

OUR RESPONSE TO THE RESPONSE ON THE SADLA BILL.

Attention Dr John Boersig PSM

Dear John,

After reading the responses as per your letter to Senator Crossin, dated 16 February 2011, are you inferring that the issues raised concerning Trans people are to be addressed at a later date?

It appears to me to be answered in your last but one paragraph;

"Consistent with this, the Bill is not designed to address broader questions about SDA. A number of the submissions to the Committee's inquiry have dealt more with what is **not** contained in the Bill, rather than what is. The Department will consider each of the issues raised in the submissions in the context of consolidation project"

Is this still with reference to *Sex Files: The Legal Recognition of Sex in Documents and Government Records*? This report has been sat for nearly two years now, 17 March 2009 launch in Canberra, with nothing so far implemented. I would draw your attention to the New Zealand Human Rights Report "*To Be Who I Am*" launched in 2008 with several of the areas of concern already addressed. I know that we have nine governments to face, as against one in New Zealand, but we had hoped for some decisions by now.

We in the Trans community regard ourselves very much as second class citizens, even after we are supposedly acknowledged as being male or female after Sex Affirmation Surgery. All the laws state that after surgery, we are to be considered male or female as to what is on our birth certificate, or Gender Recognition Certificate/Recognised Details Certificate at law, but according to the Sex and Age Discrimination Legislation Bill 2010, we are still not fully recognised at law.

How can the States and Territories over rule the Marriage Act 1961 (Cth) after what you wrote to me on the 17 March 2009 and I again quote from your letter on page 5, Paragraph 6 "The *Marriage Act 1961* does not prohibit a person who is married from legally changing their sex", no but it does legally stop them from amending their birth certificate at State and Territory levels.

I fully recognise that at present we are presented with a "fait accompli" as the States and Territories, can and do over rule this decision, by **forcing us to divorce in order to amend our birth certificate**. If we take into account Section 109 of the Australian Constitution with regard to

Direct inconsistency

The first two tests, and in particular the first, are said to involve "direct" inconsistency.

Impossible to obey both laws

Instances may arise when it is impossible to obey two laws simultaneously. A classical example is [R v Licensing Court of Brisbane: Ex parte Daniel](#). A state referendum on liquor trading hours was fixed by State law for the same day as a federal Senate election. The Commonwealth law provided that a State referendum could not be held on that day.

One law confers a right which the other purports to take away

In some situations, one law may purport to confer a legal right, privilege or entitlement, while another law purports to take away or diminish some right or entitlement. In other words, one law

says that you can do X, the other that you cannot do X. For example, the Commonwealth provision in *Colvin v Bradley Brothers Pty Ltd* affirmed that employers in certain industries could employ women to work on certain machines whilst the State provision made it an offence to do so. It was not impossible to obey both laws, since nothing in the Commonwealth law required the employment of females. This type of inconsistency may require a working-out of the actual effect of both laws in an individual case. Because of this, it could require a more subtle analysis than test 1.

[Chief Justice Knox](#) and [Justice Gavan Duffy](#) agreed in [Clyde Engineering Co Ltd v Cowburn](#) that a simple test of logical contradiction was "not sufficient or even appropriate in every case", and enunciated this test.

Where is the logic in this?

Are we, as stakeholders to be asked for further submissions, or are we to be allowed to put our case directly to the committee, if still operational.

Yours Sincerely

Kathy Anne Noble

Changeling Aspects

Hi all 08-03 2011

The Marriage Act 1961 does not prohibit a person who is married from changing their sex.

While this comment on p5 is kinda sorta true, as always, it misses the point, because a trans person can't change their b c.

They just don't get it.

Cheeyars

Sally

On 8/03/2011 1:43 PM, Kathy Knoble wrote:

>

> Please read this and tell me what you think we have achieved. Kathy

>

Not a lot. "we are continuing to work on it"..... I'm reminded of "Yes, Minister" - "in the fullness of time... when the moment is propitious"
We need to up their priorities a bit.

Like asking them for a record of how many meetings there have been on

the subject, and with which state and territory governments so far, in the two years since the report was produced. A record of correspondence on the issue would be useful too, so we can check vs the state and territory records of the same.

Zoe 08-03-2011

Zoe I agree with what you say, so who of us is to do this dastardly deed? LOL I have the way to the Legal committee and John Borsig. They just take forever to answer, plus many in the Trans community are happy to let others do the work. We need support from our own, big time now!

Kathy 09-03-2011

Kathy

Brainstorming

Hmmm...how about a letter to Borsig that we then spam around and get people to write to him saying we endorse so and so's letter.

When a public servant receives lots of communication on a topic they then are supposed to brief their minister. Might get some movement.

The downside is it can be antagonistic and piss off both public servant and Minister.

Cheeyars

Sally 09-03-2011

Hi Kathy, Zoe

I share your frustration that the recommendations of the Sex Files Report have not yet been implemented. However I would make a couple of observations:

- first, these kind of delays are not unusual. Remember that it took over a year for the recommendations of the Same Sex, Same Entitlements Report to be implemented. This time around we have had the added complication of an election to bring all activity to a halt for a while.

- secondly, I know many of us recently received letters from the Fed AG Dept indicating that they were commencing work to implement the recommendations, and would be seeking to consult with us as they went. Some activity *is* under way.

- thirdly, I notice that in these discussions there is a strong focus on the activities of the Federal Government. The reality is however that it is the STATE governments who most need to take up the recommendations. They have responsibility for birth certificates - the Fed Govt is limited in what it can do to make recognition easier. For an appreciable difference to be made in our lives, we need the States to act.

So if folks want to start a coordinated push to start urging Government to get it's act together on the Sex Files, I and the WAGP would be very happy to support and

participate in that.. but it's our view that that action should be rightly targeted at the State & Territory level.

The Fed Govt is already moving (albeit slowly).

Aram

Sent from my iPhone 09-03-2011

Hi Aram

That is a good thought, but I have been onto the QLD Government since 2004 to do things about their legislation concerning Trans people born on and off shore. All I keep getting is the run around, change of staff and 6 A-Gs in that time. Frustrated, you bet the hell I am. I think that we must do something to get this on the move. NZ did not shilly shally as we are. Their report "To Be Who I Am" went through quickly and then items were amended.

- They now do not have to have had surgery to amend documentation
- Those born off shore are recognised by their Family Court, so that they can have a "Court Order" to send to say, the UK to amend their docs over there. I know that 2 here offer a RDC and 2 offer a GRC. Perhaps we should go for a Court Order to establish that we are in fact male and female after surgery, not as is at present, yes from some, and no from others
- States are talking about doing something, which has been ongoing for some considerable time now. This is via COAG and SCAG. As I said in one of my submissions, " Action, not Agendas"

In 2 years we have not moved. If it had been the Gays and Lesbians they would be tearing down the walls. Too much time and effort goes into placating them, and none to us. I think the time has come for all to stand up and be counted. So, if we antagonise some, at least they will be aware of us and our problems

Kathy 09-03-2011

Dear All

I had thought the consultation process by the Ag was the appropriate and necessary first step. For our own part we oppose absolutely the implementation of recommendation 11 part 2. We completely oppose gender recognition boards. They put Intersex rights back into the dark ages when such a board was implemented in the U.K and in W.A.

There are other more nuanced objections to specific parts of the recommendations that Intersex would want modified before we could support them. I was expecting that would be addressed through the consultation.

Gina 09-03-2011