



Kathy Anne Noble

PO BOX 897

Cleveland

Qld, 4163, Australia

Phone: 61 7 3286 9155

Email: knoable@iinet.net.au

Website: www.changelingaspects.com

This is my submission as part of the discussion concerning the 'Consolidation of Commonwealth Anti-Discrimination Laws'

LEGISLATED OUT OF EXISTANCE

12-12 2011.

We in the Trans community are considered to be a minority group by all nine governments. Why then are we the most over legislated and marginalised section of society?

This might change your minds on the numbers coming out as Gender Dysphoric. From the UK

Page last updated at 10:22 GMT, Thursday, 29 October 2009

Born in the wrong body

Around 1 in 4,000 people in the UK are receiving help for gender dysphoria

I see that you are using the GIRES estimate of the number of people who have sought medical help for gender dysphoria. That number is growing exponentially at 11 % per annum.

Warmest regards, Bernard

Bernard Reed OBE, MA, MBA

Trustee

Gender Identity Research and Education Society (GIRES)

One might quite rightly wonder if these figures have altered since 2009

There have been several alterations since I first wrote this. The main one, being the ability to amend a passport without having had surgery.

We are legislated out of existence. We are expected to know about laws that "require us" to amend 40+ pieces of documentation. The cost in time, effort and money in order to amend this mound of documents, is horrendous. Add to this, the very real threat of on going frustration, leading to depression and suicidality. Not a pretty picture, by any stretch of the imagination.

Have the legislators ever considered just how much damage is done to the Trans community by their ill thought out and out dated legislation. This being due to lack of understanding Trans people along with lack of consultation with them.

Trans people when faced with this plethora of laws in most instances succumb to frustration, depression, breakdowns and suicidality.



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- They are frustrated at the number of laws that they are expected to understand in order to become their true self
- Frustration leads to depression as they realise that these out dated laws are totally inflexible
- Add to this, the pressures this all leads to and the frustration and depression then leads to breakdowns
- Add these three areas together and you arrive at suicidality. One reason why our suicide rate is so high
- We are not gay
- Transsexualism is not a life choice; it is a medically recognised condition.

This means that our health and well being are not being considered, which leads us to believe that we are looked upon as something other than human beings. Our rights are either non existent, or legislated out of existence.

If lucky, a review of legislation is put in place, but as we have found with the “Sex and Age Discrimination Legislation Amendment Bill 2010 [Provisions] it has left Trans people out of the final review totally. The same can be said of the “2009 The sex and gender diversity project Sex files, the legal recognition of sex in documents and government records” This has sat on the shelf now since its launch on 17 March 2009 with still no outcome.

Precedents are obtained from time to time, but Courts can and do view them differently, so in essence are of very little use and can be costly.

Amendments are from time to time enacted, but once again they become part of the out dated legislation. So what has been gained, when we are moving on? We are even aware that certain amendments are settled out of Court to no ones benefit except the person concerned. This only breeds discontent for those who have vainly tried for years to have documentation amended. More frustration, depression and possible suicidality.

If we are to be taken into account then the increases in knowledge and research into the Trans phenomena must allow flexibility to come into play. Is there an area in law, which allows for automatic updates as the need arises, so that new knowledge and research can be taken into legislation without the many years of frustration caused by laws “set in stone?”

Quote from Michael Kirby as an extract from the 2011 John Button Oration. *“The fact that at the time, I did not see the issues as Justice Thomas did; shows that in such matters, the minds of everyone, heterosexual as well as homosexual, are on a journey. When new ideas are presented, they sometimes take time for absorption by everyone”*

My wish is that there are no more lengthy delays before Trans people have legislation that is easy to understand, is nationwide in word as well as law. But more to the point is user friendly.

Just how are we expected to understand all of the following? This is why we need just one government, the Federal, to make the laws. They need to be user friendly, up to date and the one law covers the whole nation. At present they are too many trying to cover the same areas, but making an absolute mess of the whole situation.



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- We are expected to understand how the laws of the Federal, six States, two Territories and their departments and agencies apply to us
- As if this is not enough this plethora of laws is further added to by way of anomalies, ambiguities, amendments, precedents and Case by Case Basis outcomes. List to follow
- The mere fact of having the daunting task of understanding how this applies to amending 40+ pieces of documentation, deters most.
- Add to this that we have to consider those that can be amended as per the following.

These documents fall into three categories as listed below

- Pre-op Change of name, Driver's license, Medicare, Centrelink, ATO
- Post-op Birth certificate, Passport, Health Insurance Commission (HIC)
- Pre and Post-op Medicare, Centrelink, ATO
- If born off shore, then there are the added laws of your Country of birth, if they allow you to amend documentation

The mantra that exists requires, no, that should read, demands us to be “over 18, single (read divorced) and to have undergone sex affirmation surgery. If you think this is all, then please think again after reading this list of anomalies that exacerbate the whole legal frustration scene for Trans people.

- Staying married after surgery Case by Case Basis
- Sex Affirmation Surgery Can be considered on a case by case basis, if surgery is not undergone
- Unable to complete surgery, as it would be life threatening. Case by case basis
- Cannot have surgery due to cost. Not covered, or is it on case by case basis?
- Do not wish to have surgery, cannot be recognised in their preferred sex/gender
- Double mastectomy versus an orchidectomy. First is mentioned, but not the second
- Please define what is meant by *reproductive organs*
- Orchidectomy is the removal of the male reproductive organs, testes
- Double mastectomy is not the removal of any female reproductive organs
- Born off shore. DIAC will amend residency and citizenship (no mention of sex) on either basis of having had surgery, or not.
- Citizenship after amendment by DIAC, can be used to amend a passport. This could mean non surgery.
- From DIAC “*Note: the surgeon's statement would contain information such as confirmation that the person has undergone a full gender reassignment 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*”
- Passport in preferred sex, with appropriate photo and name is preferable to a DOI. A DOI can cause problems when going off shore; where as a passport in preferred sex does not cause problems with going to say Thailand for surgery. I am aware that a passport (LVP) of sorts is issued, but it comes down to appropriate name and photo with the wrong sex in the box and where the passport is scanned.
- We are in the same category as criminals and deportees, which certainly is not the case
- I helped in the listings for your designated web pages for Trans people. However, as I pointed out, it does give the wrong impression as per the attached
- **Full validity Passports issued in new gender:**



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- 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:**
- Medical practitioner's statement, where relevant, providing reasons for the applicant's inability to undergo gender reassignment;
- 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;
- Name change certificate;
- Passport Office Manager's recommendation.
- This means that to many reading these pages, that non surgery is acceptable
- Many cases are finalised by either case by case basis, or precedent, but the laws are not amended. Messy!

BORN ABROAD

Out of the six States and two Territories, only four States recognise us with a form of recognition certificate.

- South Australia since 1988
- Western Australia since 2001
- Victoria since 2005
- New South Wales since 2009

They are used in the first two not just for recognition of those born off shore, but also as their method for amending a birth certificate.

The second two offer a "Recognised Details Certificate" specifically for those born off shore.

Both of the above approaches can be used to apply to the UK for their "Gender Recognition Certificate" and the amendment of a UK birth certificate. Because in all four of the above the reviews have been conducted to allow recognition of the change of sex after surgery, this is fully acceptable to the UK "Gender Recognition Panel" The UK legislation is predicated on "Non Surgery"

In Queensland, Tasmania, The Northern Territory and The ACT they do not offer any form of recognition certificate, and so we have to go through the long drawn out problems involved when attempting to amend UK documentation. In essence, in these four jurisdictions we are not really fully recognised until they introduce a form of recognition certificate for those born off shore.

I am in the ridiculous situation of being fully recognised in the UK via my gender recognition certificate and amended birth certificate and my UK passport. In Australia, I have been recognised via my amended Residency status, amended Citizenship, Australian passport and



many other pieces of documentation after my sex affirmation surgery. However, this does not mean that I am fully recognised in Queensland, as they refuse to offer a recognition certificate. Ridiculous!

Residency, Citizenship, Passports and Staying Married after SRS

Residency

We found that people who arrived as ten pound Poms, or children on parent's passports were sometimes not existing, as documentation over time had not been captured electronically, or had been lost or destroyed.

A friend who moved across country was told that she did not exist by Centrelink when she applied for the dole. She had to supply details of entry on her parent's passport via Sydney in 1969 by BOAC flight. It took Centrelink 6 months to get the answer to this problem.

