



Changeling Aspects In affiliation with Agender (Aust.)
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SOLUTIONS REQUIRED TO TRANS PROBLEMS

To enable us to address the many problems that Trans people have to deal with when amending their documentation, the most pressing are the following.

It is important to Bear in mind that we are the only group of people, expected to amend all of our documentation, in order to be fully recognised in our new name/sex/gender.

I have spoken with Lawyers and a Barrister on these subjects, and they all agree that the current approach to laws pertaining to Trans people is an absolute minefield because there is no common ground.

We must address our problems to the Federal Government which enacts the laws that govern us in the Trans community. I have been advocating this situation for 3 years now. This would mean that one law meets is needed to provide those requirements we are expected to meet. That law would cover all the areas of concern at Federal, State and Territory levels but would be enacted at Federal level, with the States and Territories acting as agents for the Federal Government, just as they do in regard to the Marriage Act 1961.

The time has well and truly passed for the “passing of the buck” by the Federal Government who, as is their wont, insist that all problems rest with the States and Territories. This is clearly not the case, as the States and Territories are only liable under current legislation for change of name, driver’s licence and birth certificate. All the following matters are the responsibility of the federal Government.

There has been too much emphasis placed on the Australian Human Rights Commission (AHRC) report “Sex Lives”, sorry, but this was a bad choice of words. It is a year since the 17 March 2009 launch, with great fanfare in Canberra. Since then it appears to have mouldered on the shelf, with the Federal Government supposedly still reviewing it. We need action because in the meantime, Trans people are suffering from frustration, humiliation, discrimination, vilification, and all that these things mean. For some, the lack of empathy and understanding places enormous pressures on them, which can and does lead to suicidality.

Currently we have eight State and Territory governments, all of whom have come up with different formats on the one theme, 'how Trans people are expected to meet the requirements to amend their birth certificate' We can do a change of name and amend our driver's licence before Sex Affirmation Surgery, but have to meet stringent requirements in order to amend our birth certificate. This is the only major area of concern where they are involved. The rest of the major items are dealt with at Federal government level, and their departments and agencies. Again the details of these will follow. Currently, we are continually fobbed off by the Federal Government, which continues to insist that all of these Federal matters that involve Trans people are the responsibility of the States and Territories.

We should now look at the situations that we face when approaching the States and Territories when it comes to a change of name, driver's licence and birth certificate.

Change of name

All States and Territories allow those born in, or resident in that State or Territory to do a change of name. The law has been tightened as per the attached. Both the change of name and driver's licence can be amended before sex affirmation surgery

Requirements have been tightened because of legislation amendments. So that if you were born in Australia or born overseas and Adopted in Australia, you must now apply to the State or Territory in which you were born or adopted to do a change of name. This also assists the Registry of Births, Deaths and Marriages where Trans people are concerned, as it is noted on the person's birth registration.

If born off shore, then you will need to apply to the State or Territory in which you are a resident in together with evidence of residency. Residency requirements do differ, so you will need to contact your State Registry to ascertain their specific requirements.

If a Queensland born/adopted person has legally changed their name interstate they may, if they wish, make application to the Registry Office in Brisbane and have the change of name noted on their birth registration.

The above has been verified by the Queensland Registry of Births, Deaths and Marriages

Driver's licence

The relevant authorities will allow you to amend your driver's licence, but this would be dependent on the change of name. If the person was born in New South Wales and have completed a name change there, but now reside in Queensland, that person must apply for an amended driver's licence in Queensland, if that person intends to drive there. Sort that out. It's even more confusing.

Birth Certificate

The Birth Certificate can only be amended after sex affirmation surgery for those people born in Australia. For those born in many Countries, such as New Zealand, the UK and Spain, it can be amended without having had sex affirmation surgery.

To amend your birth certificate if born in Australia, all States and Territories require you to be “over 18, single, and have had sex affirmation surgery. They also require you to have alteration or removal of all reproductive organs, and of course to be divorced” We will follow this up in “Anomalies” later.

Would it be too much to ask what are the Governments what the definition of the words “*Reproductive Organs*” are?

