

Reply to the Age news paper 05-12-2010

Hi All,

This now really comes to the crux of the matter. In the article it states "they now live as a same sex couple" this is not true, as the letter from the Federal A-G states

Letter from the Federal A-G dated 19-01-2009

While the reforms do not expressly address the sex or gender diversity of specific individuals, they ensure that same-sex de facto couples and their families are recognised and have the same entitlements as opposite-sex de facto couples. A transgender individual who remains married after surgery will not be deemed to be no longer married as a result of the reforms. The effect of the reforms is that such an individual will receive the same treatment regardless of whether they are considered to be a member of a same-sex or opposite-sex couple. (My highlighting)

Letter from the Federal A-G dated 17-03-2009

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.

The sting is in the second paragraph, as the Federal Government law "The Marriage Act 1961" can and is over ruled at State and Territory level. This means that to be recognised via an amended birth certificate, it is the requirements by all States and Territories that you are "Over 18, single (read divorced) and have had sex re-assignment surgery. So we have the farcical included, where if remaining married after SRS the Passport Office will amend your passport on a "Case by Case Basis"

I do not understand where it states that "the couple will have to divorce next year before Bridget's operation, so she can become legally recognised as a woman" Surely there is no requirement to be divorced in order to be able to have surgery. I understood that went out years ago. As many of my friends remain married after surgery because they are still in love and regard their marriage as sacrosanct. It would also mean that to apply before the Court to divorce on the grounds of "Irreconcilable Breakdown" would be to perjure themselves, as they still want to stay married, but are forced to divorce in order to amend one piece of paper.

I understand that this is because of the situation regarding same sex couples and the push for same sex marriage. It was OK for all government departments and agencies to deem us to be a same sex couple before the 2009 legislation, which was amended by the above letter dated 19-01-2009. Prior to that letter and being deemed to be a same sex couple, meant that all benefits under the Marriage Act 1961 were taken away from a still legally married couple. All of those benefits were returned after they were no longer deemed to be a same sex couple in January 2009. The most significant being the defined superannuation scheme, so that the 65% benefit could again be passed onto the surviving spouse.

This whole problem has been created by the fact that each jurisdiction in Australia make their own legislation. I would prefer that legislation is made at Commonwealth level, with States and Territories as agents of those laws. This would mean consistency of word and law through out Australia. Are we still a legally married couple in the eyes of the Commonwealth, only for that legality to be over ruled by the other 8 jurisdictions? If so, then there would appear little hope for all of my friends who remain married but without one certificate stating their new sex/gender, an amended birth certificate.

Please also take into account that to FORCE Trans people to divorce is recognised as *“Unconstitutional in both Austria and Germany”*

Kathy