She applied for amendment of her residency status, and received back the following 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.

I was told that in order to establish your residency status, it is imperative to do so if you had been afforded permanent residency as a male and had then undergone SRS to become female, as the female did not exist until the details had been altered. This of course would be exactly the same if you were FtM. In the current situation in regard to terrorism, it is considered to be very important to have your new status confirmed.

How to go about this and apply to Immigration FOI is explained in the letter from the department. When we queried this further, we found that you need to send these details.

In the interests of assisting Trans community members who wish to make applications the Department of Immigration and Citizenship has provided the following summary of documentary requirements for some specific applications.

To apply to have departmental records amended under Freedom of Information provisions a person must make an application *Form 424C - Request for amendment or annotation to personal records under the Freedom of Information Act 1982*. There is no application fee for this application. Please note: all cases are assessed on a case by case basis.

- **Recognised Details Certificate, issued in Australia by Office of Births, Deaths and Marriages (RBDM) in States or Territories,**
OR
- **Equivalent overseas document,**
OR
- **Evidence such as surgeon's and/or psychiatrists statement**
- **Change of Name Certificate, if applicable, issued in Australia by RBDM (as no previous names are recorded on the RDC)**



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- Evidence of when and how you arrived, such as entry stamp in passport or details of ship or flight.

Australian temporary or permanent residents may be required to provide evidence of their status to State or Territory authorities in the form of a certificate of evidence of resident status. You must make this application on a *Form 164 - Certificate of evidence of residence status* (also known as a form 283) and pay a \$100.00 application fee. This certificate is not required for citizenship application purposes.

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

We also found that contrary to popular belief, that if you stayed the required two years as a ten pound Pom, you acquired citizenship automatically, this is wrong as many ex Poms have found out.

The last paragraph in the above extract from the letter intrigued me, so I queried it and it was confirmed that non surgery is acceptable to the department that covers both immigration and citizenship

The new status for residency is acceptable by citizenship, so when applying for citizenship or amending citizenship certificate those details are accepted.

Citizenship

It is desirable that the evidence of Australian citizenship reflects the person's new identity. Australian citizens applying for new evidence of citizenship should apply on *Form 119 – Application for evidence of Australian citizenship* and pay \$55.00 application fee. The following documentation should be provided in addition to those that are required for all applications:

- Recognised Details Certificate, issued in Australia by Office of Births, Deaths and Marriages (RBDM) in States or Territories,
OR
- Equivalent overseas document,
OR
- Evidence such as surgeon's and/or psychiatrists letters
- Original citizenship certificate (which is to be cancelled and retained by the department)
- Change of Name Certificate, if applicable, issued in Australia by RBDM (as no previous names are recorded on the RDC)

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



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identity, has undergone hormone treatment and shows no intention of reverting to their original gender

In cases of gender reassignment, it is desirable that the evidence of Australian citizenship reflects the person's new identity. Applicants should enclose with their application:

A Recognised Details Certificate (RDC); or either,

A statement from their surgeon confirming the full gender re-assignment procedure or a statement from their doctor/counsellor confirming 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; and

Their original citizenship certificate (which is to be cancelled and retained by the department); and if applicable, evidence to support a name change

Please note that both FOI and Citizenship are based on “Non Surgery” as per the quotes above

Believe it or not, because of the special arrangement between Australia and New Zealand, there are different number forms for the Kiwis in order to amend residency.

The impact on Trans people trying to get their heads around these “requirements” in order to be fully recognised in their preferred sex/gender is beyond belief. Most are from a non legal background, so understanding these “requirements” means they have to either go without, or take recourse to the legal system to discover how to achieve their rights.

Frustration that can and does lead to depression, lack of well being, and in many cases, suicidality. I don't think this was the intent when formulating these laws.

Was this thought through, or was it intentionally planned without any discussion with the Trans community? If so, was it done in order to frustrate by making the laws so ambiguous, that we would not even attempt to amend our documentation.

Is it any wonder that many only go as far as “Change of name, Driver's license and Medicare. Even this can prove to be daunting. Living in Queensland, but born in Western Australia, means that you have to apply for change of name in Western Australia and amendment of sex after sex affirmation surgery. However, you have to apply to Queensland Transport to amend your driver's license. Confusing? You bet!

The Trans community is the most highly regulated area of society. The above is just for one department (DIAC) There are so many others, and I would point out that as you can see from above, it is clearly not just one area of concern to be considered. This is so with all government departments and agencies.

I point out very strongly, that none of this affects the GLB communities and can be much worse for the Intersex people. I cannot and do not speak on their behalf

We desperately need a “one size fits all approach” This would take the form of the Commonwealth only legislating, so that we have consistency of word and law through out Australia. Hopefully this would remove the anomalies and ambiguities that currently exist. It



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would also lead to the removal of discrimination as well. Above all, the acceptance that Trans people are just every day human beings would be very acceptable. They have suffered a quirk of nature which is recognised through out the World.

Transsexualism is now understood to be innate and somantic rather than a lifestyle choice. Deprived of appropriate treatment, Trans people are likely to function less well and suffer ongoing health problems resulting in a greater strain on the National health System

Parliamentary Forum on Transsexualism (2005); Guidelines for Health Organisations Commissioning Treatment Services for Individuals Experiencing Gender Dysphoria and Transsexualism; London, Parliamentary Forum on Transsexualism.

Gender Identity Disorder (GID) if left untreated, can result in clinically significant psychological distress, dysfunction, debilitating depression and for some people without access to appropriate medical care and treatment, suicidality and death...delaying treatment for GID can cause and/or aggravate additional serious and expensive health problems, such as stress-related physical illnesses, depression and substance abuse problems, which further endanger patients' health and strain the health care system

American Medical Association House of Delegates Resolution 122 (2008)

The personal accounts of Transsexual people and their clinicians further demonstrates that surgical considerations often represent quite literally, a matter of life or death

Kotula D. (2002) *In The Phallus Palace*, W.E. Parker (consulting editor) Alyson Publications, Los Angeles

Delays in the 'system', whether clinical or financial, cause a great deal of stress, while the inability to access timely treatment may also be a cause of suicidal feelings. As well as suicide, a number of other risks are identified:

Stress leads to a number of Trans people to self-harm and even to attempt suicide. These feelings may occur at any time, but they are often associated with the realisation that it is impossible to continue life in the pre-transition role. For some, the choice is stark: either the gender issue is addressed, or there is no future...Through frustration or anxiety, or both, some Trans people self harm by cutting their arms and legs and occasionally, their offending sex characteristics, such as breasts (Trans men) or the penis and scrotum (Trans women) Alcohol and other substance misuse may also be a factor, especially where there is family breakdown and social isolation.

GIRES et al. (2008) Guidance for GPs, other clinicians and health professionals on the care of gender variant people; document issued by the Department of Health (UK)

Passports

New legislation has been introduced that now comes into line with DIAC, although the wording is slightly different.



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In addition, to be issued a full validity passport in your preferred gender, you must provide either a:

Letter from a registered medical practitioner (registered with the Medical Board of Australia or equivalent overseas authority) certifying that you have had, or are receiving, appropriate clinical treatment for gender transition to a new gender or that you are intersex; or.

RBDM revised birth certificate; or

RBDM gender recognition certificate; or

RBDM recognised details certificate; or

DIAC revised citizenship certificate (or a letter from DIAC confirming that DIAC has accepted the reassigned sex and their records have been amended).

Australia Government changes policy on passports.

<http://www.abc.net.au/news/2011-09-15/passport-gender-choice-made-easier/2899928>

UNCLASSIFIED 16-09-2011

Hi Kathy,

Apologies for the delay in getting back to you.

In relation to your question about Australia Post:

People may attend an interview at any Australia Post outlet that conducts passport interviews - they may also attend any state or territory Australian Passport Office.

We are working closely with Australia Post to urgently distribute the new policy to all passport interviewing outlets across Australia.

Australia Post will shortly send a 'bulletin' to all of their outlets outlining the new policy, and training material developed in conjunction with the Australian Passport Office will follow.

Given the number of Australia Post outlets that conduct interviews (around 1700) it may take some time to ensure that all Australia Post staff members are fully trained on the new policy.

But as mentioned earlier, applicants may also attend an Australian Passport Office for their interview.

People wanting advice on the new policy may contact the Australian Passport Information Service (131232), or a state or territory passport office.

