

Good Afternoon Warren,

04-03-2011

I have just gone through the "Sex and Age Discrimination Legislation Amendment Bill 2010, and wish to query the following.

Page 4. **9 Subsection 4(1)**

Insert:

***Official record of a person's sex means:***

- (a) a record of a person's sex in a register of births, deaths and marriages (however described); or
- (b) a document (However described), issued under a law of a State or Territory, the purpose of which is to identify or acknowledge a person's sex.

At (a) does this mean an amended birth certificate for Trans people? And  
At (b) does this refer to a Gender Recognition Certificate (GRC) or a Recognised Details Certificate issued by a RBDM in this Country, or an GRC issued off shore, as per the UK?

Page 10. **54 After subsection 28A (1)**

Insert

(1A) For the purposes of subsection (1), the circumstances to be taken into account include, but are not limited to, the following:

- (a) the sex, age, *marital status, sexual preference*, religious belief, race, colour, or national or ethnic origin, of the person harassed;

How would this be applied to Trans people who stay married after Sex Affirmation Surgery?

Page 12 **62 After subsection 40(4)**

Insert

- (5) Nothing in Division 2 renders it unlawful to refuse to make, issue or alter an official record of a person's sex if a law of a State or Territory requires the refusal because the person is married.

Does this mean that we retain the status quo that currently exists; that we are denied the right to amend our birth certificate, if remaining married after Sex Affirmation Surgery. This although we are allowed to amend our passport on a case by case basis and the letter from the Federal Attorney-General's Office dated the 17-03-2009 to me stating;

"In relation to your letter of 24 January 2009, I would like to clarify the Government's position. I can confirm that the Commonwealth Same-Sex discrimination law reforms will have no effect on the *Marriage Act 1961*. The Marriage Act provides that a marriage must be between a man and a woman. This is consistent with current Government policy and there are no plans to change the Marriage Act to allow for a marriage to be solemnized between same-sex couples.

**Gender re-assignment surgery has never, of itself, changed the status of a marriage which was valid at the time of solemnization. It has always been the case that a validly solemnized marriage would continue, irrespective of whether one of the parties subsequently underwent gender re-assignment surgery. The same-sex reforms due to come into force on 1 July 2009 do not change that position.**

The legal recognition of the sex of transgender persons is primarily a matter for the States and Territories, as they are responsible for maintaining their respective Registers of Births, Deaths and marriages. All States and Territories have legislation which enables post-operative transgender persons to obtain either a recognition certificate or an amended birth certificate recording their preferred sex in certain circumstances, unless the person is a married person. Again, the same-sex reforms have no impact on this.”

I also add the letter from the Passport Office,

### **“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 PIDS 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 a 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.

As you can imagine, this is totally confusing to the Trans community and it appears that, that confusion is to be contained within the new legislation. How are we ever to be expected to come to terms with these anomalies?

Add to this the Constitution, especially section 109, and it becomes even more so.

## Section 109 of the Australian Constitution

### “Conflict of Laws”

If the laws of a state ever conflict with the laws of the Australian Government, the Constitution says that Commonwealth law is to be followed.

The Australian Government judiciary may also have the power to review decisions by a state judiciary.

When will we have consistency of word and law, that covers Australia Wide, so that we know exactly what is required of us, is the same Nation wide?

Yours Sincerely

Kathy Anne Noble

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Dear Warren,

05-03-2011

I would add that section 109 of the constitution is really a form of **VETO**, as per the veto used against the territories. Is this correct?

Kathy Anne Noble  
Changeling Aspects