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A Brief History of X

The Long Legal Battle for Sex: Not-Specified

by Norrie

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Norrie: It took me a few moments to work out that this probably meant we had won.

In some ways this case started back in 1991, when a group of gender and sex diverse people came together to form the Transgender Liberation Coalition.

The barrier to legal non-binary identity has been seen as the legal fiction it always was.

Back then, 'transgender' was not legally defined, though 'transsexual' was medically defined, but the group didn't want to be bound or excluded by a single definition of sex or gender status. Our commonality was that we were persecuted for not fitting into the presumed truth of binary sex and gender conformity. We lobbied to have sex and gender diverse people protected from discrimination, and allowed to have legal documents that reflected their actual identity, like everyone else, whether or not it matched what had been put on a birth certificate decades earlier.

Clover Moore, then Member of Parliament for the inner-city State electorate of Bligh, was the first to introduce transgender law reform into the Parliament.

Since she was an independent M.P., and not allied with either major party, this bill lapsed when the Parliament rose for elections. But it was now on the notice paper, metaphorically, and T.L.C. lobbyists Aidy Griffin and Nadine Stransen worked with Greens M.L.C. Ian Cohen and Labor Deputy Premier Andrew Refshauge to reintroduce the Transgender Anti-Discrimination and other Acts Amendment Bill of 1996. I was consulted over the wording of the proposed legislation, but I was more a support person to the main lobbyists Aidy and Nadine, who were invited to help Ian draft his Second Reading speech, which was later used in court in my case to interpret the amended *Births, Deaths and Marriages Registration Act 1995* (N.S.W.).

The vital clause said "a person who has undergone surgery to correct or eliminate ambiguity" would then be recognised as whatever sex they are now. It was big enough to drive a truck through. I just didn't know that I would end up being that truck.

A dozen years later, I was with the steering committee of Sex and Gender Education (S.A.G.E.) Australia, the current national lobby group for the rights of people of sex or gender diversity, when the spokesperson Tracie O'Keefe asked me if I'd like to apply for a Recognition of Details certificate stating my sex as it is, which, in terms of male and female, is non-specific.

Following the Australian Human Rights Commission report luridly titled 'Sex Files' (consultations about sex and gender diversity), we had been told by the Federal Department of Immigration and Citizenship that it would issue a passport with sex status 'X' for Unspecified or Non-Specific or Not Stated if there was supporting state documentation (that is, birth certificate, or the equivalent for people not born in N.S.W., a Recognition of Details Certificate).

I went to the Registry of Births Deaths and Marriages, but they weren't sure they could help me, and I was quite distressed initially at what seemed like bureaucratic naysaying. But, after one officer spoke to his boss and she spoke to her boss, they said they could and would help me.

They wanted a copy of my Citizenship certificate, so I went to the Federal Department of Immigration and Citizenship, where they said they could help if I had proof of living at the same address for every month in the last three years. One phone bill or electricity bill for every month. I fumed and stressed and went back with a mountain of paper and got the damn certificate copy. I think I began the process in November 2008, but it was March 2009 before it was complete, after much paperwork and to-ing and fro-ing and doctors' certificates and faxes questioning the doctors' certificates and reissuing of the doctors' certificates and finally acceptance of the doctors' certificates, followed by a week to upgrade the computer programme at the Registry.

Finally I received the certificate stating my sex as Not Specified, with a cover letter signed by the Registrar himself stating the process was now complete and final. Finally. Tracie advised me to keep quiet about it for a little while, since the certificate arrived the day before the Sydney Gay and Lesbian Mardi Gras parade, and there would be little room for any news in the mainstream media for anything else that was 'queer'. I duly kept my counsel but smiled particularly radiantly as I marched in that parade. One month later, the story was on the front cover of the *Sydney Morning Herald*. One working day later, there was a phone call from the Registrar to advise

it had all been a mistake.

File notes later revealed there were public queries, and a legal opinion obtained by the Solicitor-General (effectively further up the hierarchy than the Registrar of Births, Deaths and Marriages) stated that the certificate issued had not in fact been issued, because it could not have been.

Lawyer David Shoebridge took my case as his last one before taking up his seat in the State Parliament as a Greens Member of the Legislative Council. He helped me appeal to the Administrative Decisions Tribunal, which bounced the case along for a couple of years and two appeals, I can't tell you why, it was too convoluted for me to follow. While that was happening, Kevin Rudd as Minister for Immigration and Citizenship, changed the passport rules so that one only needed supporting medical evidence to get 'X' as the sex. I already had the doctors' letters, so I got an 'X' on my passport in 2011.

Yay, Kevin Eleven!