In relation to your questions about citizenship certificates:

Australian citizenship certificates have not contained a sex or gender field for some time. For more detailed information on Australian citizenship certificates it's best to contact the



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Department of Immigration and Citizenship (DIAC). Their media contact details are on their website www.immi.gov.au

People seeking a passport in their preferred gender, who have an Australian citizenship certificate, do not need to have their sex/gender in DIAC records amended. People who choose to amend their DIAC records, however, will need to provide at interview a letter from DIAC as evidence that DIAC has changed their records. The Australian Passport Office will also need to see the existing citizenship certificate to confirm the person's Australian citizenship.

It is important to remember that changing DIAC citizenship records is no longer necessary to obtain a passport in a person's preferred gender. Under the new policy a client may provide a letter from a medical practitioner instead.

Questions concerning DIAC requirements to amend their records for Permanent Residents, including for New Zealand citizens, should be directed to DIAC.

Our policy applies only to Australian citizens as Australian passports are issued to Australian citizens only.

I hope this clarifies things for you.

Kind regards,
Dana

Dana Robertson
Media Liaison Officer
Department of Foreign Affairs and Trade
tel: + 61 2 6261 1555
fax: +61 2 6261 1325
media@dfat.gov.au



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28 November 2011

Ms Kathy Anne Noble
(knoble@iinet.net.au)

Dear Ms Noble

Thank you for your email of 7 November 2011 to Mr Kevin Rudd MP, Minister for Foreign Affairs and the Attorney-General, the Hon Robert McClelland MP, regarding passports for Trans people. I have been asked to reply on behalf of the Minister.

We appreciate your comments of support for the government's new policy which makes it easier for members of the sex and gender diverse community to obtain a passport in their preferred gender.

In accordance with the policy announced in the media, an Australian passport may be issued to sex and gender diverse applicants in M (male), F (female) or X (indeterminate/unspecified intersex) upon receipt of a statement from a medical practitioner (registered with the Medical Board of Australia or equivalent overseas authority) certifying that the person identifies as Male, Female or they are Intersex/of Indeterminate sex. A copy of the policy is attached for your information. The policy has not changed since it was announced on 14 September 2011

In relation to the query about the scanning of the passport, I can assure you that the passport will scan with the corresponding letter that appears in the sex field on the passport.

I trust this information is of assistance.

Yours sincerely

Mauro Kolobaric
Assistant Secretary
Passport Client Services Branch
Australian Passport Office

R G Casey Building John McEwen Cres Barton 0221
Telephone:02 6261 1111 Facsimile:02 6261 3111



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Sex and Gender Diverse (SGD) Policy

The Australian Human Rights Commission (*Addressing sexual orientation and sex and/or gender identity discrimination 2011*) defines the phrase 'sex and gender diverse' (SGD) as referring to the whole spectrum of sex and/or gender identity. For the purposes of issuing passports, this includes 'trans' and 'intersex' persons. 'Trans' is a general term for a person whose preferred gender is different to their sex at birth. The term 'intersex' refers to a person who has genetic, hormonal or physical characteristics that are not exclusively male or female. A person who is intersex may identify as male, female or as being of indeterminate sex. An RBDM, DIAC or a medical practitioner registered with the Medical Board of Australia (or equivalent overseas authority) must determine an applicant's sex.

A passport may be issued to sex and gender diverse applicants in M (male), F (female) or X (indeterminate/unspecified/intersex).

Applications from persons who identify as sex and gender diverse and seeking a sex in their passport different to their birth sex will generally fall into two categories:

1. Applicants who have undergone sex reassignment surgery and have an amended cardinal document; or
2. Applicants, who are seeking a passport in a non-registered sex as they are unable to, or choose not to, obtain an amended cardinal document. These applicants may or may not have undergone sex reassignment surgery.

All states and territories have legislation allowing sex and gender diverse persons who have undergone sex reassignment surgery, and are not married, to apply to amend the sex on their birth certificate. RBDMs are legislatively empowered to amend a person's birth record and may provide documentation recognising a person in a sex different to their sex at birth when evidence can be supplied that sex reassignment surgery has been completed. In relation to Australian citizens not born in Australia, DIAC is legislatively empowered to amend citizenship records in relation to a person's sex.

A full validity passport in a new sex may be issued to sex and gender diverse applicants who present an amended birth certificate, gender recognition certificate, or recognised details certificate showing that an RBDM has accepted the reassigned sex. For applicants born overseas, a gender recognition certificate, recognised details certificate, revised citizenship certificate or other evidence from DIAC may be presented.

A full validity passport in a new sex may be issued to sex and gender diverse applicants who are unable to, or choose not to, obtain an amended cardinal document in their new sex and can provide a statement from a medical practitioner (registered with the Medical Board of Australia or equivalent overseas authority) certifying that they have had, or are receiving, appropriate clinical treatment (including sex reassignment surgery) for gender transition to a new gender or that they are intersex and do not identify with the sex assigned to them at birth.

Applicants must meet all other normal passport requirements, including identity documents supporting their identity in the wider community. As with applicants who have changed their name due to marriage, there may be instances where the sex and gender diverse applicant has not had time to change their PIDs and as a result cannot provide PIDs to support their new sex. Interviewing and eligibility officers need to be mindful of this and accept the application and all supporting documentation.



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Good Morning Donelle,

07-12-2011

Can you please ask the following question that some of my Trans friends are asking concerning being able to amend their passport if remaining married?

- We know that they can amend their passport if remaining married after surgery on a case by case basis.
- How does this apply to those who remain married and have not had sex affirmation surgery?
- Can they amend their passport as it is now based on non surgery?
- How would this affect those who are currently married, but are in a position of entering into a divorce?
- Can they also amend their passport under the new legislation?

We are totally confused, as what seems to be a simple solution, throws up more queries as we think it through.

Yours sincerely
Kathy Anne Noble

Dear Kathy

07-12-2011

Thank you for your email. Applicant's must meet all the usual passport application requirements to be issued a passport in their preferred gender (*whether they are married or not*), except that:

If the applicant is unable to, or chooses not to, obtain an amended cardinal document they will need to provide a letter from a registered medical practitioner (registered with the Medical Board of Australia or equivalent overseas authority) certifying that they have had, or are receiving, appropriate clinical treatment for gender transition to a new gender.

Sex reassignment surgery and supplying an amended birth or citizenship certificate is no longer a prerequisite to issuing a passport in a person's preferred gender.

Kind regards

Donelle

So what now constitutes a cardinal document? Is it a birth certificate, or a passport?

Marriage

There is no mention of how the Wife, Spouse or Partner is affected in all of these situations if remaining married after sex affirmation surgery of their partner. Surely they are an aggrieved party to this if they wish to remain in the marriage, as many do.

WIVES, SPOUSES AND PARTNERS 17-05-2011

Much is written and talked about concerning the plight of Trans people who stay married after sex affirmation surgery.



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However, there is nothing written or talked about concerning the plight of the “wives, spouses and partners” Do they exist? Yes, they certainly do and have suffered intolerably under the legislations that until recently were in force. One is still in force, that being the legislation by all States and Territories requiring the Trans person to divorce.

There is no mention of how the Wife, Spouse or Partner is affected in all of these situations if remaining married after sex affirmation surgery of their partner. Surely they are an aggrieved party to this if they wish to remain in the marriage, as many do. Because they were willing to stand by their Trans partner due to their commitment to their marriage vows, they were deemed to be part of a “same sex couple”, thus listing them as lesbian, which they found to be both abhorrent and untrue.

They along with their partner were to suffer due to this deeming by way of losing access as a married couple to Medicare, PBS, Centrelink, ATO, defined superannuation, inheritance and self esteem, due to the fact, they felt their lives had been taken away from them.

After several years of fighting to have their rights returned as a legally married couple, in January 2009 they were no longer to be deemed to be a “same sex couple” In March 2009, they were recognised by the Federal Attorney-General’s Office as being legally married. This, we understand was part of the “Same Sex Act 2009” provisions. This meant they finally had all rights restored under the Marriage Act 1961.

There has never been any attempt at an apology for this gross act of discrimination against wives, spouses and partners. Many now suffer because of the years of being considered as lesbians by the governments of the day. Several are receiving counselling because of their problems, which include breakdowns of health and deterioration of their well being.

Many of my friends in this position are close to breaking point due to the lack of understanding and empathy involved. How much more must they endure in order to have full recognition of what to them is an on going commitment to their marriage and the full recognition of the Trans partner? Their health in many cases is at risk and that will come back to health departments across the Nation.

