



**Human Rights and  
Equal Opportunity Commission**

February 2006

Deanne Scobie

Dear Ms Scobie,

Thank you for your letter of 18 January 2006 regarding the current situation of married pre and post operative mature transsexuals and their partners. I have great sympathy for the emotional and financial strain that you and your partner have suffered.

As you may be aware, neither the *Sex Discrimination Act 1984* nor the *Human Rights and Equal Opportunity Commission Act 1986*, which are administered by the Commission, directly cover discrimination on the basis of transgender status. Therefore the Commission is not able to provide an avenue to address many of the concerns you have identified. The limitations of the legislation require a legislative solution. There have been various attempts made to introduce legislation which would make discrimination against people on the basis of their sexuality, transgender identity or intersex status unlawful. For example in 1995, the Australian Democrats introduced a Sexuality Discrimination Bill into federal Parliament but that Bill lapsed in 1997. In 2003, a Sexuality and Gender Discrimination Bill was introduced into the Senate and reintroduced in 2004. It is currently before the Senate. I recommend that you take your concerns directly to the relevant Ministers and your local member of Parliament.

As you say, there are also many remaining instances of discrimination on the basis of marital status in the law. Marital status is, of course, a ground of unlawful discrimination under the Sex Discrimination Act. A complaint may be made under the Sex Discrimination Act if a person believes that they have been discriminated against on the ground of their marital status in the areas of work, education, the provision of goods and services, providing land, housing or other accommodation, the membership and activities of licensed clubs, or the administration of Commonwealth programmes. However, the Act is not able to address discrimination in federal legislation such as the Centrelink example you raise. Again, that will require a legislative solution.

However, if discrimination against transsexual people on the basis of their marital status is contained in State or Territory laws, a court may find it is inconsistent with, and overridden by, the Sex Discrimination Act. There is such a matter before the court, *Gurney v Victorian Office of Births, Deaths and Marriages*, by a woman in a similar situation to yours. She is alleging marital status discrimination. A decision in this case will not solve most of the problems that you have outlined, but it may open an avenue for legal argument in New South Wales.

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**Human Rights and Equal Opportunity Commission**

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Website: <http://www.humanrights.gov.au> ABN 47 996 232 602

I have enclosed for your information a guide to making complaints under the Sex Discrimination Act. I have also passed a copy of your letter to our complaint handling section and to the Human Rights Unit of the Commission for their information.

I am aware of the situation facing transsexuals and I appreciate you contacting me with your concerns. *I share your anguish.*

Yours Sincerely,

*Pru Goward*

**Pru Goward  
Sex Discrimination Commissioner  
Human Rights and Equal Opportunity Commission**

*Should you find yourselves  
in Sydney please feel free to  
ring my office, if you could  
accept our meeting being  
limited to 30 minutes, I  
would love to meet you and  
talk these issues through.*

*Bests*

*PG*