We are also made aware of the penalties of using our old birth certificate, as it is a punishable offence and we can be fined for so doing. Again more on this in “Anomalies”

If born off shore, then the person has to apply to your Country of birth, that is, of course if that country offers that facility. This is where the form of recognition certificate offered by South Australia, Western Australia and the Recognised Details Certificate (RDC) offered by Victoria and New South Wales becomes very useful. These forms can be used as proof positive after the required criteria has been met in these four States, as evidence of sex affirmation surgery, and in the case of the UK, you just send in the RDC, application form and fee if applicable. They will then return your Gender Recognition Certificate, and the rest is automatic, as the Gender Recognition Panel pass the details to the Registry of births, pension department and tax office.

Now we come to the Federal areas of concern

Department of Immigration and Citizenship (DIAC)

DIAC, covers those of us born off shore, in 2 different areas. The first is

- Residency. This means that the person has to apply to amend your residency status to Immigration, Freedom of Information department (FOI). If the person came into the Country as a male, and are now female, then the department will amend your records accordingly. First they are noted, then the person applies to have form 283 issued. This is the “Certificate of Evidence of Resident Status (CERS)” This now alters the person’s name back to the date of entry as a permanent resident, but does not denote a sex. There are requirements laid out, which can be supplied.

One of my friends applied and this is the answer she received back in a letter “If you have not made a valid application and if you are still in Australia after that date (Word/ no date) you will *become an unlawful non-citizen on date* (again word but no date)”. It appears that our fears of inconsistency concerning this matter are well founded.

- Citizenship, again covers those of us born off shore. We can amend our Citizenship Certificate by using the details that have been accepted by Residency. All that is needed is the relative form, fee and original certificate to be sent back. They will back date this now to when the person took out Citizenship with your new name on it. Again, there is no mention of sex. Again all requirements can be supplied
- Interestingly there is this item of interest sent to me by DIAC, and I quote

Note: the surgeon's statement would contain information such as confirmation that the person has undergone a full gender re-assignment procedure. The psychiatrist's statement would provide confirmation that the person is living as their chosen gender of identity, has undergone hormone treatment and shows no intention of reverting to their original gender.

So this gives us born off shore the facility of "Non Surgery" Correct? Another anomaly.

Department of Foreign Affairs and Trade (DFAT)

Passport Office

- Passport office will accept details accepted by DIAC in order to amend the passport of those born off shore. As you can see from above, does this mean "Non Surgery?"
- For those born in Australia, they have to have an amended birth certificate.
- From their web site
 - Will accept, those staying married after sex affirmation surgery on a case by case basis. This applies to both those born in Australia and off shore.
 - Queries with regard to requirements on their web site, as it is causing confusion, as many think they do not need surgery, amended birth certificate as it states
 - 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.

The high lighted section is causing confusion, as many think they do not need anything other than what is stated there. Bearing in mind, that all government agencies, do not amend the sex until after surgery. Anomalies

Federal Government

Currently, the Federal Government and it's Departments and Agencies supposedly only recognise amendments after Sex Affirmation Surgery, but this is patently wrong, as per DIAC and DFAT. We will cover this fully in anomalies.

- Marriage Act 1961
 - Until the Same Sex Act 2009, we were deemed to be a same sex couple if we remained married after surgery. This has now been corrected as follows

In letters from the Commonwealth Attorney-General's Office you will come to understand the total shift that we have encountered. From the second letter, dated the 17-03-2009 I have extrapolated the following hypothesis, which questions the legality/validity of the States to be able to *force* us to divorce in order to amend documentation.

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

“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.

The Government's same-sex reforms amend 84 Commonwealth laws to remove discrimination against same-sex couples and their children. They extend to same-sex de facto couples the same entitlements and obligations that apply to opposite-sex de facto couples”.

This will be further dealt with in the anomalies section. The question being, how can the States and Territories require (*FORCE us to divorce?*)

SURGERY

All States and Territories have the requirement that to be able to have Sex Affirmation Surgery, you must be over 18.

Irreversible Interventions. Any surgical intervention should not be carried out prior to adulthood, or prior to a real-life experience of at least two years in the gender role of the sex with which the adolescent identifies. **The threshold of 18 should be seen as an eligibility criterion and not an indication in itself for active intervention**

Extract from WPATH SOC Sixth Version

- They further muddy the waters by talking of “*Removal/alteration/procedure*” Concerning the reproductive organs. I would ask, what are really considered as reproductive organs for this exercise?
- Therefore, please define what the Government discerns as Reproductive Organs

My understanding of reproductive organs is as follows. I have checked with Doctors and nurses to arrive at this understanding.