This is destroying couples who have been put through enough over the years due to having to come to terms with a partner’s Transsexualism and their change. They are now having a huge burden imposed on them as they wish to remain married, but are looked upon as pariahs by State and Territory governments because they wish to remain married. However, they are still there for their partner and are willing to have thrust on them an abhorrent situation, as they are told that in order for their partner to amend their birth certificate; they are required (FORCED) to divorce.

There is no law in Australia that can force them to do this, and to stand up in Court and use the only wording for a divorce in Australia “Irretrievable Breakdown” would be tantamount to performing perjury.

There are couples who have been married for 40, 47 and 50 years that have no intention of divorcing because of the above requirements at State and Territory levels. Have the costs involved, not just in monetary terms, but in health and understanding these couples wishes to honour their marriage vows been taken into consideration? The health factor plays an immense part in this scenario, as couples in their 60s and 70s should not be placed in this despicable situation



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It appears a situation where we have a yes and no approach to this problem, with the federal government understanding their plight, but the States and Territories totally unaware of the harm they are doing, all because they fear setting a precedent for "same sex marriage"

Kathy Anne Noble
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NSW Anti-Discrimination Commission Section 47 Provision of goods and services

This from friends after being told that they could take action under this section.

Until July 2009, Trans people and their wives, spouses and partners, if remaining married after sex affirmation surgery, were deemed to be a "same sex couple". Therefore they lost all rights under the Marriage Act 1961 as this was the situation that applied to all same sex couples at that time. Those rights were returned under the Same Sex Act July 2009 which is outlined in the letter from the Federal Attorney-General's Office dated 19-01-2009

After sex affirmation surgery in August 2007, we discovered we had been deemed to be a same sex couple, so lost out on PBS, Medicare, Centrelink, ATO Inheritance and Defined superannuation. I have been subjected to letters being sent to MR, as I cannot amend my birth certificate. I am told that all my details have been amended and new cards issued in my femme name, but still the letters are addressed to MR, even after deeming ceased in July 2009.

Our health is suffering and our self worth has taken a hiding. We are not a lesbian couple, as we still recognise our marriage vows, which we take very seriously. The impact of this on not just our lives, but the family has been extreme. The cost in health will of course over time be passed on to the National health system, and already this is happening.

What is there exact standing in all of this, especially as they had to put up with being deemed to be part of a same sex couple if they dared to stay married if their partner underwent sex affirmation surgery? They lost that tag in January 2009 and were told in March 2009 that their marriage was still legal. Has anyone in government taken the time to ask how they feel at first being deemed to be a same sex couple, or what their feelings are in regard to being told their marriage is legal, but their Trans partner cannot amend their birth certificate. Add this to the equation which appeared in the Brisbane Times (part of Fairfax Media) and you might begin to realise their hurt. *"It's a transition that makes Janice and Brenda one of the few legally married homosexual couples in Australia"* I have been informed that this is totally untrue by Australian Human Rights Commission.

All States and Territories require us to be single (Read Divorced) in order to amend our Birth Certificate. I cannot come to terms with this, when the Federal Government sent me this reply; plus answers from the Passport office and Centrelink on this subject. All three are to follow.

- Add to this the fact that we are required to "Alter or remove all reproductive organs in order to be recognised fully in our new sex/gender."
- We are allowed to "Change our name and driver's licence before changing our sex/gender"



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- Many other areas will allow us to change our details either before or after surgery. We can change the details of utilities, rates, banks on production of the change of name and letter supporting that we are to be considered as male or female from our psychiatrist.

The only sticking points in regard to these issues, comes from the States and Territories namely, being forced to divorce in order to amend our birth certificate.

Letter from the Federal Attorney-General dated 19-01-2009: to me [excerpt]

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.

Letter from the Federal Attorney-General dated 17-03-2009: To me [excerpt]

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.

Sex and Age Discrimination Legislation Amendment Bill 2010 [Provisions]

This report was issued in March 2011 and has done nothing to cease discrimination against Trans people, as the following will show.

This is from the 'Sex and Age Discrimination Legislation Amendment Bill 2010 (Provisions)'

2.47 This definition is included to complement changes made by item 62 of Schedule I of the Bill, which would amend section 40 of the Sex Discrimination Act. Section 40 sets out exemptions under the Sex Discrimination Act to acts done under statutory authority. The Bill would amend the Sex Discrimination Act to provide that nothing in Division 2 of Part II makes 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'.

Again from the 'Sex and Age Discrimination Legislation Amendment Bill 2010 (Provisions)'

3.81 The Department has advised that 'the amendments to the Sex Discrimination Act in the Bill are primarily intended to implement the accepted recommendations' of the Senate Report. However, providing for these exemptions was not raised in the Senate Report, and the Senate Report explicitly recommended extending the Sex Discrimination Act to protect against discrimination on the basis of either sexual orientation or gender identity.



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Why were these points not raised in the Senate Report?

Again from *the 'Sex and Age Discrimination Legislation Amendment Bill 2010 (Provisions)'*

The following iterates what I was sent from the Federal Attorney-General's Office, as above

3.82 Given that the Department has advised the committee that 'the Marriage Act 1961 does not prohibit a person who is married from legally changing their sex', it is unclear to the committee why the Sex Discrimination Act would need to be amended to specifically exempt state and territory laws which enable refusals to make or alter official records of the person's sex because the person is married. The Department has failed to explain to the committee how this exemption for these state and territory laws operated prior to its proposed inclusion in the Act, exactly which state and territory laws are being referred to, and, most importantly, what changes to the law the Bill would effect which require these amendments to preserve the existing law.

3.83 In particular, the committee expresses concern about the lack of explanation provided in the EM to the Bill in relation to amendments to provide exemptions for official records of a person's sex. Given the opposition to these provisions from a number of submitters, it would have been of assistance to the committee if a more comprehensive explanation was provided in the EM

Again, why was there this lack of comprehensive explanation not provided? It is very important data not expanded in the "EM Explanatory Memorandum" WHY???????????

3.84 While the committee expresses its concerns about these provisions, since the government is undertaking consultations with the states and territories on the recommendations of the Human Rights Commission's Concluding Paper, the committee endorses the Human Rights Commission's suggestion that these exemption provisions should only be enacted temporarily. Further, the committee strongly encourages the Australian Government to take a leadership role in ensuring that there is a nationally consistent approach to the legal recognition of sex in official records. This is a must!

Please explain the above. To what extent are these consultations progressing? What exactly does "Enacted temporarily mean?" How long is temporary? Can we in the Trans community gain access to the EM?

Add this from the Passport Office, and you begin to understand how confusing we find the legislation. When you get items in the press such as this *"It's a transition that makes Janice and Brenda one of the few legally married homosexual couples in Australia."* Then you can understand why I think that the State and Territory governments are only concerned that the situation in the Trans community will open the flood gates to same sex marriage, as they see it.

Read more: <http://www.brisbanetimes.com.au/entertainment/art-and-design/art-charts-wifes-journey-as-husband-goes-from-brent-to-brenda-20110512-1ekc7.html#ixzz1MNK2B43w>

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*):



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- 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); (**smacks of non surgery**)
- Original Birth Certificate;
- RBDM name change certificate;
- Marriage certificate;
- Statutory declaration stating that marriage has not been annulled.

Dear Ms Noble, from Centrelink

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.

I hope that this answers your question. Please contact me if I can be of further assistance in this matter.

Yours Sincerely,

Manager

Cleveland Customer Service Centre

Ph 3383 0130

If the Federal Government state what is in the above letters and are responsible for the Marriage Act 1961, how can this be over ruled at State and Territory level? The spouse was the biggest loser, when we were deemed to be a same sex couple, as they had done nothing, other than stay with their partner. We fought this for over two years, before we arrived at the current situation.

If this is the Federal Government stance on remaining married after sex affirmation surgery, then why are we still required to divorce at State and Territory level, in order to amend our Birth Certificate?

Surely the one law, being the Marriage Act 1961 should be adhered to by the States and Territories, as it is a Federal Law.

The attached gives some idea as to the situation in the EU.

Germany: Forced divorce of Trans people declared unconstitutional by Justus Einfeld

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



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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.

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.

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 offshore, 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.

They will allow you to amend your driver's licence, but this would be dependent on the change of name. If born in NSW and have changed your name there, but now reside in Queensland, you must apply for an amended driver's licence in Queensland, if you intend to drive there. Sort that out. It's even more confusing.

