certificates without the applicant having the full reassignment surgery.

The documentation received from the Family Courts usually contain: completed initial application form from applicant giving a full account of why they are applying to have the gender changed on their birth record, a covering letter from applicant outlining history (including reports from Doctors, Psychologists, Psychiatrists supporting their application or providing further history), letter from the surgeon who performed the surgery outlining the whole procedure including any follow up appointments or recommendations for applicant, Family Court Declaration as to their sex under section 28 of the Births, Deaths, Marriages, and Relationships Registration Act 1995.

Upon application the Family Court will advise the Registrar-General of the hearing date. It is up to the Registrar-General whether legal representation from Births, Deaths and Marriages attend the hearing. Once the Judge has made a decision based on the evidence presented, the Court will forward Births, Deaths and Marriages the complete application, with the Judges recommendation. A form is sent to the applicant to complete, and the information from this form will then be transferred on to a new birth record. The only fee required by Births, Deaths and Marriages is NZD\$50 which is a registration fee, plus NZD\$26 if they require a new birth certificate.

I hope this information helps you. Feel free to email me if you require any further information.

Registration Officer

The Department of Internal Affairs Te Tari Taiwhenua

Identity Services

DDI: 043823617 Extn: 4617

Email Address: kim.williams@dia.govt.nz

www.dia.govt.nz

To the Family Court,

I have received these answers to my queries concerning Trans people who were born in NZ, but now reside in Australia. Many have taken out Australian Citizenship as well as Australian passports. They need to know how to go about amending their NZ birth certificate and to this end; I have received these answers, but do need more clarification.

If you could just answer the remaining queries that I have raised it would be most helpful to the Kiwis that I am helping in Australia

Dear Kathy

Thank you for your email today. Here is some more information you may find useful.

1. All applications are made through the Wellington Family Court. (Even if someone applies to another Family Court in New Zealand the application will be forwarded to Wellington. This is because Wellington is where the Registrar-General of Births Deaths and Marriages is based).

Understood

2. The website to obtain the forms is: www.justice.govt.nz/family/forms/list

The forms they need to download are:

G5 (Application form for order (or declaration) on notice

G7 (Information Sheet) and

General Affidavit form (right at the bottom of the list)

Understood

3. The forms need to be completed, and sent in with the following documents:

a) An original (or certified true copy) Birth Certificate

b) Proof of any operation performed from a Medical Practitioner or Surgeon

c) Any Psychologist or Psychiatrist reports or letters

d) Other evidence or information relevant to the application

Does this mean at c that you do not need surgery to be able to amend your birth certificate? Also do you need to be divorced in order to amend your birth certificate?

Hi Kathy

In response to the points below where you have raised further questions:

On the question of whether or not a physical appearance would be required, as I said earlier, it would be up to the Judge considering the application so I am unable to confirm that an affidavit only would be acceptable in every case.

I hope this assists with the information you are putting together.

Kind Regards

Michelle

Michelle Haigh (néeMoffat)

Acting Principal Analyst | Family/Civil Jurisdiction

3.

The decision about whether or not full surgery is required will be up to the Judge to consider on a case by case basis. The following link gives information about a recent Family Court decision where it was decided that full gender reassignment surgery was not required in that particular case.

http://www.hrc.co.nz/home/hrc/humanrightsenvironment/actiononthetransgenderinquiry/citizenship.php#June_2008_Family_Court_Decision

With regards to your question about divorce:

S30 of the Births, Deaths and Marriages Act sets out the case when the person is married. It says:

30 Registrar-General may add information to registration of birth

- (1) Subject to subsection (2) of this section, where there is deposited with the Registrar-General a declaration issued under section 28 or section 29 of this Act that relates to a person whose birth has been registered or is later registered, the Registrar-General shall, on payment of the prescribed fee (if any), include in the information relating to the birth recorded under this Act or a former Act information that the person is a person of the nominated sex.
- (2) The Registrar-General shall not at any time act under subsection (1) of this section if the person concerned is then lawfully married to a person of the nominated sex. So, basically, the birth certificate cannot be updated if the person is married to a person of the same sex as the declaration. This provision does not refer to people who are in a civil union, so presumably they would not have to get divorced first to amend their birth certificate.

4. Documents a), b), c) and d) are then used as exhibits through the Affidavit. Understood

5. All documentation needs to be photocopied to enable the Court to send the photocopy to the Registrar-General of Births, Deaths and Marriages. The Registrar-General will then decide if he wants to defend the hearing and advise the Court that either Births, Deaths and Marriages will send legal representation to the hearing, or advise the Court that he will be satisfied with the decision of the Judge.

Photo copied and noted by a Notary or JP?

5. The photocopies/duplicates of the documentation for the Family Court to provide to Births, Deaths and Marriages do not need to be certified.
6. If the Registrar-General wants to defend the hearing, the applicant will be required to be present at the hearing. If not, the Court may decide to forward the application to the Judge who may then make a decision based on the information given in the application, and grant an order without the applicant having to appear in Court at all.

Understood

7. Once the Judge has made a decision and granted a Court Order in favour of the applicant, the Court will then advise Births, Deaths and Marriages and the applicant. A Court Order will be forwarded to Births, Deaths and Marriages.

Understood

8. I will send the applicant an application to Deposit a Declaration by Family Court as to sex of person aged 18 or over.

The completed application form (BDM65) will be completed and returned to Births, Deaths and Marriages along with:

- e) An original or certified true copy of the applicant's Birth Certificate establishing the applicant was born in New Zealand
- f) The declaration from the Family Court
- g) The application fee = New Zealand Dollars \$50.00
- h) Application fee of new Birth Certificate if required = New Zealand Dollars \$26.00

Is this you personally, or the department?

8,9,10.

These queries appear to be directed to Kim Williams, rather than us.

9. Once the completed form is returned, I collate all the information and forward it to the Registrar-General for approval to create a completely new birth record. Once approved, I will then transfer the information and create a new birth record for the applicant. Their old birth record will then remain a closed record. The information on the new birth certificate will show their new name, if applicable, their new nominated gender of female or male, and everything else will remain the same as their old record. (birth date, place of birth, and parent's details).

Again, is this you, or the department?

10. After the new record has been created, I will then write to the applicant and

advise them that their application has been completed, and send their new birth certificate if they have requested a new one.

Again, is this you, or the department?

And last but not least, apart from the \$76.00 payable to Births Deaths and Marriages, there are no Court Fees involved. Great!

Hope this information helps you.

Registration Officer

The Department of Internal Affairs Te Tari Taiwhenua

Identity Services

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