SEX AFFIRMATION SURGERY 2010-02-22

If we are to retain the current criteria that exists, that being the requirement of the “Alteration or removal of a person’s reproductive organs” in order to qualify for a ‘Recognised Details Certificate/Birth Certificate’, they must have undergone sex affirmation surgery.

Reproductive organs to me mean, testes in the male and ovaries and uterus in the female. The penis and vagina are but delivery systems.

Currently a double mastectomy is considered as part of the reproductive system, but an orchidectomy is not. Surely, this is plainly wrong, as the breasts play no part in reproduction; only coming into use after the baby is born. On the other hand, the removal of the testes ceases the supply of semen, so that procreation cannot occur. This is but a very extreme form of vasectomy. An orchidectomy also stops the major source for the production of testosterone.

If we are to continue to follow these paths, then it is amply apparent that ‘GenderQueer’ does not fit the requirement of “Alteration or removal of the reproductive organs”

As stated at the beginning, the Australian system does not recognise “Non Surgery” as related in the requirement. Therefore a Recognised Details Certificate cannot be offered in their new gender/sex.

On the other hand, the requirement to be divorced in order to amend a birth certificate is draconian and unconstitutional, especially in light of the Federal Attorney-General’s letter of the 17 March 2009, as well as the case by case basis allowed by the Passport

Office. Also it flies in the face of 'Re-Kevin' which is now widely accepted as the major break through with regard to staying married after surgery.

Kathy Anne Noble

According to the Passport Office web site under
"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 an 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.

Please note (*e.g. mastectomy*) When asked about an orchidectomy, I have received no answer. To me a double mastectomy is not the removal of reproductive organs, as they only come into play after baby is born, in order to feed the baby. Where as, the removal of the testes (*orchidectomy*) is the ultimate reproductive male organ. This is the extra stage that is really a complete vasectomy, as there can be no sperm produced, and therefore, no reproduction.

ANOMALIES

To add to this situation, the problems lead to many anomalies as follows, and there are many.

We have to consider that many Countries such as the UK, Spain, New Zealand and others now recognise "Non Surgery" in order to amend documentation. People born in those Countries, but residing in Australia, may or may not be fully recognised, as some States and Territories do not offer a form of recognition certificate to those born off shore. As we have four States that do, why can't the remaining two States and two Territories offer the same legislation? Again, this comes down to not having one legislation to cover all States and Territories enacted at Federal level.

We have the situation where Federal Government departments such as DIAC will recognise forms of recognition certificates from both Australia and off shore. This leads to confusion, as DFAT will not recognise those issued off shore.

We also have DIAC accepting those born off shore that has not had surgery, in order to amend their residency status and citizenship. This could also lead to backdoor amendment of passports for those born off shore, as DFAT accept what DIAC has accepted in order to amend the residency and citizenship. Also, it is my understanding that after surgery, if you have never held a passport before, then you just apply in your new sex.

So, I suppose the real question to ask here, is, does the Federal Government accept “*non surgery, or not?*”

With regard to birth certificates, why is it a requirement that one has to be divorced in order to amend this document? When you read the letters from the Federal Attorney-General’s Office above you become totally confused. On one hand, they are saying

“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.”

But the States and Territories can over ride the Federal law and impose, no force us to divorce, when there is no law in Australia that can force you to divorce.

Many of my friends, who stay married after surgery, do so out of their love, belief in their marriage and for companionship and monetary reasons. For many years they, especially the spouse, lost all of their rights under the Marriage Act 1961, as they were deemed by Federal Government Departments and Agencies to be a “same sex couple” The implications were huge and covered a wide range of the above, as well as those outside of them. One in particular, being the Commonwealth defined superannuation fund, where if one died, the remaining partner could not access the amount to pass to the surviving partner. This has now been amended under the Same Sex Act 2009. To my knowledge, there has never been an apology given to these married couples by any of the areas involved.

We must now look at the incredibly confusing and convoluted situation, when it comes to changing documents. I understand access to previous details of name and sex are available to all those employed by Government departments and Agencies. This is the information that I have been given. Is this correct?