We have had the excellent New Zealand Human Rights Commission report "To Be Who I Am" in 2008, with much of it implemented. Also in 2008 in Australia we had consultations with the Australian Human Rights Commission which produced a report in March 2009 "Sex Files, the sex and gender diversity project" Up until today, not one of the 15 recommendations have been implemented.

The Federal Attorney-General's Office keeps talking about it, but nothing eventuates. This is due to the fact that numbers 1 to 9 are to do with State and Territory legislation. Only 10 to 15 are down to the Federal government. To date, it is still on the shelf, with much promised, but nothing originating.

Recently Trans friends have asked me, "Are we treated as humans?" and people in society at large, say "The way you are treated under discrimination, is inhumane." This is because of the "Inquiry into the Sex and Age Discrimination Legislation Amendment Bill 2010." There are



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many queries regarding this, as the Bill is still only for the binary sexes, so any discrimination that is written into State and Territory laws against Trans people will remain.

The worst is staying married after surgery, as we are “FORCED” to divorce in order to amend our birth certificate, as we consider this to be discrimination of the highest order. There is no law in Australia that can make you divorce, and to even stand in Court and ask for a divorce under the current law, would be laying one open to perjury. We in many cases do not wish to divorce, as we take our vows seriously and rely on each other for love and support. I cannot for the life of me, see how this stacks up in regard to the following.

We now have the situation whereby not just Austria and Germany have declared that the demand for a person applying for legal gender recognition to be unmarried as *unconstitutional*, we now have Sweden wanting to put this in place. Currently it is being stalled by the Minister responsible for legal reform on transgender legislation, in spite of an overwhelming parliamentary majority in favour of law revision.

There are also many, many more Countries who consider sterilization to also be unconstitutional. Is this the sign of the times to come?

May I ask why we do not have a Minister who is responsible for legal reform of transgender legislation? His/her task would be to align all legislation within the nine jurisdictions in Australia.

Letter to the Senate Legal and Constitutional Committee

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia.
Letter to the Federal Attorney-General

Dear Sir,

In response to your introduction of the “Sex Act Discrimination Legislation Amendment Bill 2010” I would raise the following points.

In regard to the first dot point, I have been informed by your Office that it is only the ‘Binary sexes, male and female’ that will be affected by any amended legislation. This was in both October and November 2010.

We now have to establish if a Trans woman is fully recognised as a woman, and a Trans man is fully recognised as a man. This should be covered in your first of the “Four key amendments to the Sex Discrimination Act”.

Are we in the Trans community to be accorded the same levels of cover as natal male and female? If not, why not, as we are supposedly granted that sex status after Sex Affirmation Surgery.

We would expect to be covered equally under the proposed section two amendments, as we are now legally recognised as male and female.



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“Both statements, namely in relation to CSW and the International Day to Eliminate Violence Against Women, were aimed to address the issues, as they pertained to all women in Australia. As I have been addressing these issues at a national level, in neither statement did I aim to identify the specific groups of women that were included, such as Trans women, or Indigenous women, women with disabilities, culturally and linguistically diverse women, among others. You will note a similar approach being taken in my messages around International Women's Day.

However, in instances where it is necessary to identify specific groups of affected women, I would of course include Trans women. I recognise that Trans women face significant and disturbing levels of discrimination on the basis of their sex identity and/or gender identity, and the protection of the rights of Trans women is an important that does not often get the visibility that it requires.”

(MY HIGHLIGHTING)

Above is an extract from Elizabeth Broderick's Letter to me, Dated 23-03-2011

Three, at this point in time does not enter into the frame, although many Trans women do produce breast milk.

The fourth and final is the main one where we are concerned, as I have been informed that it does not apply to Trans people, only to natal male and female. If we are fully recognised in our sex now as male or female, surely this is of itself “Discriminatory”

When it comes to young Trans people, they have no legal redress and are open to all of the problems you list, and many more

We are made to jump through hoops to become our true selves, but we are still not legally fully recognised at any level of government in Australia. Therefore it would be nice for all governments to recognise us at law as now being no longer Trans, but man or woman. To this end, this major shift should be noted within the legislative amendments before the senate committee and government.

We also have many problems to face when we grow old. The above recognition would be very helpful in those areas as well.

Finally, in letters to me from your Office, you have cited over 80 pieces of legislation were altered in the “Same Sex Act 2009” My question is this, “ How many pieces of legislation confront Trans people at all levels of Government, their departments and agencies in Australia?

Yours Sincerely, Kathy Anne Noble.

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia.
20-01-2011



EFFECT OF REASSIGNMENT OF SEX

I was asked by a Trans friend “are we considered to be human?” We abide by the many laws imposed on the Trans community, only to find that under the “Sex Discrimination Act 1984 Review” we will gain nothing, not even the recognition of male or female after sex affirmation surgery.

This is altogether frightening, scary even, when we look at the statements made by all States and Territories in the laws they have enacted in Australia, that concern us after sex affirmation surgery. We are then considered to be “Anatomically male or female” so why are we treated this way?

All States and Territories in Australia state in their laws, in one form or another, that “A person’s sex is noted under the Act, the person is of the sex stated on their birth certificate or recognition certificate. They are also, but subject to any law, a person of the sex so stated or altered.”

Therefore, if there is no recognition certificate/ recognised details certificate issued by a state or territory, then it follows that we are not recognised in our new sex/ gender

To achieve this outcome, it is required that we have *“Altered or had removed all reproductive organs”*. Even if we do this we are still faced with the following, which smacks of having a bet each way. *Still no clear definition as to what are “Reproductive Organs”*

I borrow the words of Noel Pearson, but substitute “Trans Peoples,” for “Indigenous Peoples,” so that it now reads as, “What is still needed is positive recognition of our status as the country’s Trans people, and yet sharing a common citizenship with all Australians.

Are these contradictory principles? I argue they are not. We can recognise the status of Trans peoples without fracturing the principles that all Australians are equal citizens.”

Noel Pearson is director of the Cape York Institute for Policy and Leadership

QUEENSLAND

Section 24

1. a person who has had the reassignment of the person’s sex entered into a register maintained under a corresponding law is a person of the sex as reassigned
2. A person who is the subject of a recognition certificate is a person of the sex stated in the recognition certificate. *(do not recognise recognition certificates from the UK or outside of Australia, even then, they may not recognise them from within Australia)*
3. However, the person must comply with section 23 (10) for the reassignment of the person’s sex to be noted under the Act
4. If the reassignment of a person’s sex is noted under this Act, the person is a person of the sex as reassigned. *There is nothing noted for those born off shore, due to there being no Recognised Details certificate being issued*

All other States and Territories, plus the 2005 Draft (prepared by the Parliamentary Counsel’s Office) BDMR Amendment Bill 2005 looked at these details. Not adopted at the SCAG meeting in July 2005 Division 4.4

This appears to be the worst form of discrimination, as they purport to recognise us on one hand after surgery as anatomical males or females, but then on the other, still require us to divorce in



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order to amend our birth certificate. Sorry, this does not make any sense at all to me. Is it because, they are afraid of setting a precedent, for “Same Sex Marriage?”

Discrimination is an awful weapon to use against any part of society, and we certainly receive more than our share. Discrimination is worse than any debilitating disease, as it cannot be cured by drugs and care alone. Care and compassion and empathy are what are sadly lacking due to the unwillingness of Governments at all levels through out the World to attack this most insidious of pressures. Pressures that lead to a very debilitating scenario. Depression, frustration, self harm, drug and alcohol abuse and suicidality. If we are not cared for in the initial stages, then in the long term our problems will manifest by having to be cared for by the Government health departments with all that infers, when cost is taken into account

The following is with the full support of Transgender Victoria Group (TVG)

CONSTITUTION QUERIES-RE SECTION 109

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

We are in the invidious situation of literally being between a rock and a hard place. Most of the people that we deal with do not understand and need to have explained how the forced Trans divorce situation comes about.

- It is the forced faux “choice “ of either having a birth certificate that doesn’t match your identity/body and staying married or
- Divorcing (possibly by perjuring yourself because there are no irreconcilable differences) in order to get a birth certificate that reflects who a person truly is.

The explanation for this situation follows on through out this submission. Also the inconsistencies that are involved in these matters.