Meanwhile, back at the Administrative Decisions Tribunal hearing, when I tried to make my submission orally, they scrambled and said they wanted copies of my notes, rather than listening to the speech the notes had been prepared to support.

The Crown Solicitor's team representing the respondent (the Registrar of B.D.M.) had thought I was a garden variety transsexual, covered by clause A which was about changing to 'the opposite sex', and panicked when I cited clause B, which applied to people who have surgery to correct or eliminate ambiguity.

The Crown team asked for proceedings to stop while they consulted a man in a grey suit sitting at the back of the court.

The Administrative Decisions Tribunal insisted sex could only be male or female, so with the pro bono assistance of law firm D.L.A. Piper, advice from barristers Alister Abadee and Geoffrey Watson S.C. (who was unable to represent me in court because he became too busy prosecuting the shenanigans of the State A.L.P. at I.C.A.C.), and court representation by John Howard's Solicitor-General, barrister David Bennett Q.C., we took the case to the Supreme Court of N.S.W. in November 2012.

After a long wait of six months, we went back to the court for the issuing of the Judgment.

"The appeal is allowed, the decision of the tribunal is set aside, the matter is referred back to the tribunal, the respondent pays the costs of the appellant".

It took me a few moments to work out that this probably meant we had won. And now, it's all over bar the shouting. The barrier to legal non-binary identity has been seen as the legal fiction it always was.

Thank you to all who helped make this happen, in particular D.L.A Piper's Emily Christie, Samantha Butt and Nicholas Patrick, barristers Alister Abadee, Geoffrey Watson and David Bennett, activists/lobbyists Tracie O'Keefe, Aidy Griffin, and Nadine Stransen, past and present Members of Parliament Clover Moore, Ian Cohen, Andrew Refshauge and David Shoebridge, and all my friends who supported and inspired me and put up with my varying moods through this trial.

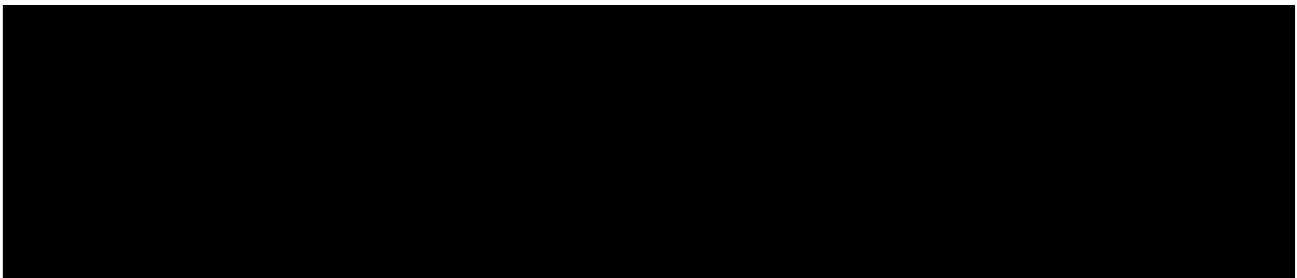
norrie mAy-welby

From [Wikipedia](#)  norrie mAy-welby became the first person in the world to be officially declared to be neither a man nor a woman, making Australia the first country in the world to recognise a "non-specified" gender.

Born in Paisley, Renfrewshire, Scotland, as a male and moving to Perth, Western Australia at the age of seven, norrie underwent male-to-female reassignment surgery in 1989, but later found that being a woman was not what zie felt like either. Zie moved to Sydney in the early 1990s. Doctors stated, in January 2010, that norrie was a neuter, neither male nor female, as hir psychological self-image was as a neuter, hir hormones were not the same as a male's or female's, and zie had no sex organs.

One of hir worries about being labelled male or female is that zie now looks like neither and is physically neither as well. Because of this, if hir passport states gender as being one or the other, it is possible that zie might be detained for not fitting what the gender field says zie should look like. This was one of norrie's reasons for seeking recognition as gender neutral. Of hir own sexuality, norrie has stated: "I'd be the perfect androgyne if I was completely omnisexual, but I'm only monosexual. Just think of me as a big queen girl."

norrie has been an integral part of the Gender Centre in many ways since moving from Western Australia many years ago. [Visit hir website for more about norrie](#)  Meanwhile, this excellent video has appeared on You Tube, an interview with norrie in which zie explains her views on many topics





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The Gender Centre is committed to developing and providing services and activities, which enhance the ability of people with gender issues to make informed choices. We offer a wide range of services to people with gender issues, their partners, family members and friends in New South Wales. We are an accommodation service and also act as an education, support, training and referral resource centre to other organisations and service providers. The Gender Centre is committed to educating the public and service providers about the needs of people with gender issues. We specifically aim to provide a high quality service, which acknowledges human rights and ensures respect and confidentiality.