Change of name

- Can be done before surgery for those born on and off shore as per revised legislation

Driver's licence

- Can be done before surgery for those born on and off shore. If born in New South Wales, you will have to do a change of name there, but if you now reside in Queensland, then your driver's licence must be changed there.

Birth certificate

- After Sex Affirmation Surgery if born in Australia and single (Read Divorced)
- Born off shore, you must apply to your Country of birth, if they offer the facility. This could be either after Sex Affirmation Surgery, or Non Surgery, as discussed above.
- The use of an old birth certificate is covered and is said to be a punishable offence by fining the person concerned. New South Wales stated that an old birth certificate could be used if you went to a Country that did not recognise transsexualism. Is this still the case, or has it been removed?
- Many of these were mentioned in the ***“DRAFT (Prepared by Parliamentary Counsel's office) Births, Deaths and Marriages Registration Amendment Bill 2005”*** Unfortunately, nothing has been done about it.

Passport

- Usually after Sex Affirmation Surgery, but there are exceptions, as above, Those born on shore and off can apply if they remain married after surgery on a case by case basis. Those born off shore must have taken out citizenship.

Residency Status

- This is a must for those born off shore in order to amend your new name and have it backdated to when you came into the Country as a permanent resident. May be Non Surgery, as above.
- Does not mention sex on the CERS (form 283)

Citizenship

- Again a must for those born off shore, as it will back date your citizenship to when you took it out and amend you name to that date. Again, it maybe on Non Surgery, as above.
- Does not mention sex on the certificate.

Health Insurance Commission

- This is after Sex Affirmation Surgery when central records are updated to show just not your new name, but your new sex as well
- Medicare and Private health will issue you with new cards in your new name, but all details on screen remain as the other person, until after surgery

All Government Agencies

- Centrelink as well as Medicare, the ATO and others do not amend central records until after surgery

Hospital Records

- Be aware that each Hospital keeps its own records. So don't think that they know all about you if you go to a hospital that you have never used before. Records will have to be applied for to the hospital/s that you may have been in.

Staying Married

- As discussed above, why is it that the States and Territories are able to *force us to divorce to enable us to amend our birth certificate?*
- All Federal Government agencies now recognise that the marriage is still 100%, after the Same Sex Act 2009.

Germany: Forced divorce of trans people declared unconstitutional

by Justus Eisfeld

On 23 July 2008, the German Constitutional Court declared the provision in the German Transsexual Law (Transsexuellengesetz TSG) which requires forced divorce of transsexuals unconstitutional. The TSG requires that transsexuals who legally want to change their gender marker on their birth certificates have to be unmarried (though a registered partnership was no hindrance). This part of the law has just been declared unconstitutional and may not be used until the German government proposes a new solution. The German government has a deadline of 1 August 2009 to come up with a new law. Earlier the Constitutional Court declared that a retrieval of a legal change of names in the case of a marriage after the name change was also unconstitutional.

This is a major victory for the trans community in Germany and abroad – as well as for the broader LGBT community. After Austria in 2006, Germany is the second country without same-sex marriage that abolishes the forced divorce rule for transsexuals.

- If the above can be done in Germany and Austria, then we would hope the same is done here, so that Trans people become fully covered after surgery and are recognised as people, not something to be pushed aside without consideration for their feelings and well being

Finally, you might like to consider the attached list of other areas that we have to make aware of our change of sex.. These can all be done before surgery. There maybe some who will not, but I found them all very accommodating, even down to designing forms.

The list goes something like this. DOCTOR, DENTIST, PHARMACIST, ENDOCRINOLOGIST, SURGEON, POST OFFICE, BANK, BUILDING SOCIETY, TELSTRA, ELECTRICITY, RATES OFFICE, MEDICARE, PRIVATE HEALTH FUND, ACCOUNTANT, SOLICITOR, CENTRELINK, AUSTRALIAN TAX OFFICE, INSURANCE COMPANY, LEASE COMPANY, ELECTORAL ROLL, OWNERSHIP OF A DOG, LAND REGISTRY AND PERHAPS MORE.

Yours Sincerely, Kathy Anne Noble.
President, Changeling Aspects
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