Section 109 of the Australian Constitution

In Australia, legislative power is held concurrently by the Commonwealth and the States. In the event of inconsistency between Commonwealth and State laws, **section 109 of the [Constitution of Australia](#)** provides that the laws of the Commonwealth shall prevail over those of a State to the extent of any inconsistency.



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The meaning of "invalid" in s 109 does not mean that a State law is invalid in the positivist sense that the State Parliament lacks power to pass it. The State law, though enacted with full validity, merely ceases to operate. Hence, in order for s 109 to come into operation at all, there must be a valid State law and a valid Commonwealth law. (*Carter v Egg and Egg Pulp Marketing Board (Vic)*).

When s 109 takes effect, the State law yields to the Commonwealth law, but remains a valid law of the Parliament which enacted it. The practical significance of this will become apparent if, at some later date, the overriding Commonwealth law ceases to operate.

In the absence of s 109, this function might have been fulfilled by covering clause 5 of the Constitution, which makes Commonwealth laws "binding on the courts, judges and people ... of every part of the Commonwealth".

The evolution of High Court doctrine in s 109 cases has led to three broad approaches to determine when there is inconsistency.

Full text

“ When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. ”

[\[edit\]](#) *Direct inconsistency*

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

[\[edit\]](#) **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 Daniell*. 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.

We in the Trans community find it exceedingly hard to obey the two laws concerning marriage and the Marriage Act 1961 and the State and Territory laws.

The Commonwealth Government state that we are still married after Sex Affirmation Surgery as per the previous letter.

State and Territory legislation require (*FORCE*) us to divorce in order to amend our birth certificate. My understanding is that there is no law in Australia that can force us to divorce.

From: kathy noble [mailto:knoble@inet.net.au]

Sent: Friday, 5 June 2009 4:29 PM

To: 'Alan Berman'; Stephen Page; 'Karen Gurney'; 'Yasmin Hunter'

Subject: Query



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In affiliation with Transbridge Townsville

Good evening,

Can you please tell me if there are any laws in the World “Forcing” people to divorce?

Sincerely Kathy

Kathy

I can only speak for Queensland. The answer is “no”. People can only divorce in Australia if there has been an *irretrievable breakdown of marriage, which is defined as separation for 12 months.*

Regards

Stephen Page
Accredited Family Law Specialist
Partner
Harrington Family Lawyers

If we were to use this in a Court of Law, we would be committing perjury, as we do not wish to divorce, but we do wish to stay in a marriage in which we have and still do take our vows seriously. We depend on each other for many areas of support within that marriage.

It does raise the question, if this is a Federal Law ‘Marriage Act 1961’ then how can the States and Territories “FORCE” us to divorce in order to amend documentation?. This appears to be the same situation that the German Government faces after being told by the German Constitutional Court, that they must repeal the Act “FORCING” people to divorce in order to amend documentation, as this is “UNCONSTITUTIONAL” Austria repealed this Act in 2006, Germany in 2009 and now Sweden is doing the same.

[edit]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 [Chyde 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.



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As above. We were given back our marriage rights after they were taken away by *deeming us to be a same sex couple if we remained married after Sex Affirmation Surgery*. As per the previous letter, dated 19-01-2009

Our right to stay married was stated in the March letter from the Federal Attorney-General's Office as part of the "Same Sex Act 2009" as in previous letter.

Which are we to take as being the over arching law, the Federal Law, or the States and Territories Laws?

Our rights to remain married have been returned (conferred) by the Federal Government, but are then taken away at State and Territory level. Which is correct? Are you having two bob each way?

I find these two areas cover precisely our situation in regard to marriage and one conferring a right and the other purporting to take it away. As per section 109 and inconsistency.

What follows is just one outcome, after my friends here and I have been fighting for over 3 years. Is it any wonder that we suffer from acute frustration, leading to depression and other health issues. Again, I would draw your attention to the fact that these health issues will cost Government Health Departments in the future, as the stress related health issues take their inevitable toll on the Trans community, and not just in matters regarding marriage. Do we have any **RIGHTS?**

HUMAN RIGHTS

I have covered this in another piece. I would however ask, *what Human Rights are we in the Trans community granted. This in light of the Sex and Age Discrimination Legislation Amendment Bill 2010 [Provisions]*

NSW Anti-Discrimination Commission. As above

Acquisition of knowledge

To our knowledge there is nothing in any curriculum that teaches about Trans issues. The Royal Australian and New Zealand college of Psychiatry depends on the Royal College of Psychiatry in the UK, who in turn rely on the American Psychiatric Association to promote Trans issues. We are still waiting for the next round of determinations, which are to be released in 2013. However, this is well outside the original date of 2008.

It is hoped that DSM V will be more sensitive to Trans issues when it is finally released., as will the WHO.

Many countries have now moved away from sterilisation in order to be considered male or female after sex affirmation surgery. Many also consider it to be "*unconstitutional*" to force people to divorce in order to amend their birth certificate. Austria, Germany and Sweden all take this approach.



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Lack of Knowledge

I am continually surprised at the lack of knowledge with regard to Trans issues by people in government departments and those appointed to look after our interests. These also include the Medical profession, at all levels. The Legal profession. Human Resources and Business in general, but most of all, the general public. This is largely due to lack of education concerning Trans people. One big misnomer that continually rears its head is the fact that Trans people are considered to be GAY, which we are not.

I have recently been asked what does the “I” stand for and would you believe the LGBTIQ acronym. When it comes to WPATH, then they are totally mystified. If we are to have people looking after our interests and future well being, let alone legislation, then I think it is only right that these people are up to speed and more to the point are appointed for the life of those enquiries. Of course, this could alter with changes of government, but we expect that as par for the course.

- I Intersex
- LGBTIQ Lesbian, Gay, Bi-sexual, Trans, Intersex, Queer.
- WPATH World Professional Association for Transgender Health

I expect people to understand what I am talking about when at a meeting or an interview concerning Trans issues. If not, to ask about these concerns. Please not to create the idea that they understand, when in fact they have no knowledge concerning the point being discussed. With the advent of groups such as the sex discrimination, legal committee and the friendship group, it is to be hoped that the people we are to deal with are fully up to speed on our issues within the Trans community. Currently, any knowledge that they do have is very largely out of date, not by months, but in some cases, years.

We run into this problem all too often when dealing with not just government departments and agencies, but non government organisations (NGO) as well. I think one of the worst we encounter is the “Post Shop” when trying to amend our passport. In many cases we are directed back to the passport department, as the “Post Shop” staffs are not up to speed on our issues. I would also point out that there are those in these departments who will go the extra mile to help, but the usual cry is for a supervisor to help.

I have lost count of the number of times that I have been told we are “too complex” when it is not us that cause these complexities, but the vast array of laws that have been enacted to deal with us. It is the laws which create the complexities. The sooner we have laws enacted at Commonwealth level that cover the whole Nation, the better.

If many Countries in the World can appoint a minister for Trans issues, as they are becoming ever bigger, then why is it not possible for Australia to do the same. We might then have Trans people being asked for meaningful and up to date input to these committees. This would mean using the significant expertise of many Trans people who are only too interested in making life better for all Trans people.

We respect people for their expertise, gained over time in their profession. Therefore, I expect to have the expertise of Trans people to be so recognised as being gained due to their having to live this situation 24/7.



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I am fast approaching 77, so do not think there will be much movement before I leave this World. However, I would very much like to be proved wrong and go happily knowing that others, especially the young will be well looked after within the Trans and Intersex communities at all levels of government as well as within society in general. It is now time for this to happen.

MEDICAL

When you consider that we have to rely on these professionals in order to assess us and allow us the right to go onto hormones and drugs in order to change our sexual characteristics, I wonder how we ever survive.

We are given very little in the way of guidance in the use of these drugs and hormones. Usually we are told the “good stuff” but very seldom the bad. These are the side affects of having to take hormones for the rest of our lives. Bayer told me that they only consider short term usage of oestrogen for a period of 3 to 5 years, with 6 months on, and 6 months off. Trans women will not countenance this approach, as we have been told that they are for life. So many worry that if they stop taking them, they will lose their secondary sex attributes.

How is this going to affect the young ones who could be on these hormones for 40, 50 or even 60 years?. We already know that there are some nasty side affects such as, weight gain, fluid retention, clots, embolisms, coronary problems and strokes. This is of course aside from items such as frustration, depression, self harm, drug and alcohol abuse and suicidality. What a lovely mix we face in our quest to be our true self.

