

From: Kathy Knoble [knoble@iinet.net.au]

Sent: Wednesday, 23 March 2011 9:19 AM

To: 'Deanne Scobie'; 'Zoe Brain'; 'crawshawsp'; 'Chameleons W.A.'; 'Catherine Barrett'; 'Betty Verhelst'; 'LGBTI Legal Service Inc'; 'Legal and Constitutional, Committee (SEN)'; 'Federal A-G'; Aram Hosie; Gabi Rosenstreich; 'martine.rose@activ8.net.au'; 'oiaustralia@bigpond.com'; 'peter@genderrights.org.au'; Sally Goldner

Subject: FW: Query

This is what I have asked. I find it very disturbing that, if this is correct, we are in a worse situation than we thought.

Kathy

From: Kathy Knoble [mailto:knoble@iinet.net.au]

Sent: Wednesday, 23 March 2011 9:15 AM

To: 'brinsley.marley@humanrights.gov.au'; 'domenicvircillo@humanrights.gov.au'; 'catherine.branson@humanrights.gov.au'

Cc: 'NeroliHolmes@adcq.qld.gov.au'; 'KevinCocks@adcq.qld.gov.au'

Subject: Query

Good Morning Brinsley and Domenic and Catherine

Am I correct in my understanding that the AHRC Charter does not allow intervention in State legislation even if that legislation is considered to be discriminatory?

Are we to understand that this means although Australia is a signatory to the UN Human Rights, in fact it cannot use those powers to over turn State and Territory legislation that is discriminatory?

One area that comes to mind is the fact that the States and Territories can over rule the Marriage Act 1961, even though were are told by the Federal Government on 17 March 2009, and I quote.

“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”

This is from Centrelink

Dear Ms Noble,

I refer to your recent enquiry about Centrelink’s policy in regard to the introduction of the Government’s same-sex reforms. *From 1 July 2009, a couple who are legally married and not living separately and apart from one another on a permanent or indefinite basis, despite one of the members of the couple having undergone gender re-assignment surgery, can be assessed in the same way as any other legally married couple.*

This is 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.

All three of the above are saying the same that we can indeed,

- amend documentation even if we remain married after Sex Affirmation Surgery (Passport Office) on a case by case basis.
- Our marriage is still solemnised after Sex Affirmation Surgery and recognised under the Marriage Act 1961 by the Federal Government, Centrelink and other Government Departments and Agencies. We also had the deeming rule removed in January 2009.

Also from. Susan Booth, *Senior Member, Queensland Civil and Administrative Tribunal and former Queensland Anti-Discrimination Commissioner*

Transgender people who wish to stay married after they have transitioned. Seems fair to me, it is consistent with the Universal Declaration of Human Rights that allows every human the right to marry and form a family.

Staying married when the people in that marriage wish to do so – is both fair and right.

Does this in effect mean that we have a toothless tiger for a Human Rights Commission? I also see that we have not ticked off on any of the items raised by several Countries in regard to our application of Human Rights that were raised recently in regard to same sex marriage and other items of interest

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