There is no research into our problems. Again when I enquired of Bayer what could be done, I was informed that they do have an “adverse reaction data base” but we have to apply to them for a form to be filled in by our GP to be sent to their data base. I am firmly of the opinion that we do not show on their radar.

Schering and androcur

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia.

09-02-2011

ANDROCUR, THE TRUTH

After several years of asking, I have finally been given the full answer to this problem. Many when put onto this drug are not informed of this situation, so are totally unaware of the consequences of being labelled a “Sexual Deviant” for life. This is bad enough, but when the e-Card is introduced, this information will be encrypted into it.



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We are not in the Trans community in any way shape or form “Sexual Deviants” The problem seems to arise through lack of understanding by the treating clinician, many of whom do not explain what is the outcome of being prescribed Androcur, before under going Sex Affirmation Surgery. Trans women do not them selves understand the situation that will face them, if the listing of “Sexual Deviant” is not explained, as per the attached email. Most of the people I represent in this case are not made aware of this outcome until told by friends, when it is too late. After sex affirmation surgery, it is legal for the use of it for hirsutism, as you are now legally female.

The details relating to this drug can be accessed by clinicians on their web site and states the two listings that apply under PBS guidelines. Two GPs that I deal with, think this is more a matter for the clinicians not researching the web page and therefore the out come of sexual deviant. It is not down to the patients, as most have gone to the clinician with the understanding that they will have drugs, hormones and procedures explained to them. They are not professionals, so rely on the clinician following their duty of care. This quite obviously is not the case, as even highly regarded clinicians do not relate this odious position to patients.

What would happen if this detail is placed on a patient’s records/eCard and they are later taken into custody? What happens if they need to apply for a blue card? They will be denied it, because of this listing.

From what is written in the email below, there is no way this can be altered by Schering, the makers, other than applying to have this drug listed for the use of Trans people.

Is there any way that this can be amended without the drug company applying? Where is the compassion and empathy from government removing this evil labelling via a special edict?

I am not sure if this is a form of discrimination. It means that if you are given Androcur before Sex Affirmation Surgery, you are listed as a “Sexual Deviant” for life, in fact placed in the same category as a sex offender. However, if you apply after Sex Affirmation Surgery, you can now apply as a female to use it legally for hirsutism, without being listed as a “Sexual Deviant”

Please read what is below, to further clarify the situation.

Subject: Androcur on the PBS [SEC=UNCLASSIFIED]

Dear Kathy

As per our phone conversation:

Androcur (Cyproterone acetate) is listed on the PBS for the following indications:

Advanced carcinoma of the prostate

To reduce drive in sexual deviations in males.

It is an Authority required listing and hence specifies the specific indications for use on the PBS.



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These are also TGA registered indications for the drug.

To access Androcur on the PBS for transgender pts- the Dr would have to prescribe it under the "sexual deviation" listing. If the patient was unwilling to have it prescribed under this listing, the Dr could prescribe an alternative drug- such as Aldactone (which does not have any restrictions on its use on the PBS i.e. it has an Unrestricted benefit listing) OR it could be prescribed on a private script- but the cost would be higher - as we discussed \$80-\$100- rather the PBS cost of a prescription around \$34.

Unfortunately Androcur does not have a specific TGA registered indication for use in transgender patients and the PBAC cannot list a drug unless it is TGA registered for that purpose.

To have a specific indication for transgender on the PBS, the drug would firstly have to be TGA registered for that indication. This would be up to the sponsor (manufacturer of the drug). Then an application for listing for that indication would have to be lodged to the PBAC.

Medicines are added to the PBS on the advice of an expert and independent advisory body of medical specialists, general practitioners, other health professionals and a consumer representative. This advisory body, the Pharmaceutical Benefits Advisory Committee (PBAC), examines applications for PBS subsidy on the basis of a medicine's medical effectiveness and value for money in comparison with other available treatments. Companies cannot be compelled by the Government or the PBAC to apply for PBS listing of a medicine.

I hope this helps in your understanding of why patients are accessing Androcur under the "sexual deviation" listing.

Regards Sue

Sue Swensson
PBAC Secretariat
02 6289 8348

To finalise.

- We are sick and tired of being asked "What are you?" not "Who are you?"
- We are sick and tired of being called a "Sexual Deviant" when we are not
- We are sick and tired of being looked upon, as something that has crawled out from under a rock
- We are sick and tired of being discriminated against and cast as a "Second Class citizen"
- We are sick and tired of being looked upon as less than 'human'
- We are sick and tired of being subjected to ill conceived laws, that accept as male or female In one section, only to reject it in another.

I would venture to say, that this is the considered opinion of the Trans community.



After four years, authority script codes still a waste of doctor's time

THE streamlined authority script system Is still a sham, with GPs wasting their time entering four digit prescribing codes.

In an attempt to cut red tape, the Federal Government revamped the authority script system in 2007, enabling GPs to enter the codes, rather than phoning Medicare Australia.

The codes - which identify both the drug and the indication for which it Is prescribed – were intended to allow Medicare to carry out audits to ensure the drugs were being used in line with PBS rules. .

However; *Australian Doctor* discovered 12 months ago that Medicare Australia had no access to the information because it had no legal agreement with pharmacists to send it on.

Although the inability to track prescribing has rendered the streamlined authority system a sham, the Federal Department of Health and Ageing confirmed that Medicare Australia would be able to access the data – but only from 1 December this year.

Once the changes are implemented, it will also mean Medicare can send the data to the Pharmaceutical Benefits Advisory Council so that it can identify the indications for which streamlined drugs are being prescribed.

The news comes after the government last month put 27 medications – including ondansetron injections and fluconazole tablets ; onto the streamlined system. There are now 139 drugs that require doctors to phone Medicare for approval to prescnbe.

The AMA has called for the entire system to be scrapped saying there was no clinical or economic grounds for it to be retained.

Paul Smith

The codes were intended to allow Medicare to carry out audits to ensure the drugs were being used in line with PBS rules. (Read answer from PBS below)

Dear Sue,

Thank you. I will follow up with Medicare

Love and Peace, Kathy

From: Sue.Swensson@health.gov.au [mailto:Sue.Swensson@health.gov.au]

Sent: Tuesday, 15 February 2011 10:34 AM

To: Kathy Knoble

Subject: Re: Query [SEC=UNCLASSIFIED]

Dear Kathy

the 2 listings in the Schedule are as follows:



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Advanced carcinoma of the prostate;
To reduce drive in sexual deviation in males.

If a Dr uses it in a transgender person there is nothing in the restriction stating that use- but the Dr would have to prescribe it under the sexual deviation listing if they wanted it on the PBS for what they perceive is the indication for use.

Not sure re what details are on the Medicare cards- you would need to talk to Medicare.

Regards Sue

Sue Swensson
PBAC Secretariat
02 6289 8348

Good Morning Sue,

This is what you sent me most recently. I and my GPs are wondering if there really is a listing of "Sexual Deviant for Trans Women before surgery if on androcur"

Would it show up, as we are led to believe on the person's Medicare records, held by Health Insurance Commission's central records? This would be akin to what happens when new cards are issued by Medicare and Private Health before surgery, as the detail still remains as male and old name on the central records, even though the new cards are in the new name of the person concerned. New Card has femme name, but records are still in male name until after surgery.

Once surgery has been done, then we can apply to have our central records amended to that of female and the screen now shows that to be so.

In other words, do we have the fact that we are "Sexual Deviants" appear when our cards are scanned for all to see. What happens if we are unfortunately incarcerated, and this shows up, how will that affect our being in prison and what part of the prison would we be incarcerated in? Pre op would be a male prison as a sexual deviant and post op would be a female prison, but again as a sexual deviant.

The implications are too horrendous to contemplate, all because someone in the medical profession is not doing their homework on this very disturbing subject. It is all there on screen if the doctor goes into "Androcur", as both listings are shown.

Kathy

Dear Kathy

unfortunately there is no data capture for that particular indication- as it is a Streamlined authority- and pharmacists are not obliged as yet (but coming) to provide the Streamlined authority code when claiming from Medicare - therefore it is not know how many scripts are for the two separate indications.

Sorry- this will be remedied but not just at the moment.

Regards Sue

Sue Swensson



PBAC Secretariat
02 6289 8348

The Endocrine Society's CLINICAL GUIDELINES

Endocrine Treatment of Transsexual Persons:
An Endocrine Society Clinical Practice Guidelines 2009

ANDROCUR

Cyproterone acetate (Androcur) a progestational compound with anti-androgenic properties (80-82), is widely used in Europe. Flutamide blocks binding of androgens to the androgen receptor, but it does not lower serum testosterone levels; it has liver toxicity, and its efficacy has not been demonstrated.

80 Gooren L 2005 Hormone treatment of the adult transsexual patient. *Horm Res* 64 Suppl 2:31-6

81 GoorenLJ, Giltay EJ 2008. Review of studies of female to male transsexuals: effects and risks of administration of androgens to females. *J Sex Med* 5:765-76

82 Levy A, Crown A, Reid R 2003 Endocrine intervention for transsexuals. *Clin Endocrinol (Oxf)* 59:409-18

PARAPHILLIA.

Sexual deviation

A form of sexual behaviour in which intercourse between adults is not the final aim. Instead, the man (deviation is rare in women) achieves erection and orgasm in other ways, such as by being whipped or wearing women's clothes. Forms of sexual deviation include *exhibitionism, fetishism, frottage, necrophilia, paedophilia, sadomasochism and transvestism.*

QLD Anti-Discrimination

Subdivision 2 Representative complaints

146 Representative complaints

(1) If a complaint alleges that a number of people were subjected to the alleged contravention by the respondent, the commissioner must determine whether the complaint should be dealt with by the commissioner as a representative complaint.



[s 147]

Anti-Discrimination Act 1991

Chapter 7 Enforcement

Part 1 What the Anti-Discrimination Commission may do

Page 82 Reprint 9B effective 14 October 2010

(2) The tribunal may subsequently make its own determination under section 194.

147 Criteria for determining whether prima facie representative complaint

(1) The commissioner may deal with a complaint as a representative complaint if the commissioner is satisfied that—

(a) the complainant is a member of a class of people, the members of which have been affected, or are reasonably likely to be affected by, the respondent's conduct; and

(b) the complainant has been affected by the respondent's conduct; and

(c) the class is so numerous that joinder of all of its members is impracticable; and

(d) there are questions of law or fact common to all members of the class; and

(e) the material allegations in the complaint are the same as, or similar or related to, the material allegations in relation to the other members of the class; and

(f) the respondent has acted on grounds apparently

(2) If the commissioner is satisfied that—

(a) the complaint is made in good faith as a representative complaint; and

(b) the justice of the case demands that the matter be dealt with by means of a representative complaint; the commissioner may deal with the complaint as a representative complaint even if the criteria set out in subsection (1) have not been satisfied.

Good Afternoon Sue, 10-03-2011

I understand from my Pharmacist that there are 4 generic brands that offer the same results as Androcur. Is this correct? If so, are they also listed as per Androcur? Or can they be prescribed without that disgusting listing, of sexual deviant? If there are, what are they please?

If they can, is it possible to make this known to the medical fraternity, so that we do not suffer that listing.

Love and Peace, Kathy

Kathy



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In affiliation with Transbridge Townsville

yes there are other generic brands which all have the same listing as Andocur. The brands can be found on PBS.gov.au.

Regards Sue

Sue Swensson
PBAC Secretariat
02 6289 8348

Sue,
Thank you. It is as I thought; they are all under the same listing. Oh well, it was a very faint hope.

Love and Peace, Kathy

Good Afternoon Sue,

I have spoken with my local Medicare, and they say that nothing concerning sexual deviancy shows up on their records. Is this a fallacy that is being perpetuated by the Trans community, or is it indeed details that are held elsewhere? This is becoming a nightmare for us to follow through.

Love and Peace, Kathy

Dear Kathy

sorry can't help- as we are not connected to medicare. AS it is a Streamlined authority they probably do not have it on their records., as pharmacists do not record the Steamlined codes and Medicare then would not know which indictaion it was for.

Regards Sue

Sue Swensson
PBAC Secretariat
02 6289 8348

Because of this listing as a sexual deviant, we are denied access to a blue card. This has happened to several Trans people.

These are some thoughts that could be considered as applying to Androcur prescriptions.

If after change of name, Medicare and PBS accepted us as female, we could obtain Androcur for hirsutism and not be listed as a "Sexual Deviant"

I have attached the type of letter you are given by your psychiatrist after your name change. Medicare then issue a new card in your new name, but the sex has not been altered, as we have not undergone surgery. I would also point out that

- Many choose not to have surgery
- Many cannot afford to have surgery
- For some, it would be life threatening

TO WHOM IT MAY CONCERN

This is to certify that Kathy Anne NOBLE formally known as Frank Ernest NOBLE (male sex) has been undergoing treatment in a gender reassignment programme and should now be regarded as permanently female.

This may not be able to be administered, as HIC central records are not amended until after surgery.



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This really does muddy the waters. Why if we are now to be considered as female and our Medicare card is issued in our female name, then why cannot androcur be listed as for hirsutism, which it certainly is in order to help to get rid of the beard in conjunction with electrolysis.

COSTS

Transsexualism is now understood to be innate and somatic rather than a lifestyle choice. Deprived of appropriate treatment, Trans people are likely to function less well and suffer ongoing health problems resulting in a greater strain on the National health System

Parliamentary Forum on Transsexualism (2005); Guidelines for Health Organisations Commissioning Treatment Services for Individuals Experiencing Gender Dysphoria and Transsexualism; London,

We receive no support to meet the cost of transitioning and even if on a pension, due to ill health caused by our condition, we are obliged to pay for all out of pocket expenses. To find the money to pay for an assessment with either the psychiatrist or endocrinologist is hard for many. To pay this money and then have to go to Medicare in order to receive a refund is bad enough, but you have not been reimbursed fully, and very few bulk bill.

There is also the cost of medication, which may or may not be on PBS. Fees for change of name and other costs start to mount up very quickly.

We need to undergo removal of the beard, and this alone can be an expensive item. Laser can be used, but electrolysis is considered as the only permanent solution. It is reckoned that according to the type of hair in the beard it will take some where in the region of 300 hours or more to remove the facial fuzz. This is not cheap, as it now costs \$100.00 per hour, so the cost of \$30,000.00 soon becomes out of the question. We then have to resort to shaving, tweezers or waxing to remove the beard on a temporary basis. No government help.

This figure is similar to sex affirmation surgery, dependant on whether you are a member of a private health fund, which most cannot afford (pension), if you are having surgery in Australia, or abroad. If going abroad then you cannot claim any rebates from Medicare and private health. If you go to either of the surgeons in Australia then you can claim against Medicare, even if not in a private health fund. If in a private health fund, then they cover the gap to various levels. This may mean that the hospital bed and theatre are covered, so no cost, or very little. The cost for the surgeon and anaesthetist are paid in full, with rebates after surgery from Medicare and private health. If working, then you are able to claim against tax for anything over \$1500.00 at 20 cents in the dollar. All well and good, but you have to find the money to pay before you receive any rebates.

There are many items of surgery that are considered to be “plastic surgery” and therefore do not attract any rebates. For many Trans women, breast augmentation maybe necessary as well as shaving of the Adam’s apple, rhinoplasty and voice training or surgery on the vocal chords.

We have not even discussed the cost of clothing and make up. These are essential to our well being, especially make up to cover that facial fuzz whilst trying to remove it by one way or another. Without thinking about the cost it can become frightening when you add all of these items together, as you will see that you are looking at a figure in excess of \$100,000.00.



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SUPPORT

Support usually comes in the main from our own support groups, most are not funded by government in any way. They are usually manned by volunteers who pay out of their own pocket (if able to) or donations from members.

We rely heavily on these facilities in the main. It is good to see that there are some organisations for youngsters now being funded with drop in facilities and paid staff. We desperately need more of these facilities to be funded that are currently run by volunteers.

We need to have government support where we can attend for assessment and issue of scripts, such as the sexual health clinics in Queensland. However, due to the emerging numbers in the Trans community, many are on quota, as to how many they can see. I wonder why, we are still called a minority group, as we are expanding exponentially. Young, middle aged and older people are coming out more readily, as they realise what their true feelings are.

This will mean more support is required at all levels in the now and the coming future. There will also need to be ongoing support and emergency facilities to cope with the growing numbers.

There is much work to be done with inter-action between government departments and Trans people, as this is the only way to arrive at understandings that are acceptable to all. However, it is far from a happy situation, as many in the Trans community are not willing to take part, as they fear "outing themselves"

Yours Sincerely,
Kathy Anne Noble.
President, Changeling